

# MINNESOTA STATUTES 1957

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LAND FOR STREETS AND PARKS 430.02

## CHAPTER 430

### LAND FOR STREETS AND PARKS (ELWELL LAW)

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**430.01 DESIGNATION OF LAND FOR SYSTEM OF STREETS, PARKS AND PARKWAYS.** The council and the board of park commissioners of any city of the first class may, by concurrent resolution adopted by a majority vote of each body, designate lands to be acquired for a system of streets, parks, and parkways, and determine that this land shall be acquired by proceedings under this chapter, to be conducted either by the city council or the board of park commissioners, as this resolution shall specify. The council of any such city, acting separately, may by resolution so adopted, designate lands to be acquired, improved and operated for motor vehicle parking lots. If proceedings are taken by the board of park commissioners, the duties herein specified to be performed by the city clerk, the city engineer and the city attorney, respectively, shall be performed by the secretary, the engineer and the attorney elected and employed by the board of park commissioners, and the powers hereinafter specified to be exercised by the city council may for the purposes of this chapter be exercised by the board of park commissioners. The term "system of streets, parks, and parkways," as used herein, shall embrace any body of contiguous land of whatever shape or area, designed ultimately to be used in part for streets and in part for parks or parkways, and the concurrent resolution shall designate what part is for streets, what part for parks and what part for parkways. When the city council desires to take or improve, or take and improve, land for street purposes alone, or to take land for motor vehicle parking lots, it may proceed under this chapter for that purpose without the concurrence of the board of park commissioners, and when the board of park commissioners desires to take or improve, or to take and improve, land for parks and parkways alone, or either, it may proceed under this chapter without the concurrence of the city council.

[1911 c. 185 s. 1; 1917 c. 103 s. 2; 1945 c. 470 s. 2] (1552)

**430.02 PROCEEDINGS FOR ACQUISITION OF LANDS.** Subdivision 1. **Plat and survey.** After the adoption of the resolution it shall be the duty of the city engineer to make and present to the council a plat and survey of the proposed improvement, showing the character, course, and extent of the same and the property necessary to be taken or interfered with thereby, with the name of the owner of each parcel of the property, so far as the engineer can readily ascertain the same, and such statement as may in the opinion of the engineer be proper to explain the plat and survey and the character and extent of the proposed improvement.

When the plat and survey shall be finally adopted by the city council, it shall be filed with the city clerk, and it shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the city council.

The plat shall also show the amount of land taken from each owner, so far as the owners may be known, and the lands contiguous to these improvements.

**Subd. 2. Commissioners or appraisers.** The city council shall then or afterwards appoint five freeholders of the city, no two of whom shall reside in the same ward, as commissioners, to view the premises and to ascertain and award the amount of damages and compensation to be paid to the owners of property which is

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to be taken or injured by the improvement, and to assess the amount of the damages and compensation and the expenses of the improvement upon the lands and property to be benefited by the improvement, and in proportion to the benefits to be received by each parcel and without regard to a cash valuation.

Three or more commissioners shall constitute a quorum and be competent to perform any duty required of these commissioners; and they shall be notified of their appointment, and vacancies in their number shall be filled by the city council, and they shall be sworn to the faithful discharge of their duties.

Subd. 3. **Notice of hearing; hearing; award and appraisalment.** The commissioners shall give notice, by two publications in the official newspaper of the city, that the survey and plat is on file in the office of the city clerk for the examination of all persons interested and that they will, on a day designated in this notice, which shall be at least ten days after the first publication of the notice, meet at a place designated in the notice on or near the proposed improvement, and view the property proposed to be taken or interfered with for the purposes of these improvements, and ascertain and award therefor compensation and damages, and view the premises to be benefited by this improvement, and assess thereon in proportion to benefits, the amount necessary to pay the compensation and damage and the cost of making the improvement and that they will then and there hear such allegations and proofs as interested persons may offer. These commissioners shall meet and view the premises pursuant to the notice, and may adjourn, from time to time, and, after having viewed the premises, may, for the hearing of evidence and preparation of their award and assessment, adjourn or go to any other convenient place in the city, and may have the aid and advice of the city engineer and of any other officer of the city, and adjourn from time to time. After viewing the premises and hearing the evidence offered, these commissioners shall prepare and make a true and impartial appraisalment and award of the compensation and damages to be paid to each person whose property is to be taken or injured by the making of the improvement; but if the remainder of the same property, a part of which only is to be taken or damaged by the improvement, shall be benefited by the improvement, then the commissioners, in considering and awarding compensation and damages, shall also consider, estimate, and offset the benefits which will accrue to the same owner, in respect to the remainder of the same property, and award him only the excess of the compensation or damages over and above these benefits.

