

CHAPTER 428

PUBLIC IMPROVEMENTS IN CITIES OF THE SECOND OR THIRD CLASS

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428.01 CERTAIN CITIES TO MAKE LOCAL IMPROVEMENTS AND ASSESS COSTS TO PROPERTY BENEFITED. Any city in the state which now has or hereafter may have no more than 50,000 and not less than 10,000 inhabitants is hereby authorized and empowered to fill, grade, curb, plank, pave, gravel and macadamize its streets, lanes, alleys, and highways; to construct, lay, relay, enlarge and repair sidewalks, retaining walls, area walls, gutters, sewers and private drains; to construct, lay, relay, enlarge, and repair service or supply pipes and branch pipes from any and all main lines of water, sewer, and gas pipes, to the lines of the street or alley on either and both sides of the main lines, whether such main lines have theretofore been constructed or are then in process of construction, and to connect such service or supply pipes and branch pipes to such main lines; to build and place protection fences and railings along streets, alleys, and highways for the safety of pedestrians; to plant, maintain, and protect shade and ornamental trees along its streets, lanes, alleys, and highways; to abate nuisances and to drain swamps, marshes, and ponds and to fill the same in such cities; to sprinkle its streets, lanes, alleys, highways, and public grounds with water and oil, and to saturate or treat the surface thereof with any kind of fluid, mineral, or substance for the prevention of dust in the atmosphere or on the surface of such highways or grounds; and to provide either or both electric or gas, or any other means, lamp posts and fixtures and appliances for illuminating such portions of its streets as its city council may determine to specially light, and to levy assessments for the cost of all the improvements mentioned above upon property to be benefited by such improvements in the manner and as hereafter designated.

[1901 c. 379 s. 1; 1913 c. 7; 1913 c. 49; 1919 c. 424 s. 1] (1713)

428.02 SPECIAL ASSESSMENTS; INTERSECTIONS. The expense of any improvement mentioned in section 428.01, except as otherwise specially provided in sections 428.01 to 428.55, shall be defrayed by an assessment upon the real estate benefited thereby, to be levied, enforced, and collected in the manner herein-after prescribed, except that all or any part of the expense of paving, repaving, graveling, macadamizing, filling, and grading of the space occupied by street intersections may, if the council of such city deems it expedient, be paid out of the general fund of such city.

[1901 c. 379 s. 2] (1713-¼)

428.03 SEVERAL IMPROVEMENTS IN ONE CONTRACT. Two or more improvements upon one or more streets, either of paving, curbing, graveling, macadamizing, planking, grading, or filling, or constructing retaining walls, protection fences, area walls, sewers, gutters, or drains, or either or any of them, may be done at the same time under one resolution and included in one contract, if deemed advisable by the council of such city so to do.

[1901 c. 379 s. 3] (1713-¾a)

428.04 PLANS AND SPECIFICATIONS; ESTIMATE OF COST. Subdivision 1. City engineer to make plans and specifications; sealed bids; published notice. Prior to the passage of any resolution for the doing of any work or the making of any improvement hereinbefore specified, the expense of which is to be assessed upon property benefited, except as otherwise specially provided in sections 428.01 to 428.55 for certain designated kinds of improvements, the council of such city shall cause plans and specifications of such proposed work, together with an estimate of the probable expense thereof, to be made by the city engineer of such city, or by such other person as may be employed by the council for that purpose, and presented to the council for its consideration and approval and the same shall immediately, upon the approval thereof by the council, be filed with the clerk or recorder of such city for the inspection of all parties interested.

The council shall then designate a time, not less than 20 days distant, and a place at which it will meet and act in relation to the doing of the proposed work and the making of the proposed improvement and direct that notice be given by the clerk or recorder of such meeting and the time, place, and purpose thereof, and that in the meantime sealed proposals for the doing of such work and the furnishing of all material therefor, if required, will be received by the clerk or recorder and opened in the presence of the council at this meeting.

In this notice shall be concisely stated the location of the proposed work, the general nature of the proposed improvement; that the plans, specifications, and estimate therefor have been so filed with the clerk or recorder, and that all persons interested will be heard at such time and place; the notice shall be given by publication thereof in the official newspaper of such city at least once in each week for two successive weeks prior to the time designated by the council.

Subd. 2. Work done by city engineer and maintenance crew in certain cities of the third class. In any city of the third class employing a city engineer and maintenance crew, the governing body of the city may determine to proceed with such public improvement by having the work done by the crew employed by and under the direction of the city. When such work is done by a city crew, the city may assess the expense thereof upon the real estate benefited in the same manner that any such city may now levy assessments for public improvements made by an independent contractor under contract with the city as now prescribed by statute.

[1901 c. 379 s. 4; 1947 c. 445 s. 1] (1713-¾b)

428.05 SEWER DISTRICTS. Subdivision 1. **Territory.** When the system of sanitary sewerage known as the Shone-Hydro-Pneumatic system, or any system other than a natural gravitation system, shall be adopted and established in and for any such city, or for any portion of same, the council thereof in each instance, when it proposes to cause the sanitary sewers or system of sewers to be constructed or laid for the drainage of any given portion of the city, shall first determine and accurately describe by ordinance the area of territory to be made tributary to an ejector or pumping station to be constructed for such district, and in each instance this territory shall be known as a sewer district in the city and properly designated by number.

Subd. 2. Boundary lines, when changed. After sewers or sewer pipes shall have been constructed or laid in any district, or any portion thereof, in accordance with plans adopted for the district, the council of such city shall have no power

or authority to change the boundary lines of the district, nor to increase or diminish the extent of territory made tributary to the ejector or pumping station therein; provided, that when it shall be found advisable, after any district has been established, to make a portion of the district tributary to the pumping station of an adjoining district for the purpose of obtaining a better and more efficient drainage for that portion, then the council may, by an affirmative vote of two-thirds of all its members, cause the change to be made, after the city engineer of such city shall have filed his opinion in writing deeming this change proper and advisable.

Subd. 3. Cost, how paid. When any sewerage system, other than a natural gravitation system, shall be adopted and established in any such city, the cost and expense of all machinery, ejectors, pumps, air compressors, compressed air storage tanks, and all compressed air pipes and connections, and of erecting and installing all the machinery and appliances and the cost of constructing and laying the final discharge and outlet pipes from the ejector or pumping chamber, in the district to its terminus, shall be paid by the city at large out of its general fund; and no greater amount than the cost of material and labor for and of constructing and laying all sewers and sewer pipes, and the cost and expense of material and labor for, and of constructing and equipping all flush tanks, the ejector or pumping chamber or chambers and attendant manholes and all other manholes in each district, shall be chargeable to and assessed upon the lots and parcels of land found benefited in the district.

