

CHAPTER 228.

An act to provide for departments of public works and the making of public improvements in cities of over one hundred thousand (100,000) inhabitants.

H. F. No. 846. 95 C 228
66-M - 315
69-NW 27
75-NW 224
Department of Public Works. 95 C 228
72-M 226

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

SECTION 1. Each city in the state of Minnesota now or hereafter having more than one hundred thousand (100,000) inhabitants is hereby authorized to maintain a department of public works and to make public improvements within the limits of such city as hereinafter provided.

In cities of more than 100,000.

SEC. 2. Said department of public works shall consist of three branches.

- First—An engineering department.
- Second—A commissioner of public works. and
- Third—A board of park commissioners.

The head of the engineering department shall be a competent civil engineer to be known as the city engineer. He shall be appointed by the mayor on the second (2d) Tuesday in June of each even numbered year, or as soon thereafter as practicable, and shall hold his office for a term of two (2) years. The city engineer in office when this law takes effect in any city shall continue in office under this act until the expiration of the term of office for which he is elected, and until his successor is appointed and qualified. The city 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 with sureties in such sum and upon such conditions as shall be approved by the common council.

How composed

He shall receive a salary of five thousand (5,000) dollars per annum. The city engineer may be removed at any time for cause by a two-thirds (2/3) vote of all the members of the city council.

Salaries.

Whenever the office of city engineer becomes vacant the mayor shall appoint a city engineer for the unexpired term. The city engineer shall appoint a first assistant engineer, who shall receive a salary of twenty-five hundred (2,500) dollars per annum, and he may appoint such further assistant engineers and other employes in his department as the public service require who shall receive such compensation as the common council may determine.

Said assistant engineers and other employes shall hold

their respective positions at the pleasure of the city engineer.

The city engineer shall have the general charge of all the engineering work required by the city. He shall 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. He shall perform all civil engineering officially required by the commissioner of public works, by the board of park commissioners or any other department of the city, but neither said engineer nor his deputies or clerks or other employes shall perform any other service except that connected with their official duties. Said city engineer shall keep a full official record pertaining to all work in his office, which record shall belong to the city.

Duties of city engineer.

SEC. 3. The city engineer under the direction of the city council and under the direction of the commissioner of public works shall be charged with the construction, control and supervision of all the sidewalks, streets, lanes, bridges, alleys and public levees; and it is hereby made the duty of said engineer 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 perform the duties and work created and imposed by this section, he is authorized to appoint not to exceed six (6) persons to be designated as street commissioners who, under his direction, shall perform such duties as the city engineer shall from time to time prescribe.

Street commissioners.

Said persons so appointed shall at all times be under the supervision of said engineer and shall receive such compensation as the engineer with the consent of the common council expressed by resolution may determine; and in fixing such compensation said resolution shall specify the period for which said compensation shall last, which period shall in no case exceed at any one (1) time six (6) months.

Commissioner of Public Works.

SEC. 4. On the second (2nd) Tuesday in June of each even numbered year, the mayor of the city shall appoint a commissioner of public works. Said commissioner shall be a resident and qualified elector of the city, and shall not hold any other office under the charter or ordinances of the city. He shall hold his office for two (2) years and until his successor shall be appointed and shall qualify as provided in this act. On the taking effect of this act in any city the mayor thereof shall

immediately appoint a commissioner of public works to hold in the interim until the time for the appointment of a commissioner of public works for a full term above provided for. Said commissioner to have all the powers of commissioner of public works herein provided for. In case of a vacancy during a term the mayor shall in like manner appoint a successor to fill the unexpired term.

SEC. 5. The said commissioner of public works shall receive a salary of three thousand (3,000) dollars per annum, and shall give his whole time and attention to the proper and efficient discharge of his duties imposed upon him by the provisions of this act. Before entering upon the discharge of his duties he shall take and subscribe an oath to the effect that he will faithfully and impartially execute his duties to the best of his ability, which oath shall be filed with the clerk of the city.

Salary, oath
and duties of
commissioner.

The commissioner of public works may appoint a clerk and such other employes as he shall deem necessary for the proper conduct of the business of his office.

Neither the commissioner of public works nor any officer or clerk in his employ shall be interested directly or indirectly in any contract made and entered into by the commissioner of public works for any work or for any materials to be furnished therefor; and all contracts made with said commissioner in which said commissioner shall be so interested shall, at the option of the city be declared utterly void and of no binding effect whatever, and said commissioner shall thereupon forfeit his office and be removed therefrom upon proof of such delinquency; and it is hereby made the duty of the mayor and every officer of said city to report to the common council any such delinquency when discovered.

The commissioner of public works or any of his clerks or employes who shall be interested directly or indirectly in any such contract or contracts aforesaid, or any contractor or other person who shall take any such contract or contracts with knowledge of such interest of such commissioner, clerk or employe in such contract or contracts, or who shall corruptly influence or attempt to influence the action of the commissioner or any of his clerks or employes in the letting or making, or entering into any contract, or in the performance of any official duty of such commissioner, clerk or employe, shall be guilty of a misdemeanor and liable on an indictment and conviction thereof to be punished by imprisonment for a period not exceeding six (6) months

Penalty for
being inter-
ested in con-
tracts.

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

The commissioner may be removed for cause by a two-thirds ($\frac{2}{3}$) vote of all the members of the common council and not otherwise.

Compensation
of clerks.

SEC. 6. The clerks and other employes of the commissioner of public works shall receive such compensation as the council shall determine and shall hold office at the pleasure of the commissioner of public works.

City may con-
demn land for
parks, markets
&c., construct
the same and
assess therefor.

SEC. 7. Any city in this state now or hereafter having over one hundred thousand (100,000) inhabitants is hereby authorized and empowered to condemn land for public parks, public markets, for the opening, widening extending, altering or straightening of any street, levee, lane, alley or highway and to condemn any easement in and across, over or under the property of corporations and others for streets, bridges, approaches, culverts, ditches or sewers, and to condemn an easement in land for the construction of slopes or retaining walls for cuts and fills upon real property abutting on any street, levee, lane, alley or highway now ordered or to be hereafter ordered to be opened, extended, altered, straightened or graded and for change of grade in any street, levee, lane, alley or highway and to abate nuisances, and to drain swamps, marshes and ponds and stagnant pools and to fill the same in said city, and to levy assessments for all the improvements above mentioned, and for such other local improvements as may be ordered by said city upon property fronting upon such improvement, or upon the property to be benefited by such improvement or improvements without regard to cash valuation.

Two or more of said improvements may be combined in one proceeding when deemed proper to do so by the common council.

The provisions of this section shall apply to any and all improvements heretofore ordered as well as to those that shall be hereafter ordered.

May assess for
grading, etc.

SEC. 8. Such assessments may be made by any city subject to the provisions of this act for grading, filling, leveling, paving, curbing, walling, bridging, graveling, macadamizing, planking, opening, extending, widening, contracting, altering and straightening any street or streets, levee, lane, alley 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 across, over and under the property of corporations and others for streets, bridges, approaches, culverts and ditches, and for an easement

in land for the construction of slopes or retaining walls, for cuts or fills in any street, levee, lane, alley or highway, which has 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 and protecting shade and ornamental trees and for constructing grass plats or boulevards, or the setting of curbs in any public street, lane or highway, also to abate nuisances, and to drain swamps, marshes and ponds and pools of stagnant water, and to fill the same; also for constructing, laying and repairing crosswalks and sidewalks, retaining walls and walls, gutters, sewers and private drains and enlarging all of the same; also for street sprinkling, street sweeping, and also the abatement of any and all public nuisances within the limits of said city; and the city is also empowered to combine two or more of any of said improvements in one proceeding.

SEC. 9. The expense of any improvement mentioned in the foregoing sections shall be defrayed, save as otherwise provided, by an assessment upon the real estate benefited thereby, or by an assessment upon the the real estate fronting thereon to be levied in the manner hereinafter prescribed.

Expense to be assessed on frontage of real estate benefited.

Provided, that cross foot walks 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 the city, and that all or any part of the expense of improving or ornamenting public grounds squares and parks may if deemed expedient be paid out of the general fund of the city, or the park fund as hereinafter prescribed.

Provided, also, that any assessments for any of the above named local improvements which shall be apportioned or levied against public property or property otherwise exempt shall be paid out of the general fund of the city.

SEC. 10. All assessments for local improvements aforesaid, as herein provided for shall be made by the commissioner of public works.

Assessments to be made by commissioner.

SEC. 11. All applications or propositions for any improvement or improvements herein provided for except for condemning land for public parks shall be made to or emanate from the common council of the city and shall be first referred to the commissioner of public works by the common council,

Applications for improvements—how made.

Steps in ordering an improvement.

Provided, that any such application made to such council shall be in writing and said council shall not be required to proceed farther with any such application by reference to the commissioner of public works or otherwise unless said council is satisfied that the owners of at least one-half ($\frac{1}{2}$) of the property fronting and abutting upon the line of the said proposed improvement resident within the same county have subscribed to such application, and upon such reference said commissioner shall proceed to investigate the same and if he shall determine that such improvement is necessary and proper he shall report such determination to the common council accompanied with an estimate of the expense thereof and a plan or profile of the contemplated improvement and a further order directing the work to be done.

In said report he shall also state whether property can be found benefited to the amount of the assessment necessary to defray the expenses of the improvement referred to him by the council, or if he shall report a modification thereof, of the improvements he recommends.

He shall also state whether a majority of the owners of the property to be assessed therefor have petitioned for such improvement.

Such reference shall not be necessary in the case of street sprinkling.

Provided further, that it shall not be competent for said common council to order any improvement made against the report of said commissioner when the commissioner has assigned as a reason for his adverse report that property cannot be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby.

In case said commissioner shall report in favor of said improvement or of a modification thereof, and that the same is necessary and proper, and that property can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby (less the proceeds of bonds if any applicable thereto) the common council may in its discretion unless otherwise provided for in this chapter, by a two-thirds ($\frac{2}{3}$) vote of the whole number of said council, (a two-thirds ($\frac{2}{3}$) vote of the whole number of each body shall be required when the council consists of more than one body), order the doing of the said work, or the making of said public improvement as aforesaid.

Provided further, that it shall be competent for the commissioner when an improvement is referred to him for investigation and report to recommend any modifi-

cation thereof and he may include in his recommendation the making of other improvements in connection therewith if he shall also report that property can be found benefited to the extent of the assessment necessary to be levied to pay for the same.

The report of the commissioner shall be advisory to the common council and they may in their final orders modify the character of the improvement referred to said commissioner or recommended by him.

It is *further provided* however, that the common council shall in no case order the doing of any such work or the making of any such improvement or improvements unless in their opinion real estate to be assessed for such work and improvement can be found benefited to the extent of the damages, costs and expenses necessary to be incurred thereby.

When two or more improvements are ordered to be done under one order they shall be included in one contract.

Before any final order for the doing of any work is made under this section the members of the body of the common council acting on the same, save in matters of sidewalks and street sprinkling, shall examine the general plans and profiles therefor and the presiding officer shall introduce such plans and profiles and make declaration of such indorsement to such body.

But such examination and indorsement shall not be deemed jurisdictional in proceedings to assess property for such improvement.

No crosswalks shall be built until the same shall have been referred to the commissioner and said commissioner has reported in favor thereof.

SEC. 12. When any order is passed by the common council by virtue hereof for the making of any public improvement herein provided for which shall require the appropriation or condemnation of any land or real estate the said commissioner shall as soon as practicable proceed to ascertain and assess the damages and recompense due the owners of such land and at the same time to determine what real estate will be benefited for such improvement and assess the damages together with the cost of the proceedings on the real estate deemed by him benefited in proportion as nearly as may be to the benefit resulting to each separate lot and parcel thereof.