Subd. 4. **Assessment of compensation and damages; report; list.** The commissioners shall then assess the amount of the compensation and damages so awarded upon the land and property benefited by the proposed improvements, together with the expense and cost of making the improvements, as fixed by the city council, and in proportion to the benefits, but in no case shall the amount of the assessment exceed the actual benefit to the lot or parcel of land so assessed, deducting therefrom any damages or injuries to the same parcels which are less than the benefits, and assessing only the excess, and prepare and report to the city council their appraisalment and award and, if in the judgment of the commissioners, the whole amount of the compensation and damages, together with the cost of making the improvement, shall exceed the actual benefits to the specific property subject to assessment, they shall so indicate in their report and shall state the amount of the excess. The commissioners shall also report to the city council an assessment list containing their assessment of the compensation, damages, and costs, or so much thereof as shall not exceed the actual benefits to the property so assessed, which list shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed against each parcel of property and the amount of the excess of the compensation, damages, and costs which they shall return unassessed.

Subd. 5. **Assistance and expense.** The commissioners may employ clerical assistance, and the cost thereof, as well as the commissioners' compensation, and the expenses of printing the notices required, including the notice of consideration by the city council, estimated at the same rate per line as the cost of printing the prior notices, shall be added to the other amounts to be assessed and shall be assessed therewith. The city attorney shall represent the city before the commissioners and produce such evidence as the case may require.

Subd. 6. **Percentage payment by city.** The city council may provide, in all cases except motor vehicle parking lots, by the resolution appointing such com-

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missioners, that a certain specified percentage, not exceeding 75 percent, of the total damages and costs of paving only, and 33 1/3 percent of all other improvements, shall in any case be payable out of the city's general funds, and in that case the city's share either shall be added to the amount of the certificates to be issued and sold under section 430.12, or shall be provided by the issue of general obligation permanent improvement bonds and the city council shall from year to year levy a sufficient tax upon the taxable property of the city to pay the same with interest. In such case the amount provided to be paid out of the general funds shall not be assessed.

**Subd. 7. Publication of notice of hearing.** The commissioners shall, upon the completion of their report, file the same with the city clerk and thereupon it shall be the duty of the city clerk to give notice to all interested parties by publishing, as soon as possible, in the official newspaper of the city a notice containing descriptions of the several lots and parcels of land taken for these proposed improvements, the amount awarded for the taking of each lot or parcel, the names of the owner or owners of the same, descriptions of the several lots or parcels of land upon which benefits have been assessed, the amount assessed against each lot or parcel and the names of the owner or owners of the same; the names of all owners referred to herein to be obtained from the commissioners, and, so far as may be necessary, from the records in the office of the county treasurer. The published notice shall also designate and fix a place and time, not earlier than three weeks from date of publication of the same, at which a committee therein designated by the board of park commissioners or of the council will meet to hear and consider, from or on the part of the owner or owners of the several lots or parcels of land taken for the proposed improvement and of the several lots or parcels of land upon which benefits have been assessed, any and all objections to the making of the improvement, to the amount of damages awarded for the taking of or interference with the property involved, to the amount of the assessment for benefits to any property affected by the proceedings, and any and all claims of irregularities in the proceedings of the city council, board of park commissioners, or the commissioners so appointed by either thereof.