Subd. 4. Assessment of part. When only a portion of a sewerage district established as in this section provided shall be constructed and only a part of the territory in the district provided with sewers, then there shall be assessed upon the property benefited thereby, that portion only of the cost of the ejector or pumping chamber and adjoining manhole, if constructed for the ultimate use of the entire district, as the council may deem equitable and just, and the balance of the cost, not so assessed, shall, in the first instance, be paid out of the general fund of such city, and upon each and every subsequent extension of sewers in the district, that portion of the cost of the ejector or pumping chamber and adjoining manhole as may be deemed just and equitable by the council shall be included in the assessment for the cost of the extension until the district has been fully completed and each assessment for that portion of the chamber and manhole shall be returned into the general fund as the same shall be collected from time to time.

[1901 c. 379 s. 5] (1713-¼c)

428.06 CONTRACTS. Any contract for the making of any improvement designated in sections 428.01 to 428.55 may be for the entire improvement complete and include all labor, material, machinery, and whatever may be necessary for the full completion thereof, or may be for the doing of the work alone, such city furnishing the necessary material therefor, as the council of such city may deem to be the best interest of the city; and the council may also, at its discretion, cause the making of any such improvement by separate contracts for different portions thereof or by separate contracts for the labor, material, and machinery required for the making of the improvement; in each instance the notice, prescribed by section 428.04, shall contain a distinct statement of the nature and extent of these separate contracts and definitely describe the separate portions of the improvement.

When any machinery or mechanical appliances shall form a part of any improvement authorized by sections 428.01 to 428.55 the council of such city may award a contract for the same after taking into consideration the efficiency, duty, cost of operation, and maintenance and the construction, workmanship, and operation generally of the several machines or appliances designated in the several bids, without regard to the amount of such bids.

[1901 c. 379 s. 6] (1713-¼d)

428.07 SPRINKLING DISTRICT; CONTRACT FOR SPRINKLING. Before any proceedings are had by any such city council for the sprinkling of any of the streets, lanes, alleys, or public grounds in the city, the council shall each year by resolution in writing determine what territory in such city shall be sprinkled during that year, and may divide this territory into two or more sprinkling districts, describing the number, and thereafter all reference to the district by number in any notice required by sections 428.01 to 428.55, or in any other proceeding having reference thereto, shall be deemed a sufficient designation; the resolutions shall designate what officers of the city shall supervise and inspect the work in accordance with

boundary lines of each district; each district so determined to be designated by the plans and specifications therefor. This resolution shall be published once in the official newspaper of the city.

The contract price to be paid by the city for the doing of this work, when the sprinkling is done with water, shall be upon the basis of sprinkling 100 square feet per week, during the life of such contract; if in the opinion of the council it is deemed impracticable, at the time of letting any contract, to designate the exact length of time during which sprinkling is necessary in any or all of the districts designated during any particular season, the council may let the contract without so designating the beginning and the end of the sprinkling season; and upon the city so letting the contract, the council of the city shall have power to order the beginning of the work upon three days' notice to the contractors therefor, and shall have power to order the work to cease for the season in any or all districts or in any portion of any one district if in their opinion, no necessity therefor exists, and this order and direction shall be final, conclusive, and binding upon all parties concerned. When, for the prevention of dust, oil or any substance other than water is employed in this work, the specifications therefor shall designate the number of sprinklings, or applications of the substance, to be applied during the entire season to the surface of the streets in the district specified, and the contract price to be paid by the city shall be upon the basis of one lump sum for each separate sprinkling or application in the entire district; this sum to include both labor and material or to be for labor alone as the specifications therefor may prescribe.

Any number of districts may be included in one contract and any or all action by the city council with reference to sprinkling may be with reference to the entire territory to be sprinkled.

[1901 c. 379 s. 7; 1913 c. 7 s. 2] (1713-¼e)

428.08 HEARINGS; BIDS; CITY ENGINEER'S DUTIES; RESOLUTION. At the time and place designated in the notice prescribed by section 428.04, an opportunity shall be given by the council of the city to any and all interested parties to be heard for or against the proposed work designated in the notice, and the clerk or recorder of the city shall, in the presence of the council, open and read all sealed proposals which may have been received for the doing of the work or the furnishing of material, if any, therefor, or both, as the case may be, and the council of the city may then, by an affirmative vote of a majority of all its members, by resolution, in writing, accept the most favorable proposal (such proposal to be that of the lowest responsible bidder) and by such resolution authorize the doing of the proposed work or any part thereof, by the person whose proposal shall have been accepted, and direct that written contract be made with him therefor; or may reject any or all proposals offered and refuse to authorize to do such work or of any particular part thereof; or if it is deemed by the council to be to the best interest of the city, and the estimate of the city's engineer is less than the lowest bid for the work and material, may reject all proposals offered, and authorize the doing of the work under the direction of the city engineer without contract, or may, in its discretion, from lack of a quorum or any other reason, postpone the consideration and decision of the whole matter, or any branch thereof, to a future definite time, of which postponement all parties interested shall be required and deemed to take notice.

Such resolution, after the same has been duly adopted by the council, shall be signed by the president of the council and attested by the recorder or clerk, and on the next day after the adoption thereof the same shall be transmitted by the clerk or recorder to the mayor of the city for his approval. If the mayor approves the same he shall append his signature, with the date of his approval thereto, and return the same to the clerk or recorder within five days, Sunday excepted, from the date of its transmission to him; and if he declines to approve the same he shall, within that period of five days return the same to the clerk or recorder with a statement of his objections thereto, to be presented to the council at its next meeting thereafter.

Upon the return of the resolution to the council, without the mayor's approval, the question shall again be put upon the passage of the same, notwithstanding the objections of the mayor, and if upon such vote, which shall be taken by a call of the ayes and noes, two-thirds of all the members of the council shall vote in favor of the adoption of the resolution, the same shall be declared adopted and shall have the same force and effect as if approved by the mayor.

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If such resolution, transmitted to the mayor, shall not be returned by him to the recorder or clerk within those five days, Sunday excepted, after presentation thereof to him, the same shall be deemed to be approved by him, and he shall deliver the same to the clerk or recorder on demand.

[1901 c. 379 s. 8] (1713-¼f)

428.09 EXECUTION OF CONTRACTS. All contracts authorized by sections 428.01 to 428.55 for any of the improvements therein designated, shall be executed on behalf of the city by the mayor and attested by the clerk or recorder thereof.

[1901 c. 379 s. 9] (1713-¼g)

428.10 WHAT CONTRACT FOR PAVING MAY INCLUDE. Each such city is hereby authorized, when a contract is let for the paving or macadamizing of any of its streets, to include in the contract, when deemed expedient or necessary, the construction and laying, as far as the property lines, of all lateral sewers and drain connections that may be deemed expedient or necessary, and the cost of the work shall be assessed by the council upon the real estate benefited thereby, and enforced and collected in the manner and under the regulations provided by sections 428.01 to 428.55 for other local improvements in the city.

[1901 c. 379 s. 10] (1713-¼h)

428.11 PATENTED APPLIANCE AND MATERIAL. In making any improvements herein authorized, the council may select patented appliances and material to enter into the construction, if the cost, maintenance, and duty thereof is deemed relatively the lowest or most satisfactory, all things considered, and the decision of the council therein shall be final.

