

[No. 325, A.]

[Published March 12, 1879.]

CHAPTER 240.

AN ACT to revise, consolidate and amend the city charter of the city of Fond du Lac.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

TITLE I.

CITY AND WARD BOUNDARIES.

Boundaries.

SECTION 1. All that district of county included in the west half section two and the west half of the east half of section two; all of section three; the east half of the east half, and the east half of the west half of the east half of section four; the east half of the east half, and the east half of the west half of the east half of section nine; all of section ten; and the west half of section eleven; the west half of the east half of section eleven; the south east quarter of the south east quarter of section eleven; all of sections fourteen and fifteen; the east half of the east half, and the east half of the west half of the east half of section sixteen; the north of the north half of the north east quarter of the north east quarter; and the north east quarter of the north west quarter of the north east quarter of section twenty one; the north half of the north half of the north half of section twenty-two; and the north half of the north half of the north half of section twenty-three; all in township fifteen north, of range seventeen east, in the Menasha land district, in the county of Fond du Lac and state of Wisconsin, shall be known and designated as the city of Fond du Lac.

Wards.

SECTION 2. The said city of Fond du Lac shall be, and is hereby divided into eight wards as follows, to wit:

FIRST WARD.

First.

All that portion of said city described as commencing where the center of second street intersects, the east line of the city limits, (being the east line of section fourteen, town fifteen, range seventeen), thence south along said east line of the city limits, to the quarter post on the east line on said section fourteen, thence west along the quarter line of said section fourteen and the center of East Eighth street to a point opposite the east line of out lot thirty-eight (38), in the west half of the north

west quarter of said section fourteen, thence north along the east line of said out lot thirty-eight to the center of Seventh street, thence west along the center of Seventh street to the center of Main street, thence south along the center of Main street to a point opposite the south line of lot twelve, block one, Darling's addition number three, thence west along the south line of lots twelve, three and seventeen of said block one, to the east branch of the Fond du Lac river, thence westerly and northerly along the center of said east branch to the center of Second street, thence east along the center of Second street to the place of beginning.

THIRD WARD.

Commencing where the center of Western Avenue ^{Third.} intersects the east branch of the Fond du Lac river, thence northerly along the center of said east branch to the center of Merrill street, thence west along the center of Merrill street to the center of Tallmadge street or Tallmadge street extended, thence north along said Tallmadge street to the center of Russell street, or Russell street extended, thence west along the center line of Russell street and the same line extended to the west line of the city limits, thence south along the said west line of the city limits to a point opposite the center of Western avenue extended, thence east to Western avenue and along the same to the place of beginning.

FOURTH WARD.

Commencing where the center of Cotton street inter- ^{Fourth.}sects the centre of the Fond du Lac river, thence southerly along the centre of said Fond du Lac river to the center of Russell street, thence east along the center of Russell street, or Russell street extended, to the center of Tallmadge street, or Tallmadge street extended, thence south along said Tallmadge street to the center of Merrill street, thence east along the center of Merrill street and the same line extended to the east line of the city limits, thence north along said east line of the city limits to a point opposite the center of Cotton street, thence west to Cotton street and along the center line of the same to the place of beginning.

FIFTH WARD.

Commencing where the center of Cotton street inter- ^{Fifth.}sects the center of the Fond du Lac river, thence northerly along the center of said river to Lake Winnebago,

thence easterly along the shore of said Lake Winnebago to the east line of the city limits, thence south along said east line of the city limits to the center line of Cotton street extended, thence west to Cotton street and along the center line of the same to the place of beginning.

SIXTH WARD.

Sixth. Commencing where the center of Russell street intersects the center of Fond du Lac river; thence northerly along the center of said river to Lake Winnebago; thence westerly along the shore of said Lake Winnebago to the north line of the city limits; thence west along said north line of the city limits, to the west line of the city limits; thence south along said west line of the city limits to the center line of Russell street extended; thence east to Russell street and along the center line of the same to the place of beginning.

SEVENTH WARD.