**Subd. 8. Service of published notice.** Immediately after the publication of this notice and at least two weeks prior to the time designated for the meeting of the committee specifically designated in the notice, the city clerk shall serve upon each of the owners of the several lots or parcels of land taken for this proposed improvement and of the several lots or parcels of land upon which benefits have been assessed a copy of the published notice, by depositing the same in the post-office of the city, postage prepaid, in an envelope plainly bearing on its front in type no smaller than ten point the words "Notice of Tax Assessments for improvements affecting your property" directed to each of the persons at his last known place of residence, if known to the city clerk, otherwise as obtained from the records in the office of the county treasurer; provided, that the failure of any owner or owners to receive the notice shall not in any wise operate to invalidate any of the proceedings covered by this chapter.

**Subd. 9. Written objections.** Any person whose property is proposed to be taken, interfered with, or assessed for benefits under any of the provisions of this chapter, who objects to the making of the improvement, or who deems that there is any irregularity in the proceedings of the city council, or on the part of the commissioners so appointed by it, by reason of which the award of the commissioners ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interference with his property, or with the amount of the assessment for benefits to any property affected by the proceedings, shall appear at the hearing or file with the city clerk, designated in this published notice, at any time before the hearing or before the report and recommendation of the committee is filed his written objection to the making of the improvement, or his objection to the damages awarded or benefits assessed, or his claim of the irregularities, specifically designating the same, and a description of the property affected by the proceedings.

**Subd. 10. Hearings by council committee.** At the time and place designated by this published notice for the hearing, the city clerk shall present to the committee the report of the commissioner so appointed together with all written

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objections so filed with the city clerk and the committee shall then consider the same and hear the objectors, or their representatives, in person, and shall adjourn the hearing from time to time as may be necessary.

**Subd. 11. Committee report.** Within ten days from the conclusion of the hearing or hearings the committee shall file with the city clerk its report and recommendation on the matter so submitted, and upon such filing the city clerk shall give notice that this report and recommendation has been filed and that the same, together with the report of the commissioners, will be considered by the city council at a meeting thereof to be designated in the notice, which notice shall be published in the official newspapers of the city once a week for two consecutive weeks, the last publication thereof being at least two weeks before the meeting of the city council.

**Subd. 12. Action by council.** The city council, upon the day fixed for the consideration of the reports and recommendation or at any subsequent meeting to which the same may stand over or be referred, may, by resolution, annul and abandon the proceedings, or may confirm the awards and assessments or any or either thereof, or annul the same, or send the same back to the commissioners for further consideration; and the commissioners may, in such case, again meet at a time and place to be designated in a notice which shall be published by the city clerk once in the official newspaper of the city, copies of which to be similarly mailed by the city clerk to all interested persons, at least two weeks prior to the meeting, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and may correct any mistakes in the award and assessment and alter and revise the same as they may deem just, and again report the same to the city council, who may thereupon confirm or annul the same.

**Subd. 13. Levy of assessment; assessment roll.** When the city council shall confirm any award and assessment the confirmation shall make the award and assessment final and conclusive upon all parties interested, except as hereinafter provided, and the city council shall proceed, at the same or at any subsequent meeting, to levy an assessment, or such fractional part thereof as the city council may deem necessary, to pay the costs of the proceedings and making the improvements therein upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with the assessments so confirmed or in proportion to the assessments herein provided. The city council may, in its discretion, delay the levying of these assessments in any proceeding under this chapter until the completion or substantial completion of the improvements proposed to be made therein, and the actual costs of these improvements and proceedings have been determined, which cost may include interest at five per cent per annum on moneys actually advanced by the city, and thereupon the city council shall proceed to levy assessments in the proceeding, aggregating the amount of the cost, or that portion of these costs as the city council shall have determined, in conformity with the provisions of this chapter, upon the several parcels of land described in the assessment list reported to the city council by the commissioners in the proceeding, and the assessments so levied shall be in amounts proportionate to and not greater than the several amounts theretofore confirmed upon such parcels of land, respectively, by the council or by the court upon appeal in the proceeding. The city council shall cause to be made, and shall adopt, an assessment roll of the assessments, which may be substantially in the following form, or any other form the council may adopt:

"The city council doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking of an injury to private property, and estimated cost of improvement, and in and about the.....as shown on the plat and survey of the same on file in the office of the city clerk of the city. This levy is made conformably to the report and assessment of commissioners duly appointed to make the assessment and in proportion to benefits from the improvements to accrue to the parcels and not exceeding the benefits to the parcels so assessed.