[1901 c. 379 s. 11] (1713-¼i)

428.12 MUNICIPAL QUARRIES AND WORKS; COST. Each such city is hereby authorized to provide, establish, equip, and maintain and cause to be operated under the supervision of its street commissioner, municipal quarries for the purpose of providing stone, rock, and macadam for municipal improvements and uses; and suitable works, apparatus, and other facilities for the manufacture, construction, and laying of macadam, asphalt, or other kinds of street pavements and sidewalks, as the council of the city may determine.

When any material is furnished by, or obtained from, any municipal quarries, works, apparatus, or other facilities, and employed in the construction of making any public improvements provided for in sections 428.01 to 428.55, the cost of which is to be assessed upon property benefited thereby, the street commissioner of the city shall, immediately upon the completion of the improvement, certify the cost of the material so furnished and employed in the making of the improvement, and all work in connection therewith to the council of the city, and this certificate shall be placed on file with the city recorder for the inspection of all parties interested; the amount so certified shall be deemed a part of the cost of the improvement so to be assessed, and an assessment shall be made therefor, levied, and collected in the same manner as though the work had been performed and the material delivered by contract.

[1901 c. 379 s. 12] (1713-¼j)

428.13 NUISANCES REPORTED BY BOARD OF HEALTH; PLAN FOR ABATEMENT. When the board of health shall report to the council of any such city that stagnant or impure water stands upon any lot, or parcel of land within the city, thereby creating a nuisance injurious to public health, the council shall immediately proceed to investigate the same and, if they shall determine that a nuisance does exist by reason of any stagnant or impure water standing upon any lot or parcel of land and the same is injurious to public health, they shall instruct the city engineer to prepare and recommend a plan and specifications for the abatement of the nuisance, together with an estimate of the expense, which shall be submitted to the council and filed with the recorder, the same as for other public improvements designated in sections 428.01 to 428.55, and if the council deems that sufficient real estate can be found benefited to the extent of the damages, costs, and expenses necessary to be incurred thereby, the council shall order the doing of the work in the manner hereinbefore provided, and the same proceedings shall be had in relation thereto by the council and other city officers as in case of other local improvements provided for in sections 428.01 to 428.55, and the cost thereof shall be assessed upon the property benefited as hereinafter provided.

[1901 c. 379 s. 13] (1713-¼k)

428.14 CONTRACT, WHEN RESCINDED. If the council of any such city, in carrying out any of the provisions of sections 428.01 to 428.55, should find unforeseen obstacles in grading, excavating, filling, paving or abating nuisances, or in constructing sewers or drains, not provided for, the council may, by resolution, order such change or modification in the improvement to meet these unforeseen obstacles, as it may deem equitable and just, upon the recommendation of the city's engineer in charge of the work, at any time 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 an affirmative vote of two-thirds of all the members of the council; and any additional expense occasioned by this change, addition, or modification of the improvement may be included in the assessment therefor upon property benefited by the improvement, but no additional expense shall be incurred other than may be necessary to overcome these unforeseen obstacles. If the expense required to overcome the unforeseen obstacle will materially increase the cost which would be incurred in the work, if the unforeseen obstacle had not occurred, then the council of the city shall have the power, by resolution in writing, adopted by an affirmative vote of two-thirds of all the members of the council to rescind the contract therefor so far as the uncompleted part of the work is concerned, and may, in its discretion, after such rescission, order the work to be relet as other work is let under sections 428.01 to 428.55, and the original contractor, in this case, shall be entitled to be paid for the portion of the work done by him, ratably, according to contract price, as nearly as the same can be ascertained, and no more. No resolution adopted by virtue of the provisions contained in this section shall require the consent or action of the mayor of the city, but shall be in full force and effect when adopted by the city council, as herein designated.

[1901 c. 379 s. 14] (1713-¼l)

428.15 CITY ENGINEER MAY COMPLETE WORK. If, in the opinion of the city council and its engineer in charge, any work under any contract in the city, authorized by sections 428.01 to 428.55, does not proceed each month so as to insure its completion within the time named in the contract, the city's engineer in charge of the work shall have power, when authorized by resolution of the city council, to furnish and use men and materials to complete the work, and charge the expense thereof to the contractor, and the same shall be deducted from any moneys due him or to become due the contractor, or may be collected from him in a suit by the city.

[1901 c. 379 s. 15] (1713-¼m)

428.16 VIOLATING CONTRACT; DAMAGES AND INCREASED COST. In all cases where the work for any improvement contemplated by the provisions of sections 428.01 to 428.55 shall be suspended before final completion, or the contractor shall abandon his work under his contract or shall fail to perform the same for any cause, or if at any time the work or any part thereof is unnecessarily delayed, or the contractor is violating any of the conditions of his contract or executing any of the same in bad faith, then at the option of the city, and by an affirmative vote of a majority of all the members of its council, the contractor may be excluded from further control and superintendence of the work required by his contract, and the city may then assume control and superintendence and proceed to complete the work or improvement, either by authorizing the city engineer in charge to procure and furnish all necessary labor and material and complete the same by day work, or, as the council may determine, relet the unfinished portion of the work or improvement in the same manner, as nearly as may be, as provided in sections 428.01 to 428.55 for the letting of contracts in the first instance for these improvements, and in every case of new contract the work shall be carried to completion and paid for in the same manner as contracts for other like improvements, and any and all damages and increased costs of the work to the city, including both labor and material, will be a charge against the original contractor and shall be deducted from any moneys remaining unpaid him or to become due the contractor, and the balance, if any, may be collected by the city from him and his sureties as provided by law.

[1901 c. 379 s. 16] (1713-¼n)

428.17 CONTRACTOR PERSONALLY RESPONSIBLE. Any contractor or person who accepts a contract authorized by sections 428.01 to 428.55, under any such city, shall take the same with the condition that he shall be personally and directly responsible for any and all loss, damage, or injury which may arise or in any way

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be suffered by the city by reason of any occurrence while the work is going on, and before acceptance thereof by the city, caused by any negligence or misconduct on his part or on the part of his servants or employees in doing the same, and every contractor shall guard all work by suitable guards by day and with lights at night, so as to prevent any loss, damage, or accident.

[1901 c. 379 s. 17] (1713-¼o)

428.18 CONTRACTOR TO EXECUTE BOND. Before any contract for the doing of any work or furnishing any skill or material, contemplated in sections 428.01 to 428.55, to any such city for the making of any improvement therein authorized shall be valid for any purpose, the contractor therefor shall execute a bond to the city, with two or more sufficient sureties to be approved by the mayor of the city, in such amount as the council of the city may direct, not less than the contract price agreed to be paid for the performance of the contract, and in no event less than \$1,000 conditioned as provided by the general laws of this state requiring the giving of bonds by contractors for public works and improvements, and conditioned that the contractor will indemnify and hold harmless the city against any damage, loss, or injury which may arise in any way, be suffered by the city by reason of any occurrence while the work is going on and before acceptance thereof by the city, caused by any negligence or misconduct on the part of the contractor, his servants or employees, in doing the same.

This bond shall, in all respects, be executed as required by the general laws, and all provisions in these laws contained, shall be applicable, as near as may be, to contracts therein authorized.