SEC. 13. Said commissioner shall then give fifteen (15) days notice by one publication in the official newspaper of the city of the time and place when he will make said assessment in which notice he shall specify what such assessment is to be for and shall describe the

To determine
benefits and
damages.

Notice of
assessment.
Hearing.

land to be condemned as far as can be done by general description and all persons interested in any such improvement shall have the right to be present and heard either in person or by counsel, and the legal advisor of the city shall be permitted to appear before said commissioner at such hearing to represent the interests of the city.

In such notice the commissioner may specify generally what property will be assessed and if at the hearing additional property shall be included in the assessment or part of the property excluded from it no new notice shall be necessary.

The said commissioner shall review the premises to be condemned and receive any legal evidence that may be offered for the purpose of proving a true value thereof or the damages that will be sustained or benefits conferred by reason of the contemplated improvement; and said commissioner for this purpose is hereby authorized to administer oaths to all witnesses produced before him and he may adjourn the meeting from time to time and from place to place until such assessment is completed; and said commissioner shall have authority to send for persons and papers and to compel the attendance of witnesses and shall have authority to issue subpoenas under his seal.

To assess
benefits, &c.

SEC. 14. The said commissioner 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 owner or owners respectively as damages after making due allowances therefrom for any benefits which such owner or owners may respectively derive from such improvements, and said sum so awarded 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.

Interest.

Condemna-
tion—when
completed.

The condemnation taking and appropriation of any real property or an easement therein for any improvement mentioned in section seven (7) of this act shall be deemed in law to be done and fully consummated upon the confirmation by said commissioner of the assessment of damages and benefits therefor.

Difference
between bene-
fits and dam-
ages to be col-
lected or paid.

SEC. 15. If the damages to any person be greater than the benefits received or if the benefits be greater than the damages, in either case the said commissioner shall strike a balance and carry the difference aforesaid to another column so that the assessment may show what amount is received or paid by such owners respec-

tively, and the difference only shall in any case be collectible of them or paid to them.

SEC. 16. 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 commissioner of public works in his discretion in making such assessment when part of the land to be laid out in such street, levee, lane, highway or alley has been heretofore 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.

Value of land considered.

And when 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 such commissioner of public works in his discretion to make such allowance therefor in his assessment for benefits as shall in his opinion be equitable and just.

SEC. 17. If there should be any building standing in whole or in part upon the land to be taken the said commissioner of public works shall add to the estimate of damages for the land, the damages for the building or part of the building necessary to be taken if it be the property of the owner of the land.

Damages to building.

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 said commissioner of public works, and notice of such determination shall be given by him 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 commissioner of public works in writing of his election to take such building or part of building at his appraisal: and in such case the amount of such appraisal shall be deducted by the commissioner of public works from the estimated damages for the land and building, when they belong to the same owner, and from the estimated damages

for the building when 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 commissioner 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 commissioner 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 notice of 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. 18. If the land and buildings belong to different persons, or if the land be subject to lease, the damages due to such persons respectively may be awarded to them by the commissioner of public works less the benefits resulting from them respectively from the improvement.

SEC. 19. Having ascertained the damages and expenses of such improvement as aforesaid, the said commissioner of public works shall thereupon apportion and assess the same, together with the costs of the proceedings upon the real estate by him 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 such 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 commissioner of public works.

SEC. 20. When completed said commissioner of public works shall cause to be given ten (10) days notice by one (1) publication 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 said commissioner will attend for the purpose of hearing objections and that all such objections must be filed in writing with said commissioner at least one (1) day prior to said time above specified, and that unless sufficient cause is shown to the contrary the same will be confirmed; and when so confirmed it shall be entered in a book kept for that purpose.

Different
owners—sepa-
rate valuation.

To assess after
determining
damages and
expense.

Hearing after
assessment
completed.

All objections shall be in writing and filed with the said commissioner at least one (1) day prior to the time specified in said notice. Objections in writing.

Provided, however, that said commissioner may in his discretion allow any party interested who has accidentally or inadvertently omitted to file his objections aforesaid to do so at the time fixed for the hearing of said objections named in the said notice.

Should the said commissioner not be present at the time and place appointed the said proceeding may be adjourned by the clerk of said commissioner to such other convenient time and place as may be deemed expedient.

Provided, further, that nothing herein contained shall preclude the said commissioner from causing a new notice aforesaid to be given specifying a time and place at which he will attend for the purpose of hearing objections to said assessment and for the confirmation thereof in the manner as before required, in case the previous notice shall be found imperfect or in case of the absence of said commissioner or for any other reason which shall be satisfactory to said commissioner for so doing. New motion.

The said commissioner shall have the power to adjourn such hearing from time to time and shall have the power in his 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. The said assessment when confirmed shall be final and conclusive upon all parties interested therein, except a herein-after *provided*. Adjournment.

When said assessment is confirmed, a warrant under the seal of said commissioner 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 the said commissioner and the city comptroller. Warrants.

If said assessment shall be set aside by the said commissioner as aforesaid, or by the court the said commissioner shall proceed *de novo* without any further order from the council to make another or new assessment, and he shall proceed in like manner and give like notice as herein required in relation to the first and all parties in interest shall have like rights; and the said commissioner shall perform like duties and have like powers in relation to any subsequent determination as are hereby given in relation to the first. Assessment de novo when set aside.

Provided, however, that if judgment shall be obtained against any lot or lots or parcels of land assessed benefits, or if the damages assessed against any parcel or

parcels of land shall not be appealed from or shall not have been set aside in any subsequent assessments or reassessments the said commissioner may omit the pieces or parcels of land as to which the first assessment shall not have been set aside, or on which said assessment shall have been paid and as often as an assessment or reassessment is denied against any piece or parcel of real estate assessed for any local improvement the same shall be reassessed until said property shall have paid its proper proportionate share of benefits accruing from said improvement.

Notice of confirmation.

As soon as practicable after an assessment of damages has been confirmed and entered the said commissioner shall cause a brief notice by one (1) publication of the fact of such confirmation and entry to be published in the official paper of said city.

Appeals.

SEC. 21. 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 in which such city is situated from the order confirming said assessment.

Said appeal shall be made by filing a written notice with the commissioner 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 conditioned to pay all costs which may be awarded against the appellant in such sum and with such sureties as shall be provided 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 said commissioner. 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 said commissioner shall be filed in the office of the clerk of court to which such appeal shall be taken, and the cause be docketed by such clerk in the name of the person taking such appeal against the city as an "appeal from assessments." The said cause shall then be at issue and it may be brought on for hearing by either party and shall have the preference in order of trial over all civil cases 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 commissioner 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 either to confirm or annul the assessment in so far as the same affects property appropriated aforesaid of the said appellant, from which judgment no appeal or writ of error shall lie. Costs and disbursements may be taxed upon said appeal as in other civil cases, but the judgment entered therefor against said city shall be a separate judgment and paid out of the general fund of said city.

SEC. 22. When such assessment shall have been confirmed the same shall be a lawful and sufficient condemnation of the land ordered to be appropriated, and of every right, title, estate, lien and interest therein except as to those who have appealed therefrom as provided by section 21 of this act.

When condemnation completed.

The city shall thereupon cause to be paid to the owner of such property the amount of damages over and above all benefits which may have been awarded therefor within six (6) months after the date of the confirmation of such assessment with interest at the rate of seven (7) per cent per annum.

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 in fee simple. When sufficient money has been collected and if in the treasury ready to be paid out for damages assessed the city treasurer shall publish a notice to that effect in the official paper of said city by one publication. The damages assessed shall cease to draw interest at the end of the period of thirty (30) days after such publication. *Provided*, however, that when it may be necessary to condemn any land for the opening, widening or extension of any street over which any stream or 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 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 millraces across, through or under said street,

In case of doubt as to title—bond.

and construct dams above and below said street and to flow said land;

Flumes, dams,
etc.

Provided further said flumes, races, dams or flows shall be so constructed and used as not to obstruct public travel on said street. It shall be the duty of the clerk or recorder of the city to cause all deeds taken by the city for land acquired by condemnation to be recorded without delay and said clerk or recorder shall be the custodian thereof. In case no deed is given it shall be the duty of the clerk or recorder 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 in which such city is situated 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.

May occupy
up on confirma-
tion.

SEC. 23. The city shall have the right to enter upon and take possession of the lands and property ordered to be condemned or of any easement therein and to appropriate such land, property or easement to the purposes for which the same is condemned upon the confirmation of the assessment as hereinbefore provided. In case an appeal shall be taken from the confirmation of such assessment the same shall not delay the right of the city to enter upon and appropriate the property condemned.

Leases and
mortgages to
cease.

SEC. 24. When the whole of any lot or parcel of land or other premises under lease, mortgage or other contract shall be taken for the purposes aforesaid by virtue of this act, all the covenants, contracts and engagements between landlords and tenants, mortgagor and mortgagee or any other contracting parties touching the same or any part thereof shall upon the confirmation of said assessment as provided in the foregoing section respectively cease and be absolutely discharged.

To remain
valid on other
lands covered.

SEC. 25. Where part only of a lot or parcel of land or other premises so under lease mortgage 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 the confirmation of said assessment 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 apportioned that the part thereof justly and equitably payable for such residue thereof and no more shall be paid and recoverable for the same.

SEC. 26. All the proceedings taken by the said commissioner of public works in carrying out the provisions of this act shall be recorded in a book or books kept for that purpose in the office of the said commissioner describing particularly the respective improvements, all real estate taken and assessed. The said book in which said proceedings have been entered aforesaid and the official files and papers of said commissioner of public works shall be deemed public records and be prima facie evidence of the facts therein stated and certified copies thereof by the said commissioner with his seal attached shall be evidence in all the courts to the same effect as if the original were produced.

Records of
proceedings.

SEC. 27. It is hereby made the duty of the commissioner of public works of the city annually 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 of each year.

Sidewalks--
proposals.

Provided, however, that the commissioner of public works may whenever in his opinion the public interests 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 a separate contract for the construction, repair and relaying of wooden 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 commissioner of public works at least ten (10) days before the day named for the receipt of said bids by the said commissioner of public works and said work shall be let and placed under contract. The bids for the construction, repair and relaying of said sidewalks shall be accompanied by a bond to the city 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 said city for the full amount thereof as liquidated, damages in any court having jurisdiction of the amount.

Proceedings in
laying side-
walks.

Provided. That the question of what constitutes the lowest reliable and responsible bidder must be determined by said commissioner of public works independent and exclusive of the bond required by this section whenever said council shall order the construction of such sidewalks a copy of such order shall be transmitted to the commissioner 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 any unnecessary delay 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 said 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 commissioner of public works who shall cause an assessment to be made as hereinafter provided.

Notice.

The said commissioner shall give ten (10) days notice by one (1) publication in the official paper of the city to the effect that at a certain time and place he will proceed to make an assessment for the constructing, relaying or repairing said sidewalks.

Said notice shall briefly describe the location and nature of said improvements by streets. The commissioner of public works is authorized to make an assessment for such construction, relaying or repairing of the sidewalks as frequently as once a month and may include in said assessment all sidewalks laid and reported to him by the engineer up to the time of the giving of said notice for said assessment. The said commissioner shall assess the amounts as nearly as he can ascertain the same which will be required to defray the costs 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 improvements as aforesaid. When said assessment is completed the said commissioner shall give six (6) days notice by one publication in the official newspaper of the city to the effect that at a time and place therein specified said assessment will be confirmed unless sufficient cause is shown to the contrary, and the objections must be filed one (1) day before the time specified in

Assessment.

said notice, with the said commissioner. Such objections shall be made and filed in the same manner and the said commissioner shall proceed in hearing the same and shall have the same power to revise, correct, confirm or set aside such assessment or to proceed de novo as provided in section twenty (20) of this act.