Name of Owner, if known	Description of land Lot Block	Amount Dollars Cents
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Done at a meeting of the council this ..... day of .....  
A. D. 19.....

Attest.....

City Clerk

Pres't of the Council."

[1911 c 185 s 2; 1913 c 345 s 1; 1925 c 417 s 1; 1929 c 419 s 1; 1945 c 470 s 3; 1945  
c 530 s 1; 1953 c 264 s 1] (1553)

**430.023 CLERK TO MAIL NOTICES IN CONDEMNATION PROCEEDINGS IN CERTAIN CASES.** In any city of the first class which, under its charter, is authorized to condemn property for public use and to appoint commissioners to assess damages or benefits upon property to be taken for such use, which charter provides for notices of the filing of the commissioners' report in such proceedings, the clerk of such city shall mail to the person whose name appears on the records of the auditor of the county in which such city is located as the person who last paid the taxes on the property proposed to be taken, within 48 hours after the filing of the commissioners' report in such proceedings, a notice of such filing.

[1943 c. 249 s. 1]

**430.03 OBJECTIONS TO CONFIRMATION; APPEAL TO DISTRICT COURT; REAPPRAISAL; APPEAL TO SUPREME COURT.** Any person whose property is proposed to be taken, interfered with, or assessed for benefits under any of the provisions of this chapter, who deems that there is any irregularity in the proceedings of the council or action of the commissioners, by reason of which the award of the commissioners ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interference with his property or with the amount of the assessment for benefits to any property affected by the proceedings, specifically shall have the right to appeal from the order of confirmation of the city council, to the district court of the county at any time within 20 days after the order. This appeal shall be made by serving a written notice of the appeal upon the clerk of the city, which shall specify the property of the appellant affected by the award and assessment, and refer to the objection filed, as aforesaid, and also by delivering to the city clerk a bond to the city, executed by the appellant, or by someone on his behalf, with two sureties, who shall justify in the penal sum of \$50 conditioned to pay all costs that may be awarded against the appellant. Thereupon the city clerk shall make out and transmit to the clerk of the district court a copy of the award of the commissioners, as confirmed by the council, and of the order of the council confirming the same, and of the objection filed by the appellant, all certified by the clerk to be true copies, within ten days after the taking of the appeal. If more than one appeal be taken from any award, it shall not be necessary that the clerk, in appeals subsequent to the first, shall send up anything except a certified copy of the appellant's objections. There shall be no pleading on the appeal, but the court shall determine, in the first instance, whether there was in the proceedings any irregularity or omission of duty prejudicial to the appellant and specified in his written objections, that, as to him, the award or assessment of the commissioners ought not to stand and whether the commissioners had jurisdiction to take action in the premises.

The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and shall have precedence of other civil cases, and the judgment of the court shall be either to confirm or annul the proceedings only as the same affects the property of the appellant proposed to be taken, damaged, or assessed for benefits and described in the written objection. From this determination no appeal or writ of error shall lie.

In case the amount of damages awarded or assessment made for benefits is complained of by the appellant, the court shall, if the proceedings be confirmed in other respects, upon such confirmation, appoint three disinterested freeholders, residents of the city, commissioners to reappraise such damages or benefits. The parties to the appeal shall be heard by the court upon the appointment of these commissioners, and the court shall fix the time and place of the meeting of the commissioners. They shall be sworn to the faithful discharge of their duties as such commissioners, proceed to view the premises, and hear the parties interested, with their allegations and proofs pertinent to the question of the amount of the damages or assessments. These commissioners shall be governed by the same provisions in respect to the method of arriving at the amount of damages and the offset thereto of benefits to other property of the same owners, and in all other material respects, as are in this chapter made for the government of commissioners

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appointed by the city council. They shall, after the hearing and view of the premises, make report to the court of their appraisal of damages or assessments of benefits in respect to the appellant. The award or assessment of these commissioners shall be final unless set aside by the court for good cause shown. In case this report is set aside, the court may, in its discretion, recommit the same to the same commissioners or appoint a new board as it shall deem best. The court shall allow a reasonable compensation to these commissioners for their services, and make such award of costs on the appeal, including the compensation of commissioners, as it shall deem just in the premises.