Every bond shall be filed with the contract in the office of the clerk or recorder of the city, the custodian thereof.

[1901 c. 379 s. 18] (1713-¼p)

428.19 BOND OR CERTIFIED CHECK WITH BID. The council of each such city shall have power to require all bids for the doing of all work or the furnishing of all skill or material, authorized by sections 428.01 to 428.55 to be accompanied by a bond, on the part of the bidder in a sum and with sureties as the council may prescribe, or in lieu of the bond a certified check payable to the city upon a bank located in the city, or cash of the same amount, conditioned that he will enter into a contract with the city for the doing of the work or the furnishing of the skill or material for the price mentioned in his bid, and according to the plans and specifications therefor in case the contract shall be awarded to him; and, in case of default on his part to sign and enter into the contract or fail to furnish the required bond therefor within the time prescribed by the council in and by the specifications therefor, the same shall be deemed forfeited and, if a check or cash be so deposited, the same shall be the property of the city absolutely, and in case of a bond the same may be sued and judgment recovered thereon by the city for the full amount in any court having jurisdiction of the amount.

[1901 c. 379 s. 19] (1713-¼q)

428.20 ASSESSMENTS. It is hereby made the duty of the council of the city to make, without unnecessary delay, at the proper time or times, all assessments for local improvements authorized by sections 428.01 to 428.55.

[1901 c. 379 s. 20] (1713-¼r)

428.21 OBJECTIONS; ASSESSMENT STATEMENT. Upon the completion of any improvement authorized under the provisions of sections 428.01 to 428.55, the council of the city shall proceed without delay to apportion and assess the cost of the improvement, when not therein otherwise provided, upon the real estate by them deemed benefited, to the extent of benefits received, and in proportion, as near as may be, to the benefits resulting thereto from the improvement; and it shall constitute no objection to this assessment that the amount thereof either exceeds or falls short of the original estimate of the cost of the improvement submitted to the council, or that the city has not fully adjusted all matters with the contractors for the work, or approved his final estimate therefor, or that the council has refused, at that time, to relieve the contractor from further duties in connection therewith.

In all proceedings and advertisements for the making and collection of any assessment under sections 428.01 to 428.55, letters, figures, and the usual and customary abbreviations may be used to denote lots, parts of lots, lands and blocks, sections, townships, ranges, and parts thereof, the year and the amounts; the

assessment shall be in writing, in which shall be given a description of each lot or parcel so assessed, the name of the owner thereof, if known, and the exact amount assessed thereto.

[1901 c. 379 s. 21] (1713- $\frac{1}{4}$ s)

428.22 PUBLICATION OF NOTICE OF MEETING; OBJECTIONS IN WRITING. Upon the completion of any assessment authorized by sections 428.01 to 428.55, the council shall direct that the same be placed on file with the clerk or recorder, and shall appoint a time, not less than ten days distant, and a place when and where it will meet to consider and act upon the assessment, and the clerk or recorder shall thereupon cause notice of the meeting, and the time, place and purpose thereof, to be given by one publication of the notice in the official newspaper of the city, at least five days prior to the time so appointed for the meeting; in the notice shall be given a brief description of the improvement for which the assessment has been made, and the territory embraced in the assessment, and shall be to the effect that the assessment is on file with the city recorder or clerk and open to the inspection of all interested parties, and that all objections to the same must be filed, in writing, with the clerk or recorder of the city at least one day, Sunday and legal holidays excepted, prior to the meeting, and that unless sufficient cause is shown to the contrary the same will be confirmed. If this assessment be for sprinkling, the notice need not contain a description of the territory embraced in the assessment and a reference therein to the number of the district, for the sprinkling of which the assessment is made, shall be deemed sufficiently definite.

[1901 c. 379 s. 22] (1713- $\frac{1}{4}$ t)

428.23 SPRINKLING. The word "sprinkling" wherever used in sections 428.01 to 428.55 shall include sprinkling, saturating, or treating the surface of a highway, street, public way, or public ground with water, oil, mineral, or any other substance for the purpose of preventing dust in the atmosphere or on the surface of this public way or ground.

[1901 c. 379 s. 22a; 1913 c. 7 s. 3] (1713- $\frac{1}{4}$ tt)

428.24 OBJECTIONS. At the time and place so appointed, as provided in section 428.23, the council shall proceed to consider the assessment and hear all objections which parties interested may desire to make thereto, and may adjourn as often as deemed expedient to a future definite time and place, and if none of the members are present the recorder may adjourn to some other convenient time and place, of which postponement all parties interested shall be required and deemed to take notice. All objections to the assessment shall be in writing and filed with the recorder at least one day, Sunday and legal holidays excepted, prior to the meeting of the council; provided, that the council may, in its discretion, allow any party interested, who has accidentally or inadvertently omitted to file his objection, to do so at the time of meeting of the council. The council may give a new notice of the hearing, if the previous notice shall be found imperfect, or for any other reason.

The council shall, after due consideration, make corrections or changes in the assessment, and may revise the same as it deems necessary to perfect and equalize the same on the basis prescribed in sections 428.01 to 428.55, and shall confirm and establish the assessment when so corrected and equalized. The assessment, when so confirmed and established, shall be final, conclusive, and binding upon all parties interested therein, and the several amounts charged in the assessment, as so confirmed and established, against the several lots and parcels of land therein mentioned shall be enforced and collected as provided in sections 428.01 to 428.55. If any assessment be annulled or set aside, the council shall proceed de novo to make another new assessment in like manner, and like notice shall be given as herein required in relation to the first, and all parties interested shall have the like rights.

[1901 c. 379 s. 23] (1713- $\frac{1}{4}$ u)

428.25 PORTION OF COST CHARGEABLE TO RAILWAY COMPANY; DISTRESS. When, in any case, any portion of the cost and expense of making any improvement mentioned in sections 428.01 to 428.55 in any city shall, by virtue of any valid law or ordinance, or by virtue of any contract, be chargeable upon any railway company in any such city, the amount so chargeable may be assessed upon the railway company, and the balance only upon the real estate benefited thereby, and the city may collect the amount so assessed upon the railway company, by distress

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and sale of personal property in the manner provided for in the general laws of this state in the case of taxes levied upon personal property, or by suit brought for that purpose. Any real estate belonging to the railway company subject to assessment under the general laws of this state or any valid ordinance or contract, and benefited by the improvement shall be assessed as in other cases.

[1901 c. 379 s. 24] (1713-¼v)

428.26 ASSESSMENT A LIEN. All assessments levied under the provisions of sections 428.01 to 428.55 shall be a paramount lien on the real estate upon which the same may be imposed from the date of the confirmation of the assessment.

[1901 c. 379 s. 25] (1713-¼w)

428.27 RECORD OF ASSESSMENT. The clerk or recorder of each such city shall keep in his office, in books to be provided for that purpose, a correct record of all assessments confirmed by the city council and authorized by sections 428.01 to 428.55, the books to be properly ruled and headed so as to show, at all times, a substantial description and history of each assessment on each lot and parcel of ground, whether payable in instalments, as therein provided, and whether paid to the city or county treasurer or whether remaining unpaid.