Seventh. Commencing at the intersection of the center of Western avenue and the center of the east branch of the Fond du Lac river; thence west along the center of Western avenue and the same extended to the west line of the city limits; thence south along said west line of the city to the south line of the city; thence east along said south line of the city to the north and south quarter line of section twenty-two in said city; thence north along said quarter line and the north and south quarter lines of section fifteen to a point in the center of the east branch of the Fond du Lac river, where the east line of lot five, block three, Brushes' addition extended, would intersect the same; thence northerly along said east branch to the place of beginning.

EIGHTH WARD.

Eight. Commencing on the east line of the city at the quarter post in the east line of section fourteen, town fifteen north, range seventeen east; thence west along said quarter line and the center line of Eighth street to the east line of out lot thirty-eight in the west half of the northwest quarter of section fourteen; thence north along said east line of out lot thirty-eight to the center of Seventh street; thence west along the center of Seventh street to the center of Main street; thence south along the center of Main street to a point opposite the south line of lot twelve, block one, Darling's addi-

tion number three ; thence west along the south line of lots twelve, three and seventeen, same block, to the east branch of the Fond du Lac river ; thence westerly along the center of said east branch to the north and south quarter lines of section fifteen ; thence south along said quarter line and the quarter line of section twenty-two to the south line of the city ; thence east along said south line of the city to the east line of the city ; thence north along said east city line to the place of beginning ; *Provided*: That the common council shall have the power to change, alter and define, or make such new wards in said city as they shall from time to time deem expedient.

Power of common council.

TITLE II.

CORPORATE NAME AND POWERS.

SECTION 3. The inhabitants residing in said city shall be a municipal corporation under the name and style of "The City of Fond du Lac," and by that name shall have the power to sue and be sued, complain and defend, in any court ; make and use a common seal, and alter it at pleasure ; receive by gift, grant, devise or purchase, and hold and convey such real and personal estate as the purposes of the corporation may require ; and shall be vested with and have the like power to hold and convey all the real and personal estate now, hereafter or heretofore owned and possessed by the city of Fond du Lac.

Corporate powers.

TITLE III.

CITY AND WARD OFFICERS AND THEIR ELECTION.

SECTION 4. The officers of said city shall consist of a mayor, a treasurer, three justices of the peace, three assessors, and three constables, to be elected by the city at large, and in each ward one supervisor, and three alderman, one of whom shall be designated as chairman.

Officers.

SECTION 5. The annual election for city and ward officers shall be held on the first Tuesday of April in each year, at such places as the aldermen of the proper ward shall designate and of which there shall be given at least ten days' notice by publication in some newspaper printed in said city and by posting the same in three conspicuous places in each ward, which notice shall be signed by the aldermen of the ward in which the same is posted, and where the election is to be held.

Annual elections.

Qualification of voters. SECTION 6. Every inhabitant, qualified by law to vote at a general election, shall be entitled to vote in the ward in which he resides and shall have resided for ten days previous to election, for all officers to be elected by virtue of this act. Any person may be challenged in the same manner, and the same proceedings be held thereon as are or shall be prescribed by law in relation to a general election, so far as the same shall be applicable to a charter election: *provided*, that the registry law shall not be taken to apply to an election under this act.

Elections to be by ballot. SECTION 7. All elections shall be by ballot; and a plurality of votes shall constitute an election; and the names of all the officers voted for shall be upon one ballot.

Time of opening and closing of polls. SECTION 8. The polls of the election in each ward shall be kept open from nine o'clock in the morning until five o'clock in the evening, without intermission or adjournment, and when the polls shall have been closed, the inspectors, without adjourning, shall canvass the votes received by them, and make returns thereof in writing, duly signed, stating therein the number of votes for each person and the office designated, and the whole number of votes cast, and shall deliver said returns, together with the oaths of the inspectors and clerks and the poll list kept by them, to the city clerk within twenty-four hours after closing the polls.

Canvass of votes by inspectors.

Time of meeting of council.