In case the court shall be of the opinion that the appeal was frivolous or vexatious, it may adjudge double costs against the appellant.

An appeal may be taken from the court's final order to the supreme court by the city or any party thereto.

In case of proceedings conducted by the city council, all reports and other papers shall be filed in the office of the city clerk, and notices of appeal and other notices to the city shall be served upon the city clerk. In case of proceedings conducted by the board of park commissioners, all papers shall be filed in the office of the secretary or other recording officer of the board, and all notices of appeal and other notices to the city shall be served upon the secretary or other recording officer of the board.

[1911 c. 185 s. 3; 1913 c. 345 s. 2; 1925 c. 417 s. 2] (1554)

**430.04 AWARDS; HOW PAID; ASSESSMENTS.** When any award of damages made to appellants upon any appeal to the district court shall exceed the amount of the award appealed from, and when any assessment of benefits made in respect to any appellant upon appeal shall be less than the amount of the assessment of benefits appealed from, the amount of this increase in the amount of the award of damages and the amount of this decrease in the assessment of benefits may be paid by the city from the permanent improvement fund or any fund of the city available therefor, or the city council may cause the same to be assessed upon and against any property benefited by the proposed improvements in addition and without prejudice to prior assessments made thereon in the proceedings, and may refer the matter to the commissioners theretofore appointed by the council in the proceeding or to new commissioners to be appointed by the city council. These commissioners, whether new or old, shall have the same qualifications as required of commissioners appointed by section 430.02 and shall take oath to faithfully discharge their duties as commissioners and give notice of the time and place when and where they will meet to hear persons interested and assess the amounts of the increase of awards of damages and decrease of assessments of benefits upon the land and property, theretofore assessed for these benefits, or assess benefits on lots or parcels of land not theretofore assessed for benefits in the proceeding. The notice, as to the owners of the lots or parcels of land entitled to increase of awards upon any appeal, and as to the owners of any lots or parcels of land to be then assessed for benefits that were not so assessed in the original proceeding by the commissioners, shall be given by these commissioners by depositing the same in the post-office of the city, postage postpaid, directed to each of the persons at his last known place of residence, if known to the commissioners, otherwise as obtained from the office of the county treasurer; provided that the failure of any owner to receive this notice shall not in any wise operate to invalidate any of the proceedings covered by this chapter. The commissioners shall meet, at the time and place so designated in their notice, hear all persons interested, and assess the amount of the increased awards of damages and decreased assessments of benefits, or new and original assessments of benefits, upon the property benefited by the proposed improvements, in proportion to the benefits, but in no case shall the amount of this assessment exceed the actual benefit to the lot or parcel of land so assessed, and the commissioners shall prepare and file with the city clerk an assessment list of the assessment so made by them, containing a brief description of each piece of property assessed, the name of the owners thereof, if known, and the amount assessed against the same, and the city clerk shall present this list to the city council for consideration. A brief minute of the presentation of this assessment list to the city council shall be made and published in the record of the proceedings of the city council, which shall be held to be sufficient notice to all persons concerned. This assessment list shall lie over without action thereon by the city council until the next regular meeting of the council which will occur at least

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one week thereafter, at which time, or at any meeting thereafter, the city council may confirm the assessments and assessment roll, or send the same back to the commissioners for further consideration and report thereon. Any person interested who is dissatisfied with the amount of an assessment may appeal from the confirmation of the assessment by the city council to the district court, in like manner and with like proceedings as provided in section 430.03 in respect to filing objections and taking appeals from original appeals made in such proceedings from such order of confirmation. Any decrease made in any assessments upon any appeal may be paid by the city from the permanent improvement fund or from any fund of the city available therefor, or the city council may cause the same to be reassessed as hereinabove provided.