[1901 c. 379 s. 26] (1713-¼x)

428.28 WARRANT FOR COLLECTION. When any special assessment, authorized by sections 428.01 to 428.55, shall be confirmed and established by the council of any such city, as therein provided, it shall be the duty of the clerk or recorder of the city to issue a warrant for the collection thereof, which shall be under the seal of the city and signed by the mayor and clerk or recorder thereof, and contain a printed or written copy of the assessment roll as so confirmed, or so much thereof as describe the real estate and the amount of the assessment in each case.

[1901 c. 379 s. 27] (1713-¼y)

428.29 WARRANTS, TO WHOM DELIVERED. All warrants issued for the collection of any special assessment in any such city and authorized by sections 428.01 to 428.55 shall be delivered by the clerk or recorder to the treasurer of the city as soon as practicable after the assessment has been confirmed and established, excepting for assessment for the cost of repairing sidewalk, which shall be delivered to the auditor of the county as therein designated; the recorder shall in each instance take a receipt for these warrants and place the same on file.

[1901 c. 379 s. 28] (1713-¼z)

428.30 WARRANTS, NOTICE BY PUBLICATION. Upon the receipt of any warrant for the collection of any special assessment authorized by sections 428.01 to 428.55, the treasurer of the city shall forthwith give notice, by one publication in the official newspaper of the city, that the warrant is in his hands for collection, briefly describing its nature and the improvements for which the assessment has been made, and the territory embraced in the assessments; provided, when the assessment is for sprinkling, a reference in the notice to the number of the sprinkling district for the sprinkling of which the assessment has been made, shall be a sufficient reference to the territory embraced in the assessment. The notice shall require all persons interested to make payments within 30 days from the date of the notice, at his office, or at the option of the treasurer, at some bank in the city acting for the treasurer.

[1901 c. 379 s. 29] (1713-½)

428.31 NON-PAYMENT OF ASSESSMENT; PENALTY, COLLECTION. If the assessments charged in any special assessment warrant, made for any improvement under the provisions of sections 428.01 to 428.55, shall not be paid within 30 days after the publication of the notice by the city treasurer that he has received the warrant for collection, the treasurer shall return to the recorder or clerk of the city a list, duly certified by him, of the assessments so made which still remain unpaid, giving in the list the description of the several lots and parcels on which the assessments have not been paid, with the names of the respective owners thereof, if known, and the several amounts assessed thereto.

The city recorder or clerk shall thereupon add to each delinquent and unpaid assessment a penalty of ten per cent and, before the first day of November following, transmit a duly certified list of these unpaid assessments, with a description of the several lots and parcels of land on which the same are made, and the names of the respective owners thereof, if known, to the auditor of the county in which the city is located, who shall enter the several amounts of these unpaid assessments on the tax list for the city for the next ensuing year, and levy the same upon the

several lots and parcels of land to which the same are, respectively, chargeable, and the same shall thereupon be enforced and collected as other taxes on real estate are enforced and collected under the general laws of this state.

[1901 c. 379 s. 30] (1713-½a)

428.32 ASSESSMENT NOT SET ASIDE OR HELD INVALID. No assessment in sections 428.01 to 428.55 provided for shall be set aside or held invalid by reason of any informality in the proceedings prior to the entry thereof on the tax list by the auditor of the county, as hereinbefore required, unless it shall appear that, by reason of such informality or irregularity, substantial injury has been done to the party or parties claiming to be aggrieved.

[1901 c. 379 s. 31] (1713-½b)

428.33 NEW ASSESSMENT. If for any cause the proceedings of the council of any such city, or any of its officers, may be found irregular or defective, whether jurisdictional or otherwise, the council may make a new assessment, from time to time and as often as needs be, upon all real estate benefited and on which no payment has been made for these improvements, until the full amount of all benefits assessed have been realized from the real estate benefited by the improvement.

[1901 c. 379 s. 32] (1713-½c)

428.34 EXTENSION OF PAYMENT ON ASSESSMENT; ANNUAL INSTALLMENTS. The council of any city shall have power and authority and may, by resolution, in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of any assessment made and confirmed by it for the purposes and as in sections 428.01 to 428.55 designated, against any lot or parcel of land, and may provide that the assessment may be paid in annual instalments of any number, not exceeding ten. When the assessment is fully completed and has been confirmed and established, the city council shall, by resolution, determine the number of annual instalments, if any, in which the assessment may be paid, which resolution shall be attached to and form a part of the assessment roll.

[1901 c. 379 s. 33] (1713-½d)

428.35 CITY TREASURER TO GIVE NOTICE. If the council shall adopt the resolution, specified in section 428.34, the city treasurer shall, in his notice that the warrants are in his hands for collection, required by section 428.30, include a notice that the owner, or any person interested in any lot, or parcel so assessed and described in the assessment, may, at his election and written request pay, the sum assessed in instalments, as designated in the resolution.

[1901 c. 379 s. 34] (1713-½e)

428.36 NOTICE OF ELECTION TO PAY IN INSTALLMENTS; DIVIDING ASSESSMENTS. Any person desiring to so pay any assessment in instalments, as a condition precedent to the exercising of this right, shall file in duplicate, a written notice of his election and request for permission to so pay in annual instalments, within 30 days after this publication, and before the assessment becomes delinquent, with the treasurer of the city and at the same time, pay the first instalment then due and payable. Upon failure to so file this notice and request and pay the first instalment, the whole amount of the assessment shall be due and payable the same as though no extension of time for payment had been provided for.

Upon the filing of this notice and request by any person interested, the treasurer shall divide the assessment into the proper instalments, and make proper record of the same, and transmit one of such duplicate notices to the city recorder, who shall note this fact in his record book of assessments.

[1901 c. 379 s. 35] (1713-½f)

428.37 COUNCIL MAY WAIVE NEGLECT TO ELECT. The council of the city may, at any time after an assessment becomes delinquent, upon a written application to it, waive the neglect to so elect within the proper time and permit any assessment which has become delinquent to be paid in instalments as provided in section 428.36.

[1901 c. 379 s. 36] (1713-½g)

428.38 INSTALLMENTS TO BEAR INTEREST. Each instalment so extended shall bear interest, payable annually, at a rate to be determined in and by the resolution, not exceeding five per cent per annum, from the expiration of 30 days after the publication of the notice provided in section 428.30.

[1901 c. 379 s. 37] (1713-½h)

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428.39 INSTALMENTS MAY BE OF DIFFERENT AMOUNTS; WHEN DUE.

No assessment of less than \$10 against any one lot or parcel of land shall be divided into instalments, and no assessment shall be divided so that the amount of any of the instalments into which it is divided shall be less than \$5.00 and the several instalments may be of different amounts as the council may determine.

The time for the payment of the instalments, and for the enforcement of the same against the property affected by the assessment, shall be extended so that the several amounts shall become due and payable as follows: The first instalment at the time the assessment would have been payable if the time of payment had not been extended, as provided in section 428.30; the second instalment on October 1st of the succeeding year, the third instalment on October 1st of the second succeeding year, and so on; each instalment, excepting the first, shall be made due and payable on the first day of October in the year when payable.