SECTION 9. The common council of said city shall meet on Thursday next after the election in each year, at 7:30 o'clock P. M., and the returns of the inspectors of the various wards shall be produced by the clerk, and the said common council shall forthwith determine and declare who are, by the greater number of votes, elected as city and ward officers, or any or either of them; and shall also make and sign a certificate of such determination, which shall be entered in the minutes, and the original filed by the clerk in his office; and the clerk shall notify every person of his or their election within twenty-four hours after such determination.

Oath of office.

SECTION 10. Every person elected to any office under this act shall, before entering upon the duties of the same, take the oath prescribed by the constitution of the state before some proper officer and file the same with the clerk. And every person elected to any office, who shall neglect to take said oath of office within fifteen days after being notified in writing of his election, shall be deemed to have vacated his office and the vacancy shall be filled as hereinafter provided.

SECTION 11. When two or more candidates for an elective office shall receive an equal number of votes for the same office, the election shall be determined by casting lots in the presence of the common council, at such time and in such manner as it may direct.

In case of tie vote.

SECTION 12. The term of office of the justices of the peace to be elected under this act shall commence on the first Monday of May next ensuing their election, and shall continue two years and until their successor is elected and qualified. Every justice so elected shall file the oath and bond necessary to qualify before entering upon the duties of his office, as is prescribed in the statutes at large for the justices of the peace in the several towns. And the city clerk shall certify to the clerk of the circuit court, immediately after the election, the names of the persons elected justices of the peace and the terms for which they were respectively elected.

Justice of the peace; term of office.

SECTION 13. The aldermen of the wards, elected and now in office under the provisions of section two of chapter one hundred and sixty, laws of Wisconsin for 1877, shall continue in such office and hold the same respectively for the terms for which they shall have been so elected. And one for each ward shall be elected annually, and the term of office shall be for three years and their powers and duties shall be the same as now exercised and regulated, except as may otherwise be herein provided. All other officers elected under this act shall hold their offices for one year and until their successors are elected and qualified.

Aldermen; terms of office.

SECTION 14. In case of any vacancy in any of the offices provided for in this title, the common council may fill the same for the unexpired term of such office, excepting that vacancies in the office of justice of the peace shall be filled at the charter election next ensuing, and until so filled by election, the common council may appoint temporarily a suitable person to such office.

Vacancies; how filled.

SECTION 15. The term of office of each justice of the peace now in said city shall expire and be fully determined on the first Monday of May, 1879; and they, and each of them, shall at once transmit to the nearest justice elected under this act, all the books and papers relating to his office, and all the dockets and papers relating to the municipal courts in his hands.

Terms of present justices of the peace.

SECTION 16. No person shall be eligible to any or either of the offices mentioned in this title unless he shall be a resident elector of and a freeholder in said

Eligibility to office.

city; nor to any of the ward offices herein mentioned unless he be a resident and freeholder of the ward for which such officer is to be chosen. And whenever any person elected to any city office shall remove from the city, or any ward officer shall remove from the ward, he shall be deemed thereby to have vacated his office.

TITLE IV.

POWERS AND DUTIES OF THE COMMON COUNCIL.

Common council; powers and duties.

SECTION 17. The mayor and the two senior aldermen from each ward shall be the common council. The common council shall hold regular meetings at such place as the city may provide for that purpose as follows: At seven o'clock P. M. on the first Monday after the election of city officers in each year, and at such other times, not less than once in each month, as it shall by resolution appoint: *provided*, that the mayor, or, in his absence, the president of the council, for any good reason may call special meetings by notice to each of the members, to be served personally or left at their usual place of abode; and that the common council, at any of its meetings, shall have power to adjourn the same to such time as it may deem proper.

Duties of mayor.

SECTION 18. The mayor, when present shall preside at meetings of the common council, and in his absence the president of the council shall preside.

Meetings of council.

SECTION 19. The common council shall determine the rules of its proceedings, (not to conflict with any of the provisions of this act), and shall be judges of the election and qualification of its own members, and shall have power to compel their attendance; and a majority of its members shall be a quorum for the transaction of business.