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. Confirmation.

Whenever the said contractor shall fail to build repair or relay any sidewalk within the time designated by the said commissioner or in any other respect fail to comply with the terms of said contract the said commissioner 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 or to become due to such contractor or may be collected from him by suit by said city, or said commissioner may readvertise for bids for the completion of the uncompleted part of said contract under an order from the council therefor and let a contract in the same manner as hereinbefore provided in the original contract. The decision of the said commissioner that said contractor has failed to comply with the said contract shall be final and conclusive as between said commissioner and the city, and the defaulting contractor and his bondsmen shall be liable to the city for all damages resulting from such failure to carry out his contract and all additional expense and cost of construction under the new contract. Estimates.

In case said contractor shall proceed to properly perform his said contract and all the provisions, clauses, matters and things therein contained the said commissioner may upon said contractor filing with the city engineer an affidavit that all of 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 if said sidewalk shall have been constructed before a sidewalk has been ordered in front of the property by the common Owner may construct.

council. After it has been ordered 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.

Order by council sent to commissioner.

SEC. 28. Whenever an order shall be finally passed by the common council of the city as hereinbefore 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 or the setting of curbs in any public lane or highway, or for abating nuisances, draining swamps, marshes and ponds and pools of stagnant water and to fill the same the city clerk, shall transmit a copy of such order of said council to the said commissioner of public works.

Commissioner to let work.

The said commissioner 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 the said commissioner shall thereupon proceed without delay to assess the amount as nearly as he 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 stated; *Provided*, however, that the repairing of any street, levee, lane, alley, highway, public grounds 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 commissioner and the cost thereof paid out of the general fund; and *provided, further*, that nothing herein contained shall prevent 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.

What paid out of general fund.

Final order.

The final order of the council ordering the abating of nuisances, draining swamps, marshes and ponds, and pools of stagnant water or the filling of the same shall be a sufficient determination that such nuisance exists and that the ponds or pools of water are stagnant.

Assessments on Ry. Co.

SEC. 29. 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 to enforce the collection of said assessment as an indebtedness, *Provided*, however, that any real estate belonging to such railway company and subject to assessment and deemed benefited by the said improvement shall be assessed as in other cases.

The provisions of this section shall apply to street railways as well as other railway companies.

SEC. 30. Before proceeding to make an assessment for any improvement mentioned in section twenty-eight (28), said commissioner shall give six (6) days notice by one (1) publication in the official paper of the city of the time and place when he will attend for the purpose of making such assessment in which notice he shall specify what such assessment is to be for and the amount to be assessed. The said commissioner 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 if known to said commissioner and found, but the failure to give such personal notice shall in nowise affect the validity of said assessment or 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 commissioner may in his discretion receive any legal evidence and may adjourn the hearing if necessary from time to time and place to place. The personal notice required by this section may be made by depositing in the postoffice a postal card addressed to the property owners to be assessed or their agents resident in the city at least four (4) days prior to the making of an assessment upon which card shall be either printed or written substantially the notice above specified, but the failure to give such personal notice shall in nowise affect the validity of said assessment or of any of the proceedings.

SEC. 31. When the said commissioner shall have completed the assessment provided for in the preceding sections he shall cause like notice to be given of the time and place when he will attend 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 commissioner shall

Applies to street railways also.

Notice of assessment,

Notice of confirmation—
hearing.

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 said commissioner 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 the confirmation thereof.

Confirmation final.

If any assessment be annulled or set aside the said commissioner 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.

Advertising for proposals.

SEC. 32. Whenever any public improvement shall be ordered for which an assessment is to be made as aforesaid the said commissioner shall cause proposals for doing said work to be advertised in the official paper of the 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 said commissioner to be kept by him at all times open for the 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.

Sealed bids—bidder's bond.

The bids for the doing of such work shall be sealed bids directed to the commissioner of public works and shall be sealed in such manner that they cannot be opened without detection and shall be accompanied by a bond to the city in a sum not less than twenty (20) per cent of the contract 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 according to the 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 city for the full amount thereof as liquidated damages in any court having jurisdiction of the amount.

Bids opened.

Said bids shall be opened by said commissioner at the time specified in said notice inviting proposals after the time limited for receiving such proposals, or at such other time thereafter as said commissioner may appoint.

And it is hereby made the duty of the commissioner in case of the default 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 commissioner to reject all bids for contract work made by any person or persons who shall have defaulted in any contract awarded by said commissioner except as to time or who shall have refused to enter into a contract after the same shall have been awarded to him or them.

Provided, that in lieu of the bond in this section provided for the bidder may deposit with said bid a duly certified check upon any of the banks of the city payable to the said commissioner for the use of said city. Such check shall be for ten (10) per cent of the amount bid as near as can be ascertained. All checks shall be returned to the person depositing the same after the bids are opened, except that of the successful bidder which shall be retained as a guaranty that he will enter into a contract with the city for the performance of the work ordered to be done.

The said check so retained shall be returned to the successful bidder as soon as he shall have entered into a contract for the doing of said work.

SEC. 33. All contracts shall be awarded to the lowest reliable and responsible bidder or bidders who have complied with the above requisition, and who shall have *guaranteed to the satisfaction of the said commissioner* the performance of the said work to his satisfaction, except in the case of patent pavement or pavements, when in such case the notice for bids may call for wood, stone or other kind of pavement, and when all proposals therefor are in, the said commissioner may select the one which is relatively the lowest and most satisfactory all things considered, and the decision of the commissioner therein shall be final. Lowest bidder.

If the pavement selected is patented, the said commissioner shall require a license from the patentee to lay and relay the same for all time thereafter, free from all claims for royalty. Whereupon a contract shall be made on the part of said commissioner in the name of the city and shall be executed on the part of the city by said commissioner and the seal of said commissioner shall be thereto attached, and the said contract shall be countersigned by the city comptroller said contract shall be filed in the office of the city comptroller. Patent pavement.

Provided, however, that the said commissioner may reject any bid which he shall deem unreasonable and unreliable and the said commissioner 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 with the May reject bids

Approval of
common coun-
cil.

approval of the common council by a two-thirds ($\frac{2}{3}$) vote of the members thereof elect.

May suspend
contract.

SEC. 34. The said commissioner shall reserve the right in said contract in case of improper construction to suspend the work at any time and relet the same, or to order the entire reconstruction of the same if improperly done. In cases where the contractor or contractors shall proceed to properly perform and complete the said contracts the said commissioner of public works may from time to time (not oftener than once a month, except as to final estimates which may be given and allowed at any time after the allowance of the preceding estimate), as the work progresses grant to said contractor 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 commissioner the amount or balance due him shall be audited and allowed by the common council of such city and shall be payable out of the moneys applicable to the payment of such work;

Estimates-

Final estimate

Future repairs.

Provided, however, that in case of contracts for paving streets the said commissioner is authorized to retain such sum and upon such conditions and for such length of time as may be agreed upon for the keeping of said pavements in repair.

Notices—what
are.

SEC. 35. Two (2) or more of the notices required or authorized by this act to be given by the commissioner or the city clerk by publication in the official paper of the city in any special assessment proceedings may be comprised in one advertisement;

Provided, however, such notices are of the same general character or for a 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 of 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 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 purposes of this act.

And *provided, further* that the time specified for the publication of any notice required to be published in the official paper of the city under this act shall commence with the first publication.

SEC. 36. When any special assessment shall have been confirmed it shall be the duty of the commissioner of public works to issue a warrant for the collection thereof which shall be under the seal of the said commissioner and signed by the mayor, the comptroller and the said commissioner 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 assessment in each case. In case of an appeal as provided for by section twenty-one (21) of this act 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.

Warrants for special assessments.

Appeal not to delay work.

And in case such appeal shall be sustained and the assessment in relation to such property appropriated of said appellant shall be set aside by the court the commissioner 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 twelve (12) and in case the amount of damages or recompense which the said commissioner may award such appellant upon such new assessment shall exceed the first, the said commissioner shall make a new assessment upon the property to be benefited to pay the difference which may have been awarded such appellant together with the costs and expenses of such new assessment.

SEC. 37. All warrants issued for the collection of special assessments shall be delivered by the comptroller to the city treasurer within five (5) days after taking his receipt therefor.

Warrants delivered to treasurer.

SEC. 38. Upon the receipt of any warrant for the collection of any special assessment the city treasurer shall forthwith give notice by one publication 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 stating that in default thereof the same will be collected at the cost and expense of the property liable for the payment of such assessments.

Notice by treasurer.

First lien.

SEC. 39. All assessments levied under the provisions of this chapter shall be a paramount lien upon the real estate on which the same may be imposed from the date of the warrant issued for the collection thereof.

12 per cent interest.

SEC. 40. 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 reassessment 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.

Action by city treasurer in the courts.

SEC. 41. 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 reassessment or a new assessment warrant mentioned in the preceding section to report to the district court of the county in which the city is situated at a general or special term thereof all assessment warrants for the collection of any assessment under the provisions of this act 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 assessment, interest and costs respectively due thereon.

The city treasurer shall previously give at least ten (10) days notice by one (1) publication in the official paper of the city of his intended application for judgment which notice shall briefly specify the respective warrants upon which application is to be made and a description of the property against which judgment is desired and require all persons 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. Such personal notice may be made by depositing in the post-office a postal card addressed to property owners to be assessed or their agents resident in the city upon which card shall be printed or written such notice of application for judgment; but the failure to give such notice shall in no wise affect the validity of the judgment applied for or 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 said assessment.

SEC. 42. The city treasurer shall obtain a copy of the advertisement or advertisements referred to in the preceding section, together with an affidavit of the 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.

Advertisements to be filed with clerk of court.

SEC. 43. 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, or other proceedings of said court in relation thereto.

Actions—how docketed.

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.....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 judgment 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. 44. 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.

Summary hearing.

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 report or any person beneficially interested therein who shall feel 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 attorney for the city 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 forty-one (41) of this act.

No objection shall be interposed or sustained in rela-

tion to any of the proceedings prior to the confirmation of the assessment, except the common council had no authority to order the said improvement, or that the commissioner 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 other cases.

Form of order
by the court.

SEC. 45. In all cases where a judgment shall be rendered on 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 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 ordered by the court that judgment be, and it is hereby entered against the aforesaid lots and parcels of lands in favor of the city of 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 hereby 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.

Twenty-five (25) cents cost shall be laid to each lot or parcel against which judgment is rendered and included in the judgment and the further sum of fifteen (15) cents cost to each lot or parcel shall be added thereto after the notice of sale is given;

Provided, that in all cases where a difference 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. 46. It shall be the duty of the clerk of the 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, interests, damages and costs so levied, assessed, or charged upon them. Sale of lands.

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 one (1) publication in the official paper of said city.

SEC. 47. 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 against them 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 name in said advertisement by the 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. Notice of sale.

SEC. 48. 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. Letters and figures used.

SEC. 49. Certificates of sale shall be made and subscribed by the city treasurer under the seal of the city which shall be delivered to the purchaser, and 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 the costs of sale as hereinbefore provided; which judgment, interest and cost 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 Certificates of sale 12 per cent.

right to redeem shall expire. Said certificates shall bear interest at the rate of twelve (12) per cent per annum until paid.

Five annual payments.