[1901 c. 379 s. 38] (1713-½i)

428.40 NON-PAYMENT OF EXTENDED INSTALMENT; COLLECTION.

After the time of payment of any assessment has been extended and divided into instalments, if any instalment so extended shall not be paid when it becomes due and payable, together with the interest to that time on all future instalments, the treasurer of the city shall, on the fifth day of October, in each year, certify to the recorder or clerk of the city the extended instalment which has become due and payable on the first day of October in that year and which has not been paid, together with all interest then due and unpaid on the whole assessment, as a special tax on the property, in the same manner as other delinquent assessments in his hands for collection; and the city recorder shall thereupon certify the same to the county auditor in the same manner, at the same time, and with the same penalty added thereto as in cases of other delinquent assessments, and in all respects as provided in and by section 428.31; the county auditor, on receipt thereof, shall enter and carry out the same upon the proper tax list for that year, in the same manner as in other cases of unpaid assessments certified to him under the provisions of sections 428.01 to 428.55; and the same shall thereupon be collected and payment thereof enforced the same as other taxes on real estate are collected and enforced, and when collected paid over to the treasurer of the city

[1901 c. 379 s. 39] (1713-½j)

428.41 COUNCIL MAY EXTEND TIME FOR PAYMENT; COLLECTION.

Upon application, in writing, of any owner or party interested in any lot or parcel of land against which any assessment has been heretofore made, and has heretofore been confirmed by the council of the city, the council shall have power and authority and may, by resolution in writing, adopted by an affirmative vote of a majority of all its members, extend the time for the payment of the assessment as to the lot or parcel, and may provide that the assessment may be paid thereafter in annual instalments of any number not exceeding ten, providing the assessment so made prior to the date hereof exceeds the sum of \$20 against the lot or parcel of land.

[1901 c. 379 s. 40] (1713-½k)

428.42 PARTY INTERESTED MAY PAY ALL INSTALMENTS BEFORE MATURITY. Any owner or party interested in any piece or parcel of land against which an assessment is levied, may, after the assessment has been divided into instalments, pay all of the instalments at any time before maturity, but in that event shall pay interest thereon to the first day of October immediately following the payment.

[1901 c. 379 s. 41] (1713-½l)

428.43 PARAMOUNT LIEN. Every instalment, the time of payment of which has been extended under sections 428.01 to 428.55, shall continue to be and shall be and constitute a paramount lien in favor of the city and against each of the lots or parcels of land as to which the extension is granted, for the amount so extended for each lot or parcel, and until the same is fully paid.

[1901 c. 379 s. 42] (1713-½m)

428.44 APPLICATION FOR EXTENSION. When such application, election, or request for an extension of the time of payment in instalments, if an assessment shall have been made and filed, the owner or person interested and so filing the same, and his heirs, personal representatives, or assigns, or any lot or parcel of land as to which an extension has been granted, shall be held to have recognized

and assented to the validity and regularity of the assessment and of all proceedings had thereon prior to the granting of the application, and shall be thereby forever estopped from denying the validity of the assessment or the amount thereof.

[1901 c. 379 s. 43] (1713-½n)

428.45 CERTIFICATES OF INDEBTEDNESS. When the time of payment of an assessment is extended and the assessment is divided into annual instalments in any such city, as provided in sections 428.01 to 428.55, the council of the city shall have power and is hereby authorized, in anticipation of the collection and payment of the assessment, and the several instalments provided for, to issue and sell from time to time, the certificates of indebtedness of the city, in accordance with the provisions of Laws 1897, Chapter 37.

These certificates shall be issued, from time to time, in the amounts the council of the city may determine as necessary for that purpose, not exceeding in the aggregate at any time the aggregate amount of unpaid instalments and shall be issued for a length of time as the council may determine and as the extended time or times for paying the instalments may require.

[1901 c. 379 s. 44] (1713-½o)

428.46 PROPOSALS FOR SIDEWALKS TO BE PUBLISHED; PLANS AND SPECIFICATIONS. The council of each such city shall annually cause proposals to be published, in the same manner and for the same length of time as in the case of other public improvements provided for in sections 428.01 to 428.55 for the construction and laying of any sidewalks as may be ordered built and laid by the council prior to the first day of November in each year. General plans and specifications applicable to all sidewalks that may be ordered built and laid during that year by the council shall be made, approved, and filed before such publication of proposals, as in the case of other public improvements; these plans and specifications shall classify the different kinds of walks required by the conditions existing in the different portions of the city, accurately specifying the material, dimensions, and method of construction for each class, and require separate proposals for each class, the proposals shall be received and the work shall be let and placed under contract in the same manner and under the same regulations as in the case of other improvements provided for in sections 428.01 to 428.55 so far as the provisions referring thereto may be made applicable hereto.

[1901 c. 379 s. 45] (1713-½p)

428.47 SIDEWALKS; ORDER, CONTRACTS. When the city council shall order the construction and laying of any sidewalk such order shall be, by resolution in writing accurately describing the location of each walk included in the order, and the resolution shall require the same formality, vote, and approval for its adoption as resolutions of like nature designated in section 428.08; any number of walks, in different portions of the city, and belonging to different classes under the general specifications therefor, may be included in one order.

After the publication of this resolution the city recorder or clerk shall without delay transmit a copy of the order to the person having the contract for the construction and laying for the time being, who shall, within the time designated in the specifications therefor, if no time be designated in the order, cause the sidewalk so ordered constructed and laid by the council, to be constructed and laid.

When for any reason no contract is awarded by the city council for the construction of sidewalks, as authorized by section 428.46, then the council may, from time to time, authorize the construction of sidewalks in the city in the same manner as the making of other improvements are authorized by the council under the provisions of sections 428.01 to 428.55, and any number of walks on one or more streets may be included in one contract.

[1901 c. 379 s. 46] (1713-½q)

428.48 OWNER MAY BUILD SIDEWALKS; PERMIT; REGULATION. Any person desiring to construct, lay, or relay his own sidewalk shall first obtain a permit therefor from the city engineer of the city, which shall state the location of the walk, the material out of which the same is to be constructed, laid, or relaid, and the time when the same shall be completed, and there shall also be attached to the permit a general plan and specification for the doing of the work.

No work shall be begun thereon until the contractor therefor, or the owner thereof, if he shall do the work himself, shall first execute a bond to the city, with two or more sufficient sureties, to be approved by the mayor, in the penal sum of

not less than \$1,000, conditioned that he will do the work, subject to the supervision and approval of the city engineer of the city, and as required by the ordinances of the city, and will indemnify and hold harmless the city against any damage or loss which may arise, or in any way, directly or indirectly, be suffered by the city by reason of any occurrence while the work is going on and before acceptance thereof by the city engineer, caused by any negligence or misconduct on the part of the contractor or owner, as the case may be, his servants or employees, in doing the same; the bond shall be filed with the city recorder or clerk, and may be enforced by the city the same as other bonds of a like nature, as required by law.