[1911 c. 185 s. 3a; 1915 c. 86 s. 1; 1925 c. 417 s. 3] (1555)

**430.05 RIGHT OF COUNCIL TO ABANDON; EFFECT OF AWARD; PAYMENT.** The city council shall have the right at any time during the pendency of any proceedings for the improvements authorized in this chapter or at any time within 90 days after the final order of the court, on the last of all appeals from such proceedings, to set aside any or all awards and abandon all such proceedings as to any or all parcels when it shall deem it for the interest of the city to do so. Such awards, if not set aside, as aforesaid, shall be a charge upon the city, for the payment of which the faith and credit of the city shall be pledged and shall entitle the city to immediate possession. The city council may in its discretion order such awards to be paid into the district court of the county for the use and benefit of the persons who shall be found entitled thereto, in which case the moneys so paid into court shall be paid out under order of the court upon application of parties interested and upon such notice as the court may prescribe.

[1911 c. 185 s. 4] (1556)

**430.06 SPREADING OF ASSESSMENT INSTALMENTS.** The city clerk shall transmit a certified copy of the assessment roll to the auditor of the county in which the land lies, and the auditor shall include five per cent of the principal amount of the assessment with and as part of the taxes upon each parcel for each year for 20 years, together with annual interest at the rate ascertained, as herein-after provided. The city council and board of park commissioners may, by concurrent resolution, determine that the amount of the assessment shall be collected in five or ten equal annual instalments instead of 20, and in such case the county auditor shall include a corresponding per cent of the principal amount of the assessment with and as part of the taxes of each year, together with annual interest until the whole is collected. The auditor shall include in the taxes for each year one of the instalments, together with one year's interest upon that instalment, and all subsequent instalments at the same rate, each of which, together with interest, shall be collected with the annual taxes upon the land, together with like penalties and interest in case of default, all of which shall be collected with and enforced as the annual taxes and credited to the proper city fund. Any parcel assessed may be discharged from the assessment at any time after the receipt of the assessment by the auditor by paying all instalments that have gone into the hands of the county treasurer, with accrued interest, penalties and costs, and by paying all subsequent instalments; or any parcel assessed may be discharged from the assessment by presenting certificates or bonds sold against the assessments, as herein provided, sufficient in amount to cover all instalments due on such parcel and accrued interest, penalties and costs, and all instalments yet to accrue, by surrendering the certificates or bonds to the county treasurer for cancellation or having endorsed thereon the instalments, interest, penalties, and costs. The assessment shall be a lien on the land from the time of the making thereof as against the owner and every person in any way interested in the land. The owner of the land and any person interested therein may defend against an assessment at the time of application for judgment in the regular proceedings for the enforcement of delinquent taxes, but the assessment shall not be deemed invalid because of any irregularity, provided the notices have been published substantially as required, and no defense shall be allowed except upon the ground that the cost of the improvement is substantially less than the amount of the assessment, and then only to the extent of the difference between the assessment and the actual cost. Assessments made under this chapter shall be called special street, motor vehicle parking lot, and parkway assessments of the city of ..... and numbered consecutively. When an assessment

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is certified by the city clerk to the county auditor, a duplicate thereof shall be sent to the city comptroller, and all these assessments shall be sufficiently identified by name and number.

[1911 c. 185 s. 5; 1913 c. 345 s. 4; 1917 c. 103 s. 3; 1929 c. 419 s. 2; 1945 c. 470 s. 4]  
(1557)