Said certificates shall state upon their face that "this certificate may be redeemed in five (5) annual installments which shall become due and payable as follows: One-fifth (1-5) of said certificate at the end of each one of the successive five (5) years next ensuing the date of this certificate together with interest due on the whole amount thereof unpaid at the maturity of each of said installments:

Redemption.

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 a minor 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 persons filing with the city treasurer the 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 shall be recorded in the office of the register of deeds and shall be deemed sufficient to remove the cloud from such title by reason of such a city deed

Minors.

Purchasers.

SEC. 50. 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.

Bid in by state

If no bid shall be made for a 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

Entries by Treasurer.

SEC. 51. 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 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.

SEC. 52. If at any sale any piece or parcel of land shall be sold to a purchaser, 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 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-nine (49) 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 act subsequent to the sale, with the interest accruing thereon at the rate and payable in accordance with the provisions of section forty (40). 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
within five
years.*

*Lunatic or
infant.*

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 return of the certificate of sale or upon proof of its loss and the filing with the comptroller an affidavit of 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, comptroller and clerk of said city conveying to such purchaser or assignee the premises so sold and unredeemed as aforesaid.

Deed.

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 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 collected 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.

*Notice of
Expiration of
redemption.*

A memorandum of all deeds made and delivered shall

be entered by the comptroller in the book wherein such sales are recorded and a fee of one dollar (\$1.00) may be charged for every deed so issued; *provided* that nothing in this act contained shall be construed to affect or prejudice the lien 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.

Assignments
of certificates.

SEC. 53. Such certificate of purchase shall be assignable by indorsement and an assignment thereof shall vest in the assignee or his legal representatives all the right, title of the original purchaser.

Errors.

SEC. 54. Whenever it shall appear to the satisfaction of the comptroller before the execution of a deed for any property sold for assessments that such property was not subject to assessment had been paid previous to the sale he shall with the approval of the common council of said city make an entry opposite 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.

Deeds—prima
facie evidence.

SEC. 55. 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 grantee 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 either prove that the court rendered the judgment pursuant to which the sale was made had not jurisdiction to rendering 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 the 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 defense

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 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. If in any action in which the validity of a deed or certificate of sale issued under this act is brought in question on account of any irregularities, the same shall be set aside, the party holding such deed or certificate of sale shall recover from the city the amount paid by the purchaser at the sale, or by the assignee of the city on taking an assignment certificate with interest at the rate of seven (7) per cent per annum from the date of such payment. Such amount shall be paid out of the city treasury upon the order of the common council of said city. Such proceedings shall not operate as a payment or cancellation of any assessment included in the judgment, but the same shall stand as originally assessed against the property and with all accruing interest, penalties and costs. All deeds referred to in this chapter shall be admitted to record without payment of taxes and without the county auditor's certificate that the transfers have been made.

SEC. 56. Any change made in the incumbent of the office of the city treasurer or of the commissioner of public works during the pendency of any of the proceedings provided for in this act shall not operate to affect or delay the same, but the successor or successors in office of such city treasurer or commissioner of public works shall be authorized to do all acts necessary to complete such proceedings the same as if the predecessor had continued in office.

Changes in office.

In case of a vacancy occurring in the office of the city treasurer the proceedings shall be prosecuted by the comptroller until such vacancy shall be filled by election or otherwise

Vacancies.

SEC. 57. All sales of property for the non-payment of assessments provided for in this act shall be made in the day time at public vendue, in the city in which the property to be sold is situated at the time and place stated in the notice of sale prescribed in sections forty-six (46) and forty-seven (47) of this act, and may be adjourned from day to day, Sundays excepted, until the whole is completed.

Public vendue—when and where held.

SEC. 58. The city treasurer or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this act, or who shall consent to, or connive at any evasion of its provisions

Penalty for failure to perform duty.

whereby any proceeding required 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.

Errors not
affect validity
of assessment.

SEC. 59. Nor error or omission which may be made in the order or in the proceedings of the common council, or of the commissioner of public works, or of any of the officers of the city in referring, reporting upon, ordering, or otherwise acting concerning any local improvement provided for in this act, or in making any assessment therefor, or in levying or 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 forty-one (41) of this act, 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 legality of all proceedings up to the date of such certificate. The assessment warrant shall also be prima facie evidence in any proceeding in which the validity of condemnation proceedings is questioned, that all proceedings as to the condemnation of such land up to the date of the warrant were valid and regular.

Subsequent
assessments to
be paid before
deed.

SEC. 60. 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 and subsequent to the assessments under which such purchase was made. The amount of all such prior and subsequent assessments so paid by 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 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 shall from the time of such payment or redemption be refunded to such purchaser or be paid to the treasurer of the 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.

City may
occupy lands
purchased by it.

SEC. 61. 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 rent the same until the rent shall pay the amount

due on such special assessment, interest, penalties and costs. *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 as 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

12 per cent.

SEC. 62. All judgments rendered under this act upon said assessments shall bear interest at the rate of twelve (12) per cent per annum from the date thereof until paid

SEC. 63. The city treasurer of the 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 indorsement thereon after payment by such person into the city treasury of the amount for which the same was so bid in together with the amount of any prior assessment with interest thereon at the rate of twelve 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 of the council, comptroller and city treasurer or a majority thereof may authorize the city treasurer to sell, assign or 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 interests of the city.

Sale of certificate purchased by city.

SEC. 64. In all cases where local improvements of the nature provided for in this act have heretofore been made or wholly or in part completed by any of the cities within the purview of this act, whether application for judgment for an assessment or reassessment of benefits to pay for the same has been, denied by the court in whole or in part for any cause whatever, whether jurisdictional or otherwise, or, if any assessment or reassessment for any improvement within the purview of this act which shall be pending at the time this act becomes applicable to any city within its provisions shall hereafter be denied by the court in whole or in part for any cause whatever whether jurisdictional or otherwise or if judgment shall hereafter be denied by the district court as to any assessment or reassessment for any improvement provided for in this act which shall hereafter be made, the commissioner of

Reassessment

public works shall upon notice thereof by the city treasurer proceed without unnecessary delay to make a reassessment or a new assessment of benefits upon lots, blocks and parcels of land which have been or will be benefited by such improvement to the extent of their proportionate share of the costs and expenses thereof as near as the same can be ascertained by the said commissioner, and such reassessment or new assessment, shall be made by said commissioner as near as may be in accordance with the law in force at the time such reassessment is made, and when the same shall have been made and confirmed by said commissioner it shall be enforced and collected in the same manner as other assessments are enforced and collected under this act, and as often as judgment is denied on any assessment the parcels, of land as to which judgment is denied may be from time to time reassessed until each parcel benefited has paid its proportionate share of benefits resulting from the improvements.

Contract not avoided.

It shall be no objection to the validity of any contract heretofore entered into by any of the cities included within the provisions of this act, or to any assessment heretofore made, or assessment or reassessment hereafter to be made thereon that the grade of the street or highway on which said improvement has been made or contracted to be made was not established at the time said contract was let or that the work or improvement as done or contracted to be done does not conform to the established grade of said street or highway, or that an appeal was pending at the time said contract was let from any assessment for the condemnation of slopes for cuts and fills on property along the line of such street or highway or from an assessment for the condemnation of land for such street or highway; or that two or more improvements were improperly combined under one contract.

Additional assessment.

SEC. 65. If in any case the first assessment to pay for any local improvement which has been heretofore or after the passage of this act shall be ordered by the common council of any city either before or after such improvement is completed shall prove insufficient to fully pay for the same the commissioner of public works shall upon notice thereof from the city treasurer and without further order, or new order from the common council, proceed without unnecessary delay to assess and reassess the same upon the property benefited or which will be benefited thereby until a sufficient amount is realized to pay for the same. If too great 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 reassess upon the real estate benefited to the extent of such benefit for any deficiency over and above the first assessment which said improvement may cost.

SEC. 66. In all cases where the treasurer shall be unable to enforce the collection of any special assessment by reason of irregularities or omissions in any proceeding subsequent to the confirmation of any assessment, the said commissioner 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 uncollected. The treasurer shall proceed under such new warrant 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 act for the enforcement and collection of special assessments after the same shall have been confirmed as in this act provided, and as often as any failure shall occur by reason of such irregularities or omission 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 parcel of land charged therewith.

New warrants
—when issued.

SEC. 67. In all cases where the work for any improvement contemplated by the provisions of this act 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 commissioner to relet the unfinished portion of such work in the same manner as near as may be as provided in this act for the letting of contracts for public improvements of the same nature, and in every case of such new contract the work shall be paid for in the same manner as contracts for other like improvements.

Suspended
work-re-letting
contract.

The real property benefited may be assessed and reassessed therefor, and if any part of the additional expense shall be recovered by the city from the defaulting contractor or his bondsmen, the same shall be refunded ratably to the property assessed.

SEC. 68. Property owners may be allowed to construct street 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.

Property
owners may
construct.

SEC. 69. If the commissioner of public works or the common council in carrying out the provisions of this act should find unforeseen obstacles in grading, excavating, filling, paving or in any case of improving, opening

Unforeseen ob-
stacles.

or widening streets, levees, alleys or public highways, or in constructing 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 commissioner 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 all the members of the common council, (each body voting separately where the council consists of more than one body). 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 aforesaid; *Provided, further*, that in all contracts the case of such unforeseen obstacles shall be anticipated as far as possible by the commissioner 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 commissioner 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 commissioner 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 in the case as intended, and if by reason of such error, omission or mistake the assessment shall be reduced below the amount necessary to pay the costs and expenses of such improvement the commissioner of public works shall make a new assessment upon the property benefited to make up the deficiency together with the costs and expenses of such new assessment; *provided further*, that five (5) days 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 owners 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 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 uncompleted part of the work is concerned and may in their discretion by a two-thirds ($\frac{2}{3}$) vote of the members elect and after such rescission order the work to be relet as other work is let under this act, 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. 70. When any notice is required to be published in any newspaper under this act, 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 or judicial proceeding of the facts contained in such affidavit.

Affidavit of publication evidence of facts contained therein.

SEC. 71. After judgment shall have been 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 by mistake made by the commissioner of public works in making and confirming the assessment, or by the court in ordering judgment to be entered, or in entering the judgment after the same shall have been ordered, and in such case the judgment shall be opened only on application made by the city treasurer, ten (10) days notice by one (1) publication in the official paper of the city describing the improvement for which the assessment is made and the mistake for which it is desired such judgment shall be opened and stating the time when such application will be had, shall be first given and such notice shall be deemed sufficient notice to all persons interested in such application. If upon such application it shall be found that any mistake has been made materially, affecting the rights of the parties, it shall be the duty of the court to open such judgment and order the mistake corrected so as to conform to the facts.

Judgment opened only for mistakes in a assessment.

Notice of such application.

SEC. 72. If in the opinion of the commissioner of public works any work under any contract does not proceed each month so as to insure its completion within the time named in his contract the said commissioner shall have power to furnish and use men and materials

Tardy contractor to be aided by commissioner and charged.

to complete the work and charge the expense thereof to the contractor and the same shall be deducted from any moneys due or to become due such contractor or may be collected from him in a suit by said city.

Treasurer to indorse deeds, assessments paid.

SEC. 73. The register of deeds shall not record any deed from a private person or a private corporation unless there be indorsed on said deed a certificate of the city treasurer of the city in which the property conveyed is situated if it is subject to the provisions of this act, that all assessments for local improvements on the land embraced in such deed have been paid and any violation of this provision by the register of deeds shall render such register liable to the grantee of such deed for all damages costs and expenses occasioned to such grantee thereby.

Not to be indorsed when city holds certificate.

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 city treasurer shall not certify that the said assessment has been paid in any case where the property has been purchased by the city at the sale provided for in this act and the city still holds the certificate of sale.