The council of each city may, by ordinance, regulate the manner of constructing, laying, relaying, and repairing sidewalks by the owners of property in the city, not inconsistent with the provisions of sections 428.01 to 428.55, and may authorize the filing of a like bond as in this section provided, in such penal sum as the council may direct, by persons engaged in and carrying on the business of constructing or relaying sidewalks, to include and cover the construction and laying of all walks for property owners in the city, for a period of one year, and this bond shall have the same force and effect as though given for each walk separately, as above provided.

When an owner constructs, lays, or relays his own walk the same shall be constructed, laid, or relaid under the supervision and direction of the city engineer, and this engineer shall upon the full and satisfactory completion of the walk, deliver to the contractor a certificate of his acceptance, if demanded.

No property owner shall have any authority to construct or lay his own walk after the city council shall have ordered its construction by resolution and the city council shall not so order the building of any walk after a permit has been issued therefor by the city engineer, and before the expiration of the time designated therein within which the same is to be built.

[1901 c. 379 s. 47] (1713-½r)

428.49 COST OF SIDEWALKS ASSESSED UPON REAL ESTATE BENEFITED. The council of this city shall, as soon as practicable after the construction, laying, or relaying of any sidewalk, assess the cost of the improvement or improvements upon the real estate benefited thereby, in the same manner and under the same regulations provided for the making of other assessments and the same shall be collected and enforced and all steps taken in connection therewith as otherwise provided in sections 428.01 to 428.55 for collecting and enforcing other assessments authorized by sections 428.01 to 428.55; the assessments for the cost of any number of walks adjacent to any number of lots or parcels of land may be combined in one assessment roll.

[1901 c. 379 s. 48] (1713-½s)

428.50 FAILURE TO BUILD SIDEWALKS. When the contractor shall fail to build or relay any sidewalk, as provided in his contract, the same shall be built or relaid as provided in sections 428.15 and 428.16.

[1901 c. 379 s. 49] (1713-½t)

428.51 STREET COMMISSIONER TO BUILD; REPAIR; RECORD; ASSESSMENT. When the street commissioner of any such city shall report to the city council the necessity of repairing certain walks in the city, not deemed dangerous to pedestrians by him, and shall estimate the cost of these repairs to be less than \$10 adjacent to any one lot or parcel of land, the council may authorize him to make these repairs, if the owner or agent thereof fails to make them within 48 hours after notice to that effect from the street commissioner, if the owner or agent be known and can be found in the city by him.

In case any sidewalk shall become so out of repair or broken as to become dangerous, it shall be the duty of the street commissioner to immediately repair the same in a good and substantial manner.

The street commissioner shall keep a written record of all these repairs, and shall, at least once in each month report and certify to the city council the cost, in each case, of all repairs made to sidewalks in the city, as specified in this section, with a description of each lot or parcel of land abutting each case of repairs.

Each report shall be filed and preserved by the city recorder for the inspection of all parties interested; the city council shall once in each year, as near as conveniently may be to the time of the annual tax levy for the city, assess and levy the cost of making these repairs upon the lots or parcels of land found benefited thereby

in the manner provided for in sections 428.01 to 428.55 for assessing the cost of other improvements therein designated. In each case the assessment for all these repairs within the year and since the making of the last assessment therefor, may be combined in one assessment roll; this assessment shall be collected and enforced in the same manner as other assessments provided for in sections 428.01 to 428.55 except that the same shall not first be transmitted to the city treasurer for collection, but shall be directly certified to the auditor of the county by the recorder to be placed upon the tax list for that year by the auditor.

[1901 c. 379 s. 50] (1713-½u)

428.52 OWNER OR INTERESTED PARTY MAY PAY ASSESSMENT; CITY TREASURER TO CERTIFY TO CITY RECORDER. Any owner of, or party interested in, any piece or parcel of land against which an assessment is levied, may pay the assessment to the treasurer of the city at any time before the first Monday in January following the date on which the same has been certified to the city recorder or county auditor and the treasurer shall thereupon give his receipt in duplicate for the same, which shall be sufficient authority for the cancellation of the assessment by the county auditor or county treasurer on his books, or by the city recorder, as the case may be. After the first Monday in January following the date on which any delinquent assessment shall have been certified to the county auditor, the same must be paid to the county treasurer the same as other state or county taxes.

Upon the presentation of one of these duplicate receipts, by the owner or person interested, to the auditor or treasurer of the county, as the case may be, he shall cancel the assessment on his books, or if the same has not yet been transmitted to the auditor by the recorder of the city, the recorder shall thereupon cancel the assessment on the delinquent list containing the same, and after that time the lien on this land shall cease to the amount of that payment, and the county auditor, if such receipt be filed with him, shall report the same in the next settlement thereafter with the city treasurer, for taxes collected and payable to the city treasurer.

On the first Monday of each year the city treasurer shall certify to the recorder of the city all payments made to the treasurer of assessments certified to the county auditor for collection, and the recorder shall enter all such payments in the proper records therefor.

[1901 c. 379 s. 51] (1713-½v)

428.53 PUBLICATION; AFFIDAVIT OF AS EVIDENCE. When any notice is required to be published in any newspaper, under the provisions contained in sections 428.01 to 428.55, an affidavit of the publisher or printer of that newspaper, or of the foreman or clerk of the publisher or printer, annexed to a printed copy of the notice taken from the paper in which it was published and specifying the time when, and the paper in which the notice was published, shall be evidence in all cases and in every court of the facts contained in the affidavit.

[1901 c. 379 s. 52] (1713-½w)

428.54 AUDITOR NOT TO CERTIFY IF DELINQUENT. The county auditor shall not issue his certificate that taxes are paid on any piece or parcel of land upon which any delinquent assessment authorized by sections 428.01 to 428.55, or any portion thereof, has been certified to him until the assessment, or portion, or extended instalment thereof, with penalties and interest thereon, has been paid and canceled, as provided in sections 428.01 to 428.55, and in the general laws of the state governing the collection of taxes.

[1901 c. 379 s. 53] (1713-½x)

428.55 APPLICATION. Every such city may assess, in accordance with the provisions of sections 428.01 to 428.55, the cost of any improvement either fully or partially completed at the date thereof, and before the city was brought within the operation of sections 428.01 to 428.55, and for which no assessment has been made at that time.

Sections 428.01 to 428.55 shall not be deemed to repeal any provision of any special charter in force at the date thereof.

[1901 c. 379 s. 54] (1713-½y)

428.56 CITIES OF LESS THAN 25,000 MAY AUTHORIZE PAYMENT OF SPECIAL ASSESSMENTS IN INSTALMENTS. Any city within this state having a population of less than 25,000, as determined by the national or state census next preceding the making of any assessment such as hereinafter mentioned, whether

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organized and existing under a general or special law, in addition to any powers that now are, or hereafter may be, by law conferred upon it relating to the levy or collection of special assessments upon property abutting upon, or benefited by, any public improvement made within the city shall have power and authority, by a majority vote of the council of the city, to provide, by ordinance, by-law, or resolution, that any such assessment, or any part thereof, may be paid in annual instalments of any number, not exceeding ten, with interest upon the deferred instalments payable annually at a rate not exceeding six per cent per annum.