**430.07 METHOD OF IMPROVEMENTS; ASSESSMENTS.** The city council and park commissioners may, by concurrent resolution, or by separate resolution when acting separately, specify the method of improving any such street, park, or parkway, including grading, drainage, planting, paving, curb, gutter, and sidewalk, as well as sewer and water mains where necessary, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. The city engineer shall estimate the cost of each item in the improvement separately and submit the estimate with the plat. In the case of property used for residential purposes only and for not to exceed a four-family dwelling these estimates shall be for not to exceed six-inch water mains and not to exceed 24-inch sewers. The city council shall examine the estimates and, after modifying, if necessary, find and adopt an estimate of the cost. The city council, in appointing commissioners, shall recite the estimate, and the commissioners shall assess the amount thereof, or so much thereof as shall be directed by the city council, upon such lots and parcels of land in the city as they shall deem specifically benefited, in proportion to such benefits, not exceeding the actual benefit to any parcel, and add the same to the benefits assessed under section 430.02 and report the net result of damages or benefits as required by section 430.02, and with like proceedings thereafter. If, in any proceedings under this chapter, the actual cost of the improvement of any street, park, or parkway in the manner herein designated is less than the estimated cost thereof, as found and adopted by it, the city council shall immediately cancel and annul the assessments made in the proceedings to an amount which, in the aggregate, shall not exceed such fractional part of the total amount of the excess of estimated cost over the actual cost as shall be equivalent to the fraction obtained by dividing the total amount of the assessments by the total amount of the estimated cost. In case the assessments in any proceeding have not been entirely collected or in case the city council deems that any such assessments cannot be fully collected, the city council may direct the city comptroller to retain in the fund in the proceeding a sum sufficient, in the judgment of the city council, to cover the deficiencies in the collection of the assessments, and the city council shall direct that the balance of the excess of estimated cost shall be disposed of in the manner hereinafter provided. The city council shall direct the city comptroller to certify the amount of this balance to the county auditor. The auditor shall thereupon deduct the amount from the first instalment of the assessment to be collected after the receipt of this certificate. This deduction shall be made from the assessment against each piece or parcel of property in the proportion that the excess, as certified by the city comptroller, bears to the total of the instalment of the assessment. If the balance, as certified, exceeds one instalment, it shall also be deducted in like manner from succeeding instalments until the same is fully deducted. If any portion of the damages and cost of the improvement has been paid by the city, the city council shall direct the city comptroller to certify to the county auditor only that percentage of the balance or excess of estimated cost as shall be equal to the percentage of the total estimated cost of the improvement and damages which has been or is assessed against benefited property. No such certificate shall be directed by the council or issued to the county auditor until after a report from the city engineer that the work under any such proceeding has been completed and each item of damage or cost in the proceeding has been paid, and this report by the city engineer shall be made to the city council immediately upon the completion of the work in the proceeding. In any proceeding where there is or may be an excess of estimated cost and there is or shall be a balance in the fund in the proceeding over and above the actual cost, the city council shall be entitled to withdraw from this fund a percentage of the fund equal to the percentage of the cost of the improvement paid by the city, and cause this percentage to be deposited in the fund from which it was originally drawn or taken by the city council. Any existing street, park, or parkway may be improved and the expense thereof assessed and raised in the manner provided by this chapter for acquiring and opening streets, parks, and parkways and improving the same, including any or all of the following improvements: widening, grading, drainage, planting, pavement, sidewalks, curb and gutter, sewers and water mains, and in

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the case of parks, the necessary structures and apparatus for playgrounds and general park uses. In case of streets or parkways exceeding 80 feet in width, the resolution may, for the purpose of facilitating connections with private property and obviating the necessity of cutting or breaking into the improvements, order a double water main or a double sewer, one on either side of the street or parkway, or adopt such other arrangement or device as may seem most feasible.

[1911 c 185 s 6; 1913 c 345 s 3; 1917 c 103 s 4; 1923 c 488 s 1; 1925 c 417 s 4; 1953 c 184 s 1] (1558)

**430.08 ASSESSMENTS IN FIVE INSTALMENTS.** Where lands are acquired hereunder for streets, parks, and parkways and the total cost thereof shall be less than \$3,000, the amount of the assessment therefor shall be collected in not more than five equal annual instalments.

[1917 c. 103 s. 3; 1919 c. 219] (1559)

**430.09 TITLE ACQUIRED.** The title obtained to land designated for park purposes and motor vehicle parking lots under this chapter shall be an absolute estate in fee simple unqualified in any way, and vest in the city. In other lands an easement only shall be taken.

[1911 c. 185 s. 7; 1945 c. 470 s. 5] (1560)

**430.10 STREETS, PARKS, AND PARKWAYS, HOW GOVERNED.** When the proceedings are completed, the streets, parks, and parkways shall be governed as other streets, parks, and parkways by the city council and board of park commissioners respectively; but such streets may be taken by the board of park commissioners for parkways with the consent of the city council and parkways may be taken by the city council for streets with the consent of the board of park commissioners. When proceedings for the acquisition of motor vehicle parking lots are completed, the parking lots so acquired shall be controlled and operated by the city council. The city council shall fix rates for parking, which rates shall be sufficient to defray the cost of operation of such parking lots. All moneys so received shall be deposited in a fund designated by the city council and shall be kept separate and distinct from all other city funds. Funds which may be available in any other permanent or current fund may be advanced to such fund for temporary use, and shall be returned to the fund, or funds, from which advanced when receipts from operation permit.