In case of tie vote.

SECTION 20. When a vote is taken, each member shall have but one vote; except that the mayor shall only vote when the votes of the other members present are tied; but no appropriations nor appointments shall be made except by the vote of a majority of all the members elect.

Vote may be taken by yeas and nays.

SECTION 21. If required by one member present at any meeting of the common council, the vote upon any ordinance, resolution or question pending before such meeting, except the appointment of officers, shall, when taken, be taken by the yeas and nays of all the members present, and a record of such votes shall be entered at large in the minutes.

SECTION 22. It shall be the duty of the common council to appoint by ballot, yearly, at its meeting on the first Monday after the election of city officers or at such other time as it may determine, and as often as it may be necessary to fill vacancies, the following officers, viz: One president of the council; one comptroller; one city clerk; one city attorney; one city engineer and surveyor; one superintendent of schools; one fire marshal and an assistant; one chief of police; one commissioner from each ward, to constitute a board of education; eight commissioners, one from each ward, to constitute a board of health; one side-walk superintendent; one sealer of weights and measures; not less than four policemen, and such other officers as may be required to be appointed by it to carry into effect any of the provisions of this act; each and every one of whom it may remove at its pleasure; but unless so removed, each of them shall serve as such officer for one year unless otherwise provided by law, and until the qualification of his successor in office: *provided*, that the superintendent of public schools shall be appointed by the board of education: *and provided, further*, that the appointment of side-walk superintendent, or not, shall be left to the discretion of the council.

Officers to be appointed.

SECTION 23. The common council shall have the power to prescribe the duties and compensation or salary of every officer appointed by it under this act, or appointed by any authority given in this act; and shall have the general control of the property, real and personal, belonging to the said city.

Duties and compensation may be prescribed.

SECTION 24. No member of the common council, while holding such office, shall be appointed to, or be competent to hold any office of which the compensation is paid by the city; nor shall he or any other officer of the city, appointed or elected, be interested, directly or indirectly, in any contract as principal, or as partner with a principal, or as surety or otherwise, the expense or consideration whereof, or any part of the same, is to be paid by the city.

Officers not to be interested in contracts.

SECTION 25. The common council shall have the power to continue, make, modify and repeal such ordinances, resolutions, regulations or by-laws as may be necessary to carry into full effect all the powers conferred upon it by this act. In every such ordinance, resolutions, regulations or by-law passed by said common council, it may impose such penalty for the violation thereof, or any part thereof, by fine not exceeding one hundred dollars; and if not paid, with costs,

Powers of council.

imprisonment in the county jail of Fond du Lac county not exceeding three months; and shall have the power by such ordinances, resolutions, regulations or by-laws, and with such penalties as aforesaid:

- Nuisances.** 1st. To prevent, restrain, remove and abate nuisances.
- Gunpowder, etc.** 2d. To prevent and prohibit the manufacture, keeping or storing of nitro-glycerine, and to regulate the keeping and storing of gunpowder, gun cotton, burning fluids, coal oils and other dangerous, explosive materials in said city, and to provide for the inspection of illuminating oils and fluids.
- Firearms, etc.** 3d. To prohibit, restrain or regulate the discharge of fire arms, and the explosion of gun powder and gun cotton, and the firing of fire crackers and fire works of any kind within the city.
- Lights, etc.** 4th. To regulate the use of candles and lights in barns, stables, shops and out-buildings.
- Locomotives, etc.** 5th. To regulate the running of locomotives, engines and cars through the city, and prohibit them from being propelled through or in the same, at a greater speed than six miles an hour.
- Slaughter houses.** 6th. To prohibit or regulate the erection or continuance of slaughter houses in said city, and to cause the removal thereof.
- Dogs.** 7th. To prevent and regulate the running at large of dogs within said city.
- Contagious diseases.** 8th. To require and cause the removal from thickly inhabited parts of the city of all persons having contagious diseases.
- Preserve peace.** 9th. To preserve public peace and good order.
- 10th. To prevent vice and immorality.
- Disorderly houses.** 11th. To restrain and suppress disorderly houses and gaming houses.
- Gaming.** 12th. To prevent, suppress and prohibit all gaming and fraudulent devices within said city, and the use and occupation of any room or building, or any part thereof within said city, for such purpose.
- Houses of ill-fame.** 13th. To prohibit, suppress and restrain disorderly houses and houses of ill-fame, and all places of prostitution, and punish the occupants thereof.
- Vagrants, etc.** 14th. To restrain and punish common prostitutes, street beggars, vagrants and mendicants.
- Billiard tables, etc.** 15th. To regulate, restrain, suppress or provide for the licensing of billiard tables, bowling alleys and pistol galleries.
- Shows, etc.** 16th. To prohibit, restrain and regulate all exhibitions of all natural or artificial curiosities, caravans of