[1895 c. 235 s. 1]

428.57 METHOD OF ASSESSMENT. When any such improvement shall be fully completed the council of the city shall proceed to determine upon what real property the cost of the improvement, or any part thereof, shall be assessed, and shall make and levy an assessment to defray this cost, which assessment shall distinctly describe each tract or parcel of land included in the assessment and the amount assessed against each tract or parcel. This assessment may be substantially in the following form:

"The city council of the city of doth hereby assess and levy upon and against the several lots and parcels of land below described and situate in said city, the respective sums of money set opposite each such lot or parcel.

This assessment is made to defray the cost and expense of along street from street to street in said city.

Said lots or parcels of land abutting upon such improvement are assessed upon the basis of per foot front, and said lots not abutting upon but benefited by such improvement upon the basis of per foot front.

| Name of owner, if known | Description of land | Lot | Block | Abutting or benefited | Amount | |
|-------------------------|---------------------|-----|-------|-----------------------|--------|---|
| | | | | | \$ | ¢ |

Done at a meeting of said city council, held this day of A. D.

Attest:

.....
Mayor.

.....
City Clerk."

[1895 c. 235 s. 2]

428.58 ASSESSMENTS, HOW DISTRIBUTED. If any assessment be made wholly upon land abutting upon the improvement, the same shall be an equal sum per foot front for each and every foot of land abutting upon the street, alley, or public ground within which the improvement shall be made. If the assessment be made in part upon the lands abutting upon such street, alley, or public ground and in part upon lands not so abutting but which shall be, by the council, determined to be benefited by the improvement, then the cost of the improvement assessed upon the abutting lands shall be an equal sum per foot front for each and every foot so abutting, and the portion of the cost so assessed upon the non-abutting lands shall be an equal sum per foot front of such non-abutting lands which, by the council, shall be determined to be in the same class. In all cases in which any lot or tract of land abutting upon any street, alley, or public ground shall have been once assessed as an abutting lot or tract for the purpose of paying the cost of any sewer constructed in any such street, alley, or public ground it shall not be again assessed for the purpose of paying the cost of constructing any sewer in any other or different street, alley, or public ground.

[1895 c. 235 s. 3]

428.59 RESOLUTION. When the assessment is completed the city council shall, by resolution, determine the number of annual instalments, if any, in which the assessment may be paid, which resolution shall form a part of such assessment and be substantially in the form following:

"Resolved, that each and every of the respective sums so as aforesaid assessed upon the tracts or lots of land above respectively described may be paid in equal instalments with interest thereon, payable annually, at the rate of per cent per annum until paid."

The city clerk, or other like officer of the city, shall, within ten days after the mailing of any such assessment, cause a copy thereof and a copy of the resolution, to be published once in the official newspaper of the city, together with a notice to such copy attached and signed by the clerk, or other like officer, that the owner of, or any person interested therein or having a lien upon, any tract or parcel of land in the assessment described, may, at his election, pay the sum assessed against the tract or parcel in one sum and at one time instead of in instalments as in and by the resolution provided.

Any person electing so to pay in one payment, as a condition precedent to the exercise of such right, and within ten days after the publication of such notice, shall file a notice of his election in the office of the clerk or other like officer. The clerk or other like officer shall, within five days after the expiration of this last-named period of ten days, make and file, in the office of the auditor of the proper county, a certified copy of the assessment and resolution, and shall also make, and attach thereto, a tabulated statement containing a description of each and every tract or parcel of land described in the assessment, and the amount of the principal and interest of the assessment which will become due upon each and every tract or lot during each and every year in which any instalments of the assessment will become due. Upon the filing of this copy of the assessment and resolution in the office of the county auditor, the amount assessed upon each and every tract or lot of land in the assessment described shall forthwith be and become a first lien upon such tract or lot, which lien shall continue until the assessment be fully paid.

The county auditor shall on or before the first day of January next succeeding the filing in his office of the assessment, resolution, and tabulated statement, enter upon the tax lists of the county, as a special assessment upon each and every of the tracts or lots in the assessment and statement described, the amount set opposite such tract or lot as first becoming due; and, on or before the first day of January in each and every year thereafter until the instalments be fully paid, he shall, in like manner, enter upon the tax lists the amount of the instalment next to become due.

These assessments shall be collected in the same manner as is, or may be, provided for the collection of state taxes.

The city clerk, or other like officer, of any such city shall, on or before the first day of October in each and every year, file in the office of the proper county auditor a statement containing a description of each and every tract or lot of land upon which the then next maturing instalment of the assessment has not been paid and the amount of the principal and interest which will next become due upon the assessment.

[1895 c. 235 s. 4]

428.60 BONDS. For the purpose of providing funds in advance of the collection of the moneys to be derived from the assessment, the city council may, from time to time, issue the bonds or certificates of indebtedness of the city, to be paid out of the moneys to be collected from the assessment.

These bonds or certificates shall bear date of the day when actually issued and delivered, shall be under the corporate seal of the city, signed by the mayor, and countersigned by the city clerk or other like officer thereof, in such sums as the city council may, from time to time, determine, not exceeding in the aggregate the amount of the assessment, shall be payable at the office of the city treasurer at the time the council may determine, and out of the funds to be derived from the assessment in the bond or certificate specified, with interest payable annually at a rate not exceeding six per cent per annum, and shall be payable to order or bearer as by the council determined.

The instalments of interest accruing upon these bonds or certificates shall be evidenced by coupons or orders thereto attached, signed by the mayor and city clerk, or other like officers, of the city. These bonds or certificates shall not be sold, negotiated, or disposed of by the city issuing the same, or by the council thereof, at less than the par value thereof.

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All moneys collected from the assessment shall be set apart for, and applied to, the payment of the bonds or certificates issued upon the assessment, and shall not, in whole or in part, be applied to any other or different use or purpose.

[1895 c. 235 s. 5]

428.61 ERRORS, INFORMALITIES. No error or informality in any action taken by any city in ordering or making any such improvement, or the levy or making of any assessment, or the execution, delivery, or issue of any bonds or certificates shall, in any manner, affect the validity of any assessment bonds or certificates.

[1895 c. 235 s. 6]

428.62 IMPROVEMENTS; PETITION; ASSESSMENT. When the council of any city of the class mentioned in Laws 1895, Chapter 235, shall be requested by petition of the owners of three-fourths of the real property to be assessed therefor, to make or construct any specified improvement within the city and that the cost thereof to be assessed upon the real property abutting upon such improvement or benefited thereby, may be paid in a specified number of annual instalments, the council may, if it deems the improvement necessary, by resolution, grant such petition and order such improvement made or constructed, and may thereupon proceed to make or construct such improvement and assess the cost thereof upon the property abutting thereon or benefited thereby, and otherwise proceed as provided in Laws 1895, Chapter 235, without any other or further proceedings.

[1899 c. 128]