[1911 c. 185 s. 8; 1945 c. 470 s. 6] (1561)

**430.11 IMPROVEMENTS, WHEN AND HOW MADE.** The improvements so ordered shall be made as soon as possession after the land is secured, and shall be made by the body which conducts the proceedings for acquisition.

[1911 c. 185 s. 9] (1562)

**430.12 BONDS FOR IMPROVEMENTS.** The city council, for the purpose of realizing the funds for making an improvement and paying damages may, from time to time as may be needed, issue and sell special certificates of indebtedness, or special street or parkway improvement bonds, as they may decide, which shall entitle the holder thereof to all sums realized upon any assessment or, if deemed advisable, a series of two or more certificates or bonds against any one assessment, or against the assessments in two or more different proceedings, the principal and interest being payable at fixed dates out of the funds collected from the assessments, including interest and penalties, and the whole of the fund or funds is hereby pledged for the pro rata payment of the certificates or bonds and the interest thereon, as they severally become due. These certificates or bonds may be made payable to the bearer, with interest coupons attached, and the city council may bind the city to make good deficiencies in the collection up to, but not exceeding, the principal and interest at the rate fixed, as hereinafter provided, and for the time specified in section 430.06. If the city, because of this guaranty, shall redeem any certificate or bond, it shall thereupon be subrogated to the holder's rights. For the purpose of this guaranty, penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. These certificates or bonds shall be sold at public sale or by sealed proposals at a meeting of which at least two weeks' published notice shall be given, to the purchaser who will pay the par value thereof at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed five percent per annum, payable annually or semiannually. The city clerk shall certify to the county auditor the rate of interest so determined at the first bond sale held for any such improvement, and interest shall be computed upon the assessments at

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this annual rate, in accordance with the terms of section 430.06. In case the rate of interest so determined at any subsequent bond sale for the same improvement is greater than the rate so determined at the first bond sale therefor, the difference between these rates of interest shall be a general city charge.

In case the proceeds of any special certificates of indebtedness or special street or parkway improvement bonds are in excess of the amount actually necessary to make the improvements for which the same were issued, or in case the proceeds are not immediately required for the prosecution or completion of the improvement, these proceeds may meanwhile be used by the city council for the making of other improvements authorized under the provisions of this chapter, and the amount of the proceeds so used shall be replaced and made good so far as may be necessary from the proceeds of special certificates of indebtedness or special bonds issued for the purpose of making such other improvements.

[1911 c. 185 s. 10; 1913 c. 345 s. 5; 1917 c. 11 s. 1; 1925 c. 417 s. 5] (1563)

**430.13 SCOPE.** The provisions of this chapter shall apply to all cities of the first class.

The term "city council" shall be held to refer to the governing body of such cities, whether so-called or called common council or otherwise. Any certificates or bonds that may be issued to finance an improvement shall be accounted a part of the bonded debt of the city. In calculating the net indebtedness of the city due to the issue of any such certificates or bonds there may be deducted from the gross debt of the city the amount of any such certificates or bonds that are payable wholly or partly from collections of special assessments levied on property benefited thereby including those which are the general obligations of the city issuing the same, if the city is entitled to reimbursement, in whole or in part, from the proceeds of special assessments levied upon property especially benefited by such improvements.

[1911 c. 185 s. 11; 1913 c. 345 s. 6; 1923 c. 438 s. 2; 1945 c. 530 s. 2] (1564)

**430.14 POWERS ADDITIONAL.** The powers herewith granted shall be deemed an addition to all powers under existing laws and city charters and not a repeal or modification thereof.

[1911 c. 185 s. 12; 1923 c. 438 s. 3] (1565)

**430.15 PAYMENT BY CITY; GIFTS.** The city may also, if it have funds available from other sources, pay any portion of the total cost of any improvement as it deems best and raise the remainder by the methods provided in this chapter. It may also accept gifts to be used for any such purpose.

[1911 c. 185; 1913 c. 345 s. 8] (1566)