animals, theatrical shows or performances, circuses, and all other public exhibitions or performances for money.

17th. To require, fix the amount and provide for the collection of, license fees for any and all public exhibitions, shows and performances for money. License fees.

18th. To compel the owner or occupant of any grocery, meat market, tallow-chandlers shop, soap factory, tannery, stable, privy, sewer, drain, or other unwholesome or nauseous house or place; to cleanse, remove or abate the same, as often as, and whenever the common council or board of health shall deem it necessary for the health, comfort or convenience of the inhabitants of the city. Removal of nauseous substances.

19th. To prohibit any person from bringing or depositing within the limits of said city, the dead carcass of any horse or dog, or the putrid carcass of any animal, or any unwholesome thing. Putrid carcasses.

20th. To require the removal of any putrid meat, fish, hides or skins, or any decaying substance of any kind, by any person owning or occupying the premises on which the same may be, and in case of his default to do so, to cause the removal thereof. Ibid.

21st. To prevent the encumbering of the streets, squares, sidewalks, crosswalks, lanes and alleys with teams, carriages, carts, sleighs, sleds, wheelbarrows, signs, sign-posts, boxes, lumber, timber, fire-wood or any other substance or material whatever. Encumbering streets, etc.

22d. To compel all persons to remove snow and dirt from off the sidewalks in front of the premises owned, or occupied by them. Snow.

23d. To compel all persons to remove from that portion of the street lying in front of or bordering upon premises owned or occupied by them, the dirt and rubbish accumulating thereon between the sidewalk and center of the street, as often as said council deem necessary; and to fix the time for such removal. Rubbish.

24th. To prohibit the leaving of any horse, mule, or team on any street, without being securely fastened or hitched. Teams.

25th. To regulate and control the erection of awnings and awning-posts, and to provide for and compel the erection and maintenance of safe and convenient hitching posts and places for fastening teams, at such point or points as the council may deem necessary. Awnings; Hitching posts, etc.

26th. To prevent any person or persons from casting into the Fond du Lac river, or either branch thereof, within the limits of the city, or leaving upon the bank thereof any offal, dead animals, filth or rubbish, and to punish any person doing the same. Offal.