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

FORM NUMBER ONE.

Forms of council orders.

It is hereby ordered by the common council of the city of.....

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

1st, Is this improvement proper and necessary?

2nd, 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.

3rd, 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.....

That the commissioner of public works of said city of..... cause the following improvements to be made, to-wit:

That said commissioner shall cause said work to be let by the contract, as provided by law, when one-half (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 commissioner shall proceed without delay to assess the amount as nearly as he 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."

SEC. 75. In the assessment of damages and benefits for the opening of any street or alley, it shall be lawful for the commissioner of public works in his 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 the condemnation as he may deem for the best interest of the city, and if he shall determine to let the building remain on said land for any given period then he 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.

Commissioner may allow building to remain on condemned land and rent it.

SEC. 76. Before any contract for the doing of any work or labor or furnishing any skill or material to or for any city under this act shall be valid and binding against said city the contractor shall enter into a bond with said city, for the use of the city and also for the use of all persons who may perform any work or labor, or furnish any skill or material in the execution of such contract conditioned to pay as the same may become due all just claims for work and labor performed, and all skill and material furnished in the execution of such contract and to comply with all the provisions of this act, which bond shall be in an amount not less than the contract price agreed to be paid for the performance of such contract, and shall be duly signed and acknowledged by said contractor and two (2) or more good and

Contractor's bond.

sufficient sureties, and after being approved as hereinafter provided shall be filed in the office of the city comptroller.

Qualification of sureties.

SEC. 77. The sureties on such bond shall each take and subscribe an oath that he is a resident of the state of Minnesota; that he is seized in fee of real estate situate in said state and not exempt by law from sale on execution of the value and worth over and above all incumbrances thereon of the sum for which he is to justify on said bond. More than two sureties may be accepted on such bond and they may justify in separate and different sums less than the sum specified in such bond; *provided*, that the aggregate of their justification shall be equal to two sureties each justifying in a sum equal to the amount of their bond.

City attorney to supervise execution of bonds.

SEC. 78. It shall be the duty of the legal adviser of the city to see that such bond shall be fully and properly executed and conforms in all respects to the provisions of this act, and thereupon, he shall indorse upon said bond his approval of the form thereof. Such bond and the sureties thereon shall thereafter be approved by an indorsement on said bond by the mayor and legal adviser of the city, but said mayor and legal adviser shall not approve any such bond unless said legal adviser's approval of the form thereof be indorsed thereon nor unless the sureties on such bond appear personally before said mayor and legal adviser, and are by them examined touching their fitness and ability to become sureties on such bond; and it shall be the duty of the mayor and legal adviser to reject any person notwithstanding his justification to the bond if they or either of them shall deem such person of insufficient ability or otherwise to become a surety on such bond.

Parties in interest in bonds—who are.

SEC. 79. Whoever shall perform or cause to be performed any work or labor, or furnish or cause to be furnished any skill or material, (including any work, labor, skill or material necessary in the repair of any tool or machine, also including any tool or machine or material furnished particularly for such contract and used thereon) in the execution of such contract at the request of the contractor his agent, heirs, administrators or assigns, or at the request of any subcontractor his agents, heirs, administrators or assigns, or at the request of the commissioner of public works of said city, in case said commissioner shall have determined such contract and shall have completed the same as herein provided shall be considered a party in interest in said bond and may bring an action thereon in his own name for the reasonable value or agreed price (as the case may be) of the work and labor performed or

skill or material furnished by him. The city shall also be considered a party in interest in said bond and may bring an action thereon wherever any contract shall become ended or void, and the commissioner of public works shall have completed the same either by the employment of labor, or material as herein provided, or by reletting the contract for the whole work or for the completion of the unfinished part thereof.

SEC. 80. Before any contractor his agent, heirs, administrators or assigns shall receive any estimate on any contract herein provided for, he, his heirs, administrators, executors or assigns shall make and file with the city comptroller an affidavit that all claims for all work and labor to date and for which an estimate is asked have been fully paid.

Affidavit of
claims paid.

SEC. 81. No contract with any city for the doing of any public work shall be assigned or transferred in any manner, and any assignment or transfer except by operation of law of any such contract shall fully end and determine such contract and shall make the same null and void as to any further performance thereof by the contractor or his assigns without any act on the part of the said city, and the commissioner of public works of said city shall at once proceed to relet such contract or said commissioner may in his discretion proceed to complete the same at the expense of such contractor and his bondsmen.

Contract void
if assigned.

SEC. 82. No assignment, transfer, abandonment or surrender either voluntary or otherwise of any contract with city for the doing of any work or labor or the furnishing of any skill or material nor any change in any such contract, nor any extension of the time in which to complete any such contract shall operate to release the sureties on the bond in this act provided for, and no such assignment, transfer, abandonment, surrender, change or extension of time shall be pleaded as a defense to any action upon such bond in this state.

Bond not
avoided by
transfer of
contract.

SEC. 83. The commissioner of public works of the city may whenever in his judgment one (1) or more of the sureties on such bond become insolvent or for any cause are no longer fit or sufficient sureties, require any such contractor to file a new or additional bond within ten (10) days after notice to that effect; and thereupon all work on such contract shall cease until such additional bond shall be filed with the city comptroller of said city. And if any such contractor shall fail after ten (10) days notice to that effect to file a new or additional bond as aforesaid his contract shall by that fact alone become fully ended and void as to any and all further performance thereof by such contractor, and

Additional
sureties.

thereupon said commissioner of public works shall proceed to relet such contract, or such commissioner may in his discretion proceed to complete the same at the expense of such contractor or his bondsmen.

Forfeited contract to be completed and charged to bondsmen.

SEC. 84. If any such contract shall for any reason become ended or void and the commissioner of public works shall complete the same as in this act provided and the cost of completing such contract shall exceed the amount unpaid by said city upon such contract at the time it shall become ended or void, in such case it shall be the duty of the legal adviser of the city to at once commence an action in the name of said city against such contractor and his bondsmen for the recovery of the difference in amount between the cost of so completing such contract and the amount unpaid by said city upon such contract at the time the same became ended or void.

No contracts with parties who have defaulted.

SEC. 85. The commissioner of public works of any city embraced with the provisions of this act is hereby prohibited from entering into any contract for the doing of any work or labor or the furnishing of any skill or material, with any person who within two years prior thereto shall have made default in the payment of any just claim for any work or labor performed or for any skill or material furnished pursuant to any such contract with said city, or with any person who within two years prior thereto shall have assigned, abandoned, surrendered or failed to complete any such contract, or who shall have failed to comply with any of the provisions of this act.

Qualification of sureties.

SEC. 86. Whoever shall become surety on any such bond and shall take and subscribe the oath provided for in section two (2) of this act, who at the time is not a resident of the state of Minnesota, or who is then not seized in fee of real estate in the state of Minnesota of the value and worth the sum specified in such bond (or so much of said bond as he becomes surety for) over and above all incumbrances thereon, exclusive of his property exempt by law from sale or execution, is guilty of perjury; and upon conviction thereof shall be punished by imprisonment in the state prison for not less than one (1) year nor more than five (5) years.

False affidavit of claims paid—penalty.

SEC. 87. Whoever shall make affidavit required in section eighty (80) of this act, and shall receive or cause to be received from the city by himself his agents or assigns any such estimate or any part thereof while any such claim for work or labor remains unpaid and for the recovery of which an action may be maintained on the bond herein provided for is guilty of perjury, and upon conviction thereof shall be punished by im-

prisonment in the state prison for not less than one (1) nor more than five (5) years.

SEC. 88. The provisions of this act shall not be construed to make inoperative the provisions of section seven (7) of chapter three (3) of the general laws of Minnesota for one thousand eight hundred and eighty-five (1885), entitled an act to amend an act, entitled an act to authorize the organization and incorporation of annuity, safe deposit and trust companies, approved March fifth (5th), one thousand eight hundred and eighty-three (1883) approved March fifth (5th) one thousand eight hundred and eighty-five (1885) but all the right and authority conferred by said section shall continue to exist notwithstanding any of the provisions of this act, and any corporation duly organized and having authority to act under the terms of said section may become sole surety under any bond required by the provisions of this act.

Sec. 7 Chap.
3 G. L. 1885 not
affected.

SEC. 89. It shall be the duty of the city engineer to report to the commissioner of public works each week in writing the name of each man and the owner of each team employed by him during the week preceding such report in the care of streets or sewers, and the wages to be paid for each man and each team and the nature and location of the work on which said men and teams are or were engaged, and said report shall be filed by said commissioner in his office and be open for inspection at any time during business hours by any tax payer, and eight hours shall constitute a day's work for each such man and team, and the common council shall have authority to fix the compensation therefor.

City engineer to
report to com-
missioner.

SEC. 90. It shall be the duty of the commissioner of public works as soon as any assessment is confirmed in a proceeding for the condemning of land by said city or condemning any slopes by said city to cause to be made a certificate setting forth the general description of the lands condemned and the slopes taken by said city in said proceeding together with a plat showing the same. The certificate instead of being a separate writing may be written on the plat if convenient which plat or plat and certificate shall be signed by said commissioner under his seal and recorded in the office of the register of deeds of the county in which the city wherein said property lies is situate and if the certificate is separate from the plat it shall be separately recorded and a notation made upon the margin of the record thereof showing where the plat can be found in the register's office. The fees for such recording shall be paid by the city.

Land and
slopes con-
demned to be
platted, certi-
fied to, and
filed in office of
register of
deeds.

What improvements may be charged to general fund.

SEC. 91. 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 of land for slopes in cuts and 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.

City council may order system of sewers.

SEC. 92. The common council of any city within the provisions of this act 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 the said council may deem expedient, and to alter or change from time to time such system or systems as the said council may deem proper. The city engineer by and with the consent of the common council may appoint a competent person as sewer inspector who shall hold his position at the pleasure of the engineer and at such as the engineer with the approval of the common council may determine.

Laterals may be ordered by council.

SEC. 93. 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 commissioner of public works in the manner hereinbefore provided for local improvements.

Cost how assessed.

SEC. 94. The cost of constructing, altering or repairing any sewer or sewers shall be paid for by assessment as prescribed in this act; *provided* however, that the common council may order the cost thereof or such part as it may deem expedient to be paid by the city at large out of any fund now or hereafter in the treasury applicable to such purpose.

Sewer fund.

SEC. 95. Any city embraced within the provisions of this act may include within its annual tax levy from time to time such sums as it may deem expedient which shall constitute a sewer fund and which may be used from time to time as above provided to defray the costs of sewers.

Sewer regulations, charges, etc.

SEC. 96. The common council shall have power to prescribe the conditions upon which sewers may be tapped and to grant licenses wherefor and power to suspend or revoke the same. Said commissioner shall have power to prescribe the conditions upon which pavements and macadam surfacing may be taken up and replaced for sewer, gas and water connections or for any other purpose whatever. Said commissioner shall also have power to grant licenses to drain and sewer contractors and to any person or persons desiring to make any excavation of any kind in any of the streets, avenues, levees or alleys, and to suspend or

revoke the same. Said commissioner shall prescribe the amount to be paid for such licenses and shall prescribe regulations for excavating streets, avenues, levees or alleys for tapping and making connections with sewer, gas water or steam pipes, electric conduits and all underground conduits or pipes for which franchises have been or may be granted and for the protection and maintenance thereof.

No person or corporation shall be permitted to tap or make connections with any sewer, water, gas or steam pipes or electric conduits, or make any excavations whatever in the public streets, avenues, levees or alleys of said city without having first obtained from the commissioner 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 commissioner of public works.

Connections—
license therefor

Such application shall be accompanied by a bond in the sum of five thousand dollars (\$5,000) running to the city, executed by the applicant as principal and two responsible and satisfactory sureties conditioned that such excavation and tapping, or connecting with sewers shall be made in accordance with the regulations prescribed by the commissioner 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 or sewer connections. Said bond shall be approved by the legal adviser of the city and the commissioner 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 streets, avenues, levees or alleys of said city without having first obtained from the city engineer a permit therefor.

Permit.

Provided however that in the event of any unforeseen accident to the water-works of the city, it shall not be necessary to first procure a permit to make any repairs necessary.

Penalty for
violation.

Any violation of any 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 complaint therefor shall be punished by a fine of not less than fifty (50) dollars nor more than one hundred dollars.

Any city within the provisions of this act is authorized whenever a sewer is ordered built to include in such order the construction as far as the property lines of all the lateral connections and private drains that may

Sewer assess-
ments—what
to cover.

be deemed expedient or necessary or whenever a street is ordered paved to include in such order the construction as far as the property lines of all sewer, water and gas connections that may be deemed expedient or necessary. The cost of this work shall be assessed upon the property benefited in the same manner as any other local improvement.

May condemn
and cross private
property.

SEC. 97. Whenever the common council of the 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 may acquire by condemnation, and may take possess and hold an easement in over 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 commissioner 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 owners of property for such assessment shall be paid out of the sewerage fund to be provided for as hereinbefore authorized.

Grades and
profiles.

SEC. 98. The common council of each city shall cause to be established, under the direction of the city engineer, the grade of all streets, sidewalks and alleys in the city, and shall cause accurate profiles to be made one (1) of which shall be filed in the office of the register of deeds in the county in which the city is situate, and one (1) shall be kept in the office of the city engineer.

Altering grades

SEC. 99. Such grade may at any time thereafter be altered by a two-thirds ($\frac{2}{3}$) vote of all the members-elect of the common council. After the said council has caused notice to be given by publication in the official newspaper of the city three (3) successive weeks twice in each week of the time and place where the common council will consider such proposed alteration. If the common council consists of more than one body, that body of the council in which the matter of the proposed alteration originated shall cause notice to be given of the time and place where the said body in which said matter of alteration originated 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 commissioner of public works shall have made and confirmed the assessment of damages and benefits resulting from such change of grade, and *provided*, however, that the common council may annul any order for a change of grade prior to the confirma-

tion of the assessment for such change of grade by the commissioner of public works.

SEC. 100. After such alterations shall have been finally determined as herein provided the common council shall refer the matter to the commissioner 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.

To be referred to commissioner for assessment.

SEC. 101. Upon such order of reference of the common council being transmitted to the commissioner of public works the said commissioner shall make such assessment of damages and benefits in the same manner, and after giving a like notice as near as may be as in the case of improvements requiring the condemnation of land or real estate, and when completed said commissioner of public works shall proceed to confirm the said assessment in the same manner, and shall have the power to correct, revise, confirm, set aside or proceed de novo, as are given in said proceedings.

Assessment.

SEC. 102. Any party aggrieved by such assessment may appeal under the same regulations and restrictions and in the same manner as provided for appeals from the assessment of damages from the condemnation of real estate, but such appeal shall not operate to stay any of the proceedings in the matter of such alteration.

Appeals.

SEC. 103. The assessment 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.

Benefits—how assessed.

SEC. 104. The common council of any city embraced within the provisions of this act shall have full power to cause to be constructed any bridge or bridges, and also the needful approaches thereto in any street or streets or highway or highways of said city, over railway tracks, ravines, rivers, streams or other places whether such bridge or bridges or approaches thereto conform to the established grade of the street or highway wherein they may be constructed or otherwise.

Bridges over tracks and streams.

The said bridge or bridges with the approaches thereto shall become part of the street or highway wherein they may become constructed aforesaid, or of which they form the continuation, and any part or parts of any established grade of such street or highway, or of any street or highway crossing the same, may be so altered or changed by the common council as to conform with the passageway over the said bridge or bridges and with the approaches or any part thereof of such bridge or bridges, or to facilitate access to or

Change of grade to conform to bridge.

transit over the said bridge or bridges or the approaches thereto *provided* in case the said bridge or bridges or approaches thereto shall not conform to such established grade or highway where they may be constructed a vote of at least three-fourths ($\frac{3}{4}$) of the members-elect of the common council shall be necessary to authorize the same or to change any part or parts of such established grade of such street or highway or other street or streets or highways crossing the same as aforesaid.

Damages for
change in
grade.

SEC. 105. In case such bridge or bridges or approaches thereto shall not conform to such established grade or in case of any change of grade aforesaid, any owner of land abutting on that part of such street or highway where such bridge or bridges or approaches thereto, or change of grade shall be ordered by said common council, damaged thereby shall be entitled to compensation from said city to be assessed as hereinafter provided

Claims for such
damages—
when and how
presented and
procedure.

SEC. 106. To entitle such person so damaged to compensation, he shall file with the city clerk within six (6) months from the passage of a resolution or order of the common council directing the work to be done or change of grade to be made aforesaid, a written claim of damages specifying the grounds thereof, and the said common council shall refer the said claim to the commissioner of public works who shall thereupon assess the amount of compensation to be awarded such claimant, and to report the same to the common council. In making said assessment the said commissioner of public works shall give notice by publication at least three (3) times in the official newspaper of the city of the time and place at which he will attend for the purpose of making said assessment. Said notice shall specify briefly the object of said assessment and the property to which it relates, and the said publication thereof shall be at least ten (10) days before the time of said meeting. At said meeting all persons interested may appear and be heard by themselves or their attorneys, and the commissioner of public works may view the premises and also hear proof with reference to said matter. Said assessment shall not be final until confirmed by the commissioner of public works.

Notice of the time and place for such confirmation shall also be given by the commissioner of public works in the official newspaper of said city by one (1) publication at least ten (10) days prior to the time set for such confirmation. The amount so ordered shall be paid to the parties entitled thereto out of the general fund of the city or such other fund as may be provided for the

purpose. No claim of damage aforesaid or proceeding to assess the same aforesaid shall delay or suspend the prosecution of the work.

SEC. 107. In ordering the construction of such bridge or bridges, or approaches thereto, or such change of grade. No petition of property owners or other petitions or preliminary notice or reference to the said commissioner of public works, or other preliminary proceedings shall be necessary to enable or authorize the common council to act in said matter. Any property owner may appeal to the district court from the assessment of damages by the commissioner of public works in the same manner as in the case of condemnation of real estate.

Council may order change of grade without petition—appeals.

The district court shall either affirm the award of the commissioner or if the sum allowed is adjudged inadequate, the court shall fix the amount of damages and judgment therein shall be final, and no appeal shall be allowed therefrom.

SEC. 108. Sections ninety-seven (97) to one hundred and three (103) inclusive shall have no application to or affect the provisions of sections one hundred and four (104) to one hundred and seven (107) inclusive of this act.

Sections 97 to 103 do not affect sections 104 to 107.

SEC. 109. The common council of each city embraced within this act shall have the power to sprinkle the streets, avenues, levees, lanes, alleys, parks and other public grounds of the city or any part thereof.

Council may sprinkle.

SEC. 110. The common council shall direct the commissioner of public works to divide the city into 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.

Sprinkling districts.

SEC. 111. Whenever ordered by the common council the commissioner of public works shall cause proposals to be advertised for in the official paper of the city in the same manner and for the same length of time as in the case of other public improvements, for the sprinkling of 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 commissioner of public works at least ten (10) days before the day named for the receipt of said bids by the commissioner of public works. The sprink-

Bids for sprinkling.

ling shall be let and placed under contract in the same way and manner as provided for other local improvements, except that the bids for sprinkling shall be accompanied by a bond to the city in the sum of three thousand dollars (\$3,000), 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 to him, and in case of default on his part to execute the contract and to perform the work said bond may be sued and judgment recovered thereon by the city for the full amount thereof in any court having jurisdiction of the amount.

Contracts for
sprinkling.

SEC. 112. Contracts for sprinkling shall be let to cover all the sprinkling required for the calendar year and 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 commissioner of public works may reject any and all bids which he shall deem 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.

Council may
order
sprinkling.

SEC. 113. The common council may order sprinkling to be done whenever and wherever it deems the public interest for sanitation or other cause requires without reference to the commissioner 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 commissioner 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 so done, and it shall be the duty of the city engineer to cause said sprinkling to be duly inspected and to be done and performed in accordance with the contract and report the fact to the commissioner of public works who shall cause an assessment to be made for said sprinkling in the manner hereinafter provided.

At the beginning of each month, or as soon thereafter as practicable the said commissioner shall give at least ten days notice by publication in the official newspaper of the city to the effect that at a certain time and place he will attend to make an assessment for sprinkling. Said notice shall briefly describe the location of the streets sprinkled by streets and districts.

The said commissioner shall assess the amount as

nearly as he can ascertain the same which will be required to defray the cost of such sprinkling including expense of making and collecting assessments upon the real estate or lots of land fronting on such improvement without regard to the cash valuation thereof or whether the same shall be improved or otherwise. In making said assessment the expense and cost shall be apportioned pro rata upon the lineal of said real estate or lots of land fronting on said improvement aforesaid. When said assessment is completed the said commissioner shall give six (6) days notice by one (1) publication 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 at least one (1) day before such time with the commissioner; such objections shall be made and filed in the same manner and said commissioner shall proceed in hearing the same and shall have the same power to revise, correct, confirm or set aside such assessment and proceedings de novo as in the case of other assessments for local improvements. 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 act.

Assessments on
frontage.

SEC. 114. Whenever the contractor shall fail to do and perform the sprinkling contracted to be done by him within the time designated by the commissioner of public works or in accordance with the terms and conditions of his contract, or in any other respect fail to comply with terms of his contract the said commissioner of public works shall have power to furnish 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 by suit by said city, or said commissioner of public works may readvertise for bids for the completion of the unexpired term of said contract and let a contract in the same manner as herein provided in the original contract.

Commissioner
may cause
failed contract
to be com-
pleted.

In case the said contractor shall proceed to properly perform his said contract and all the provisions, clauses, matters, and things therein contained, the said commissioner of public works may upon said contractor filing with the city engineer an affidavit that all work and labor for, which an estimate is asked is fully paid for from time to time as the said work progressed grant to said contractor every thirty (30) days an estimate of the amount already earned, reserving however, fif-

Estimates.

teen (15) per cent therefrom; *provided*, however, that said fifteen (15) per cent shall be included in the final estimate allowed said contractor.

Local improve-
ment revolving
fund.

SEC. 115. Each of the cities embraced within the provisions of this act is hereby authorized to raise by taxation and to maintain by further taxation from time to time a fund to be known as the local improvement revolving fund.

There may be maintained to the credit of this fund by taxation a sum not to exceed one hundred thousand dollars (\$100,000), after crediting thereto all assessments raised to pay for contracts for local improvements provided for in this act and charging said funds with liabilities on contracts.

In order to facilitate prompt payment of contractors pending the collection of assessments to pay for local improvements contracted to be done, this fund may be drawn upon to meet payments under contracts as they may become due, and shall be reimbursed by assessments as they are collected, and by transferring thereto from the general fund the amount of assessments and expenses chargeable to such general fund.

This fund shall not be drawn upon for other purposes. If assessments to pay for damages allowed in condemnation proceedings are not collected in sufficient six (6) months after the condemnation sums to pay damages allowed for land taken, within thereof, the damages allowed shall be a charge on the general treasury, which shall be reimbursed as the assessments therefor are collected.

Board of park
Commissioners

SEC. 116. The board of park commissioners shall consist of four (4) members who shall be residents and qualified voters of the city for which they are appointed.

The terms of office of said members shall be four (4) years and shall begin on the first (1st) day of June of the year in which the member is appointed, and shall continue until his successor is appointed and qualified. The appointment shall be made by the mayor and shall be so arranged that the term of but one (1) member of the board shall expire in each year.

The mayor of each city as soon as this act is made applicable thereto shall appoint four (4) members of the park commissioners who shall supersede the park commission then existing in such city, if any there be, and whose terms shall terminate respectively on the first (1st) day of June of the first (1st) second (2nd), third (3rd) and fourth (4th) years succeeding the year in which such appointment is made, and when their respective successors are appointed and qualified.

Vacancies in the board, if they should occur, shall be

forthwith filled in the same manner for the unexpired term or terms, but the resignation of the member shall not take effect until his successor shall be appointed and qualified.

Upon the appointment and qualification of members of the board provided for in this section the terms of office of the board of park commissioners existing at the time this law takes effect if any such there be shall forthwith cease and terminate.

SEC. 117. Each person appointed as a member of the board of park commissioners shall before entering upon the discharge of his duties file a written acceptance and oath of office in the office of the city clerk of the city.

Acceptance—
oath.

The board of park commissioners shall elect at its first (1st) regular meeting after the first (1st) day of June in each year from the members of the said board a president and vice president. It shall also appoint such agents and employes as it shall deem necessary whose compensation shall be fixed by the board of park commissioners with the approval of the common council, and shall be paid out of the park fund.

Officers.

The city clerk or recorder shall be ex-officio secretary of the board and is empowered and authorized to administer oaths in all proceedings under this act and incident thereto. He shall keep an accurate record of all the proceedings of said board. He shall be allowed no additional compensation by the park board.

City clerk to be
secretary.

SEC. 118. Said board shall have a common seal and shall be capable of entering into and performing contracts on behalf of the city provided for by this act, which said instrument shall be executed by the president or vice president and secretary of the said board and sealed with its seal.

Seal.

SEC. 119. The secretary shall submit to the said board at its first regular meeting in each year a detailed report of the transactions of the board for the preceding year and such other information as may be necessary for the conduct of its business as required by the board.

Annual reports

SEC. 120. Said board may adopt rules governing its meetings and proceedings and the duties of its officers and employers.

Rules.

SEC. 121. A majority of the members of said board shall constitute a quorum; but a less number may adjourn a meeting from time to time. The affirmative vote of three-fourths ($\frac{3}{4}$) of all the members of the board shall be necessary for the designating or acquiring of lands which vote shall be taken

Quorum.

by ayes and noes and entered in full in the records of the board.

Publication of reports.

SEC. 122. Said board shall publish an annual report of its general proceedings containing a statement of its receipts and expenses, which statement shall be submitted to the city comptroller and audited by him.

No compensation.

SEC. 123. Said commissioners shall receive no compensation for their services, but may receive such sums for actual and necessary expenses incurred in performing their official duties as may be allowed by said board.

Not to be interested in contracts.

SEC. 124. No commissioner shall be interested in any contract made under the authority of said board or in land to be acquired by said board, except that if any commissioner shall be the owner of or interested in any lands which may be designated or appropriated under the provisions of this act he shall be entitled to receive compensation therefor as provided herein but shall not act officially in respect to any matter in which he may be pecuniarily interested.

Office vacated—when.

SEC. 125. The office of any commissioner under this act who shall not attend the meetings of this board for two (2) consecutive meetings without reason satisfactory to the board, or without leave of absence from it, may by said board be declared, and thereupon shall become vacant.

To have control of parks.

SEC. 126. Said board shall have the management and control of all existing and future acquired parks and parkways of said city, and may from time to time designate and acquire lands for park purposes within the corporate limits of said city as hereinafter provided.

Lands—how acquired.

SEC. 127. Lands may be so acquired in the name of the city by gift, devise purchase or condemnation as hereinafter provided, and upon obtaining title thereto said board may assume possession and control thereof; said board, may also accept and receive donations of money and property for the use of said city for park purposes.

Same—condemnation.

SEC. 128. When the board of park commissioners shall deem it to be for the public interest that any tract or tracts, pieces or parcels of land shall be condemned for the use of the city for any public park or parks or parkways within the limits of the city, and shall so determine by resolution of the board, it shall make an order directing the city engineer to make a survey thereof, a copy of which order, together with a general description of said lands shall be certified to by the secretary of said board and by him transmitted to the city engineer who shall forthwith cause a survey thereof, and two (2) plats thereof to be made and transmitted to said board.

SEC. 129. Said board of park commissioners may contract in the name of the city for the purchase of the lands or any part of the lands designated by it for park purposes to be paid for in the same manner as other lands so designated, the damages or compensation for which are appraised by the commissioner of public works of the city as hereinafter provided, and the purchase price for the same shall be paid out of the moneys applicable to the purchase of said land for park purposes when all of it shall have been collected. Said purchase price shall bear interest after the final completion of the assessment hereinafter authorized at such rates not to exceed seven (7) per cent per annum as may be agreed upon in said contract.

May contract
to purchase.

Provided, however, such contract shall be executed and recorded before the commissioner of public works shall have been directed to appraise the damages and assess the benefits as hereinafter described.

The sum so agreed upon as the purchase price of said lands shall be taken as the measure of compensation to be appraised by the said commissioner of public works therefor, and shall be reckoned as damages by the said commissioner in ascertaining the cost of the property taken in said proceeding on which it shall base the assessment of benefits to be made. If the proceedings for acquiring said land so designated shall be abandoned said contract shall thereon become void and in such case the said board of park commissioners shall execute and deliver a release of said contract to the owner of said land which may be recorded.

SEC. 130. The said board of park commissioners shall have power, and it is hereby authorized, in connection with the commissioner of public works of the city, and on behalf of the city to condemn for the use of the said city any tract or tracts pieces or parcels of land or any interest therein which may have been designated as hereinbefore authorized by this act or which may be included in or form, a part of any land so designated, and when such condemnation shall have been completed and the lands paid for as hereinbefore provided, the title to such land shall pass and be vested in the city.

May cause con-
demnation of
lands for park
purposes.

When the said board of park commissioners shall deem it to be for the public interest that any tract or tracts, pieces or parcels of land or interest therein aforesaid shall be condemned for the use of the city for any public park or parks or parkways aforesaid, within the limits of the city, and shall so determine by resolution of the board, it shall cause the same to be surveyed and platted as hereinbefore provided; it shall also determine

Modus
operandi.

by resolution what sum, if any not to exceed forty (40) per cent of the damages and expenses caused by such condemnation shall be paid toward the same out of the park fund as the same then exists, and it shall at the same time by resolution appropriate and set apart such amount from the moneys then in the park fund, the same to be held and applied as herein provided toward the payment of any damages or compensation that may be awarded in such condemnation proceedings including the expense of such proceedings; and except as herein after otherwise provided, said money so set apart shall remain in the city treasury and be applicable to no other purpose whatever. The said board of park commissioners shall thereupon make an order directing the commissioner of public works to ascertain and determine the amount of damages or compensation to be paid to the parties therein by reason of such condemnation, and also to assess the amount of such damages and expenses less the amount thereof, if any, so appropriated and set apart out of the park fund as aforesaid on real property specially benefited thereby in proportion to the benefits accruing to the same, not to exceed such benefits. A copy of said resolution and order together with a copy of said plat shall be certified to by the secretary of the board of park commissioners and transmitted to the commissioner of public works for his action thereon. If any parcel or parcels of land so designated have been purchased by said board of park commissioners in the manner hereinbefore described a description of said property with a statement of the purchase price thereof shall also be transmitted to said commissioner of public works who shall take the purchase price to be paid for said property as the amount of damages to be awarded therefor.

The said commissioner of public works shall proceed forthwith on receipt of such order to make an assessment of damages and benefits in the manner hereinbefore provided for the condemnation of land under this act.

The amount awarded as the damages to any property shall bear interest at the rate of seven (7) per cent per annum from and after the date of the completion of the assessment until paid. If the sum set apart from the park fund by the park commissioners as above provided is less than forty (40) per cent of the total amount of damages, costs and expenses as determined and appraised by the commissioner of public works together with the costs and expenses, all damages and expenses over said sum so set apart shall nevertheless be raised by assessment on the property benefited. If

said sum so set apart from the park fund proves to be more than forty (40) per cent of the damages, costs and expenses aforesaid, sixty (60) per cent of the damages, costs and expenses shall be assessed on the property benefited and the balance of said sum in excess of said forty (40) per cent shall be returned to the park fund for other uses. It shall be the duty of the commissioner of public works, whenever he finds the sum appropriated by the board of park commissioners in excess of forty (40) per cent of the total damages, costs and expenses to notify the board of park commissioners of the amount of such excess within ten (10) days after the assessment is confirmed. The commissioner of public works shall estimate as nearly as possible the cost of printing notices of assessment up to the time the same would become delinquent and the cost of engineering in making survey and plats of said improvement all of which shall be chargeable in said assessment in the costs and expenses. The commissioner of public works shall include such sum in the assessment of benefits as in his opinion will be sufficient to pay interest on the damages allowed from the time of the completion of the assessment to the time the assessment shall have been fully collected and ready to be paid over. The owner of land condemned for a park shall have the same right of appeal to the district court from the damages allowed as in the case of other property condemned under this act, and the same procedure shall be had in bringing said appeal to hearing. If the court shall find that the commissioner of public works had no jurisdiction in the matter appealed from in such cases the judgment of the court shall be to annul the assessment. If the court shall find that the commissioner had jurisdiction and also find that the valuation is unfair and the damages awarded by said commissioner 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 over and above the sum awarded by the commissioner of public works and shall order judgment against the city therefor, which judgment with interest shall be paid as other judgments against the city. The amount awarded said appellant by the commissioner of public works with interest shall be paid in the same manner as the damages to other property as to which no appeal has been taken.

SEC. 131. When judgment has been rendered on all the appeals taken from said assessment, the said commissioner of public works without further order from the said board of park commissioners shall without

Assessment on property benefited.

unnecessary delay proceed to make a new assessment or reassessment on the property by him deemed benefited by such improvement for the purpose of raising the difference between the amount originally awarded by the said commissioner of public works to said appellant or appellants and the amount which the court has adjudged said appellant or appellants is or are entitled to receive together with the costs of said new assessment or reassessment and said commissioners of public works shall proceed in making new assessment or reassessment in the same manner and shall take like proceedings as are provided for in the original assessment. If the commissioner cannot find the property benefited by said improvement or appropriation of land to park purposes to the extent of said additional sum besides the benefits before assessed he shall make the assessment to the extent of said benefit. If he is of the opinion that the first assessment was equal to the benefits derived from the improvement, he shall so report to the board of park commissioners. In making said new assessment or reassessment in cases where portions of lots were condemned by the first assessment and the remaining portion assessed benefits such untaken portions shall also bear their proportion of assessments for benefits on the new assessment or reassessment notwithstanding the owner of the same may have appealed from the assessment of damages. The proceeds of such new assessment or reassessment, if any, shall be paid into the park fund and the same shall thereafter be transferred to the general fund of the city to reimburse said city for the judgment for increased damages aforesaid rendered against the city as before provided. If the assessment or reassessment proves insufficient, the remainder shall be paid into the general fund of the city from the first unappropriated money coming into the park fund, if any. The commissioner of public works shall have the same power of reassessment in case an assessment is set aside as is given by this act in the case of condemnation of land for local improvements generally.

Collection of
assessment.

SEC. 132. The city treasurer shall proceed to collect the benefits assessed against real estate under the provisions of this act in the same manner as in the case of assessment for benefits for other local improvements, and the same proceedings shall be had for obtaining judgment to enforce delinquent assessments and for the sale of property under such judgment. The issuing of certificates of sale therefor and deeds for the purchaser in case no redemption is made as provided by law in other cases; except that real estate sold under such

judgments may be redeemed in ten (10) years from the date of the sale and may also be redeemed in ten (10) annual installments payable as follows; One-tenth (1-10) of the certificate at the end of each one (1) of the successive ten (10) years next ensuing the date of the certificate together with the interest due on the whole amount thereof unpaid at the maturity of each of said installments, and the said certificates of sale issued hereunder shall conform to the provisions hereof as to the time of payment and redemption.

In case the award of damages is increased on appeal from a reassessment the commissioner of public works shall have the power and it shall be his duty to make a further reassessment of benefits for the difference of damages as in the case of appeals from the first assessment.

SEC. 133. As soon as the assessments are collected and the proceeds thereof in the hands of the city treasurer, ten (10) days' notice thereof by two (2) publications shall be given by the said treasurer in the official newspaper of the city and the city may then and not before enter upon, take possession of and appropriate the property condemned, and whenever the damages awarded to the owner of any property condemned by said 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 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. Interest on all damages payable shall cease thirty (30) days after such notice has been given, save where damages are increased by the district court, in which case the interest on the increased amount shall run until money is in the treasury to pay the judgment therefor, and the holder thereof or his agent is notified thereof, or the money is paid into court. In case the amount allowed for interest and included in the benefits assessed by said commissioner of public works is insufficient to pay the interest accruing on damages awarded the balance shall be paid out of the general fund of the city and the general fund reimbursed from the park fund when there are available funds therein. In all cases the title to the land taken and condemned in the manner aforesaid shall be vested absolutely in the city. It shall be the duty of the clerk of the board of park commissioners to cause all deeds taken by the city for land acquired for park purposes to be recorded without delay, and the said clerk shall be the custodian

When city may enter and take possession.

Title to be vested in the city.

thereof. In case a deed is not given it shall be the duty of the 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 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.

Park commissioners may abandon any time before confirmation.

SEC. 134. The said board of park commissioners at any time during the pendency of any proceeding for the condemnation of land as aforesaid, up to and until the time of the confirmation of the assessment by the said commissioner of public works shall have the right by a three-fourths ($\frac{3}{4}$) vote to abandon all proceedings in respect to the whole improvement whenever it shall deem it for the interest of the city so to do. In case of abandonment of such proceedings the secretary of the board of park commissioners shall certify such action of the board to the commissioner of public works, and thereupon said commissioner of public works shall discontinue any further proceedings on his part in the matter.

Accurate description to be recorded in office of register of deeds.

SEC. 135. As soon as such condemnation proceedings shall have been completed and notice given that the money is in the city treasurer's hands ready to be paid for damages an accurate description of the lands condemned together with a statement of the amount of damages awarded and to be paid therefor, shall be certified by the president and vice president and secretary of said board of park commissioners under its official seal and filed for record in the office of the register of deeds in the county in which the city is situated and said register of deeds shall record the same in the records of transfers of real estate in said county which record shall be prima facie evidence of the title of said lands and the transfer of all the interests of the former owner or owners of the same to the city.

Plats.

The said board of park commissioners shall also direct the city engineer to prepare correct plats of all such lands as may be acquired under the provisions of this act, one (1) of which shall be filed in the office of said board of park commissioners one (1) in the office of the city engineer and another in the office of the register of deeds of the county to be kept on file and of record in the office of said register of deeds in the same manner as plats of additions of the city.

Expense.

SEC. 136. All expenditures of said board of park commissioners the payment of which is not herein otherwise provided for shall be paid from the park funds not

otherwise appropriated, and all moneys received from the said board from any sources, shall, where not herein otherwise directed, be paid into the city treasury to the credit of said fund. Assessments collected shall be set apart and only used for the purpose for which they were levied, all assessments on property owned by the city and on exempt property shall be paid out of the general fund of the city, moneys of the park fund, when set apart for the purpose of paying damages awarded shall be and remain in the city treasury until the assessments for the same purpose are collected by sale or otherwise, and shall then be applied with said assessment in payment of said damages.

SEC. 137. In case property sold for delinquent assessments is struck off to and purchased by the city and the city shall be unable to sell and assign the certificate of sale therefor within thirty (30) days thereafter the city shall forthwith issue certificates of indebtedness to pay for the same for the amount of said certificates of sale held by the city, said certificates of indebtedness shall be issued in the sum of one hundred dollars (\$100) each or such other sum as the common council shall prescribe and shall be payable on or before ten (10) years from their date at the pleasure of the city, and bear interest at a rate not to exceed seven (7) per cent per annum payable annually. The common council shall direct the manner in which these certificates shall be executed. The city shall redeem said certificates of indebtedness before maturity as fast as money is realized on the certificates of sale held by the city by redemption, sale of the same, or otherwise.

Certificates of
indebtedness.

SEC. 138. All expenditures under this act payable out of the park fund shall be audited by the board of park commissioners and shall be paid by the city treasurer only upon warrants of said board signed by its president or vice president and secretary and countersigned by the city comptroller. All damages payable to property owners shall be paid from the funds provided therefor, and on warrants of said board signed as aforesaid and countersigned by the city comptroller. Whenever the board of park commissioners appropriate a portion of the park fund for condemnation purposes as hereinbefore provided, it shall transmit to the city comptroller and city treasurer a copy of the resolution so provided, whereupon said treasurer shall set apart and hold said sum to be applied as herein provided. If the proceedings are abandoned or said sum so set apart is ascertained to be in excess of forty (40) per cent of the entire cost of the improvement for which the same is appropriated the board of park commissioners shall,

Expenses and
moneys—how
paid.

upon such abandonment or the ascertainment of such excess, notify the said treasurer thereof, and in case of an abandonment of condemnation proceedings all the money so set apart and in the case of an excess the portion thereof in excess of forty (40) per cent of the cost of the improvement shall at once be returned to and become a part of the park fund and applicable to other uses.

To control
water fronts.

SEC. 139. Whenever title shall have been acquired by the city for park purposes to land constituting the shore of any stream, lake or pond, said board of park commissioners may regulate and control the use of such shore and the water contiguous thereto, and in case such ownership shall embrace the entire shore of any such lake or pond said board of park commissioners is vested with the exclusive power and control of the waters of the lake or pond, and may in all things regulate and govern the use of such waters, *Provided* that said board shall not prohibit the use of sail or row boats on such waters.

Once a park,
always a park.

SEC. 140. The lands which may be designated and obtained as aforesaid for park purposes shall not be alienated or diverted for other uses and shall remain forever parks and parkways for the use of all the inhabitants of the city.

May adopt
rules and
ordinances.

SEC. 142. Said board of park commissioners may adopt rules to secure the quiet, orderly and suitable use and enjoyment of said parks and parkways by the people and the common council shall provide ordinances to enforce them and to fix penalties for the violation thereof, which ordinances shall take effect from and after the publication thereof in the official newspaper of the city; all fines collected from the violation of such ordinances shall on the first Monday of each month be credited by the treasurer of the city to the park fund. The mayor of the city shall upon the request of said board of park commissioners appoint such policemen as the common council may authorize which policemen shall be under the control and direction of the board and paid out of the park fund. All policemen so appointed shall possess all the common law and statutory power of constables, and any warrants for search or arrest issued by any magistrate or court of record in the county may be executed by such policemen in any part of such county. Each city within the provisions of this act is authorized to raise each year by taxation a sum not exceeding what would be produced by a tax levy of one mill on the valuation of taxable property in the city, which shall be paid into what shall be known as "park fund," and used for no other purposes than

those heretofore provided in this act and for the care of parks and parkways and the beautifying and embellishing of such parks and parkways, public grounds, boulevards, grass plats and public streets by said park board.

SEC. 142. The common council of any city may, in its discretion, authorize the board of park commissioners to enter upon any public street or streets of the city and improve and embellish the same, and to care for and protect any shrubbery, trees, grass plats and other embellishments therein and generally to treat and care for any such street or streets as a parkway. Tree planting on public streets of the city shall be done by the board of park commissioners who may either raise the trees for such purpose or purchase the same, all contracts for the purchase of trees by the park board shall be let after advertising for the same for a period of not less than twenty (20) days and to the lowest bidder who will agree to furnish trees according to specifications on which the bidding shall be had. The park board may employ labor in the setting out of trees along the public streets or it may let such tree planting by contract to the lowest bidder, which bidding shall be on specifications prepared by said board and on notice in the official paper by one or more publications given at least twenty (20) days prior to the receipt of such bids. On the letting of such contract, or on the planting trees by the board of park commissioners without contract the board of park commissioners shall notify the commissioner of public works of the actual cost of such tree planting, including the cost of the trees and said commissioner shall thereupon proceed to assess the same, together with the costs and expenses of the assessment on the real property benefited by the same as in the case of other local improvements and the same proceedings with reference to collecting said assessments and for reassessments shall be had as in other cases. The park commissioners may in the same manner construct grass plats and boulevards along public streets of the city, the cost thereof to be assessed on the property benefited, by the commissioner of public works in the same manner as other assessments are made.

SEC. 143. The common council shall have the same power and jurisdiction in respect to laying water mains and sewers along the parkways in said city as it has in respect to laying the same along the public streets and the same proceedings in levying and collecting special assessments for sewers along such streets shall apply to levying and collecting the same for sewers along the

Council may authorize park board to ornament streets, tree planting, &c.

Water mains and sewers along park ways.

parkways. The board of park commissioners may acquire by gift without the corporate limits of the city for parks or parkways any land or lands, and shall possess the same power and jurisdiction over said parks or parkways as if they were located within the limits of the city. The board of park commissioners is authorized to enter into the necessary contracts for carrying out the provisions of this act relative to parks and parkways and matters over which they have control.

This act—when
to apply.

SEC. 144. The provisions of this act shall apply to all cities within the state of Minnesota now or hereafter having over one hundred thousand (100,000) inhabitants according to any census made, under either state or national authority, *provided*, that whenever according to such census the population of any such city shall fall to one hundred thousand (100,000) inhabitants or less, the provisions of this act at the expiration of ninety days from the final filing of the enumeration of such city shall no longer apply thereto until the population shall again exceed one hundred thousand (100,000) inhabitants as above provided.

Effect on exist-
ing contracts.

SEC. 145. No contract for improvements or proceedings preliminary to making the same, or assessments therefor, had under the provisions of law prior to the taking effect of this act in any city shall be thereby invalidated or shall lapse, but all further proceedings in relation to the same shall thereafter conform as nearly as practicable to the provisions of this act.

This act—when
to take effect.

SEC. 146. This act shall be enforced in any city whenever the common council of any such city embraced within its provisions shall adopt the same by a majority vote of all the members. The action of the council to be subject to the veto of the mayor, as in other cases. If the mayor shall veto the action of the council, the council may nevertheless thereupon adopt this act by a two-thirds ($\frac{2}{3}$) vote of all members, and all acts and parts of acts in any charter or special law relating to said city shall be thereby, as to said city, repealed in so far as the same relate to the subject matter of this act: but no special act authorizing the issuance of bonds for any improvement or especially authorizing the making of any improvement shall be repealed thereby, all general acts and parts of acts relating to the subject matter of this act so far as they apply to any city affected by this act are hereby repealed.

SEC. 147. This act shall take effect and be in force from and after June fifteenth (15), eighteen hundred and ninety-six (1896).

Approved April 25th, 1895.