- Public criers.** 28th. To regulate, restrain and prohibit the ringing of bells and the crying of goods, wares and merchandise or other commodities in the streets of said city.
- Auction sales.** 29th. To impose and collect license fees on all auction sales within said city, and to determine the amount of such license fees and the manner of computing the same, and to ordain that each and every sale by auction made without first paying license fees, shall be in violation of such ordinances, subjecting the offender to the penalty therein provided.
- Hawking and peddling.** 30th. To regulate and restrain hawking and peddling in the streets.
- Markets.** 31st. To establish and regulate a market or markets in said city, to restrain and regulate the sale of fresh meats, fish and vegetables, and to select places for the sale of hay, wood, straw, grain, lumber, lime, and all other articles sold from wagons or sleighs, and establish fees for measuring or inspecting the same; and to provide against sales in other places under penalties therein provided.
- Liquors.** 32d. To license, prevent or regulate the sale and giving away of ardent, spiritous wines, malt, fermented and intoxicating liquors or drinks, within the city.
- Taverns, etc.** 33d. To license and regulate taverns, saloons, victualing houses, and all persons vending or dealing in ardent, spiritous wines, fermented or intoxicating drinks of any kind, including ale and beer, and prescribe the amount to be paid for such license and the time when it shall expire by limitation or for a violation thereof; and to revoke any license at pleasure, and require as a condition of granting any license such bond and with such conditions as the common council may direct: *provided*, that no license shall be granted in violation of any general law of the state nor shall the amount of license fixed in any case be less than the amount required by the general law of the state in like case.
- Pounds.** 34th. To establish and regulate public pounds, and to prevent horses, mules, cattle, or animals of any kind, from being ridden or led upon any sidewalk in said city.
- Sleighs bells.** 35th. To require all persons driving horses with sleighs or cutters in the streets of said city, to carry bells, either upon the horses or sleigh or cutter, to warn persons crossing such street.
- Drunkards, etc.** 36th. To restrain drunkards, immoderate drinking, or obscenity of language or conduct in the streets or public places of the city.
- Shade trees.** 37th. To prevent the sale or giving away of any

spiritous, ardent wines, fermented or intoxicating liquor or drink, including beer and ale, by persons having license for the sale of liquors, to any person whom the council may designate.

38th. To protect shade trees and encourage the planting of the same. Shade trees.

SECTION 26. Every ordinance or by-law imposing any penalty or forfeiture for a violation of its provisions, shall, after the passage thereof, take effect at such time as the common council shall direct, and shall be published once in a weekly public newspaper, printed and published in said city, or may, if so directed by the common council, be published in a daily newspaper printed in said city for three successive days, and in cases when the common council shall so direct, such by-laws and ordinance shall take effect from the day of the first publication thereof; and an affidavit thereof made by the printer or publisher or foreman in the office of the printer of such newspaper, shall be filed in the office of the city clerk, and shall be received as evidence in all courts and places, of the legal publication and promulgation of such ordinance or by-law. Of penalties and forfeitures.

SECTION 27. The common council shall have authority, by ordinances, resolutions, or by-laws: Further powers.

1. To manage and regulate the finances, and to regulate, preserve and dispose of the property, real and personal belonging to the city. Finances.

2. To adopt all legal and requisite measures for levying taxes and assessments, general and special. Taxes and assessments.

3. To lay out, establish, open, extend, widen, straighten, improve, alter, close, vacate, or abolish highways, streets, avenues or alleys in said city, or authorize and empower any person or corporation so desiring to build and maintain a street railway to be operated by horse power upon any of such streets or highways for a term of years, subject to such restrictions as the common council may deem for the best interest of the city, and to grant the powers and franchises necessary therefor. Streets, etc.

4. To purchase and lay out public parks or squares, or grounds, and to improve the same. Public parks, etc.

5. To provide and contract for the lighting of the streets of said city, or of such as the common council may deem necessary, and to protect and preserve the public lamps, and to punish those injuring the same. Lighting streets.

6. To establish, make, regulate, preserve and protect public reservoirs, pumps, wells, hydrants and fountains in said city, supply them with water, and con-

Fountains, reservoirs, etc.

struct all necessary water works for such purpose, and for the general supply of the inhabitants, and to pay for the same, and to prevent the unnecessary waste of water therefrom, and regulate and control the use thereof.

Sewers, etc. 7. To establish, construct and build all necessary drains, sewers and gutters, and maintain the same.

Ravines, water courses. 8. To fix up, widen, straighten, deepen, drain, dress, or otherwise improve or abate any and all sloughs, ravines, water courses and wet places in the limits of said city.

Improve river. 9. To widen, deepen, straighten, dress, cleanse, fill up or otherwise improve, either or both of the branches of the Fond du Lac river, and any or all the rivers, creeks, streams, ravines, or water courses in any part or parts of the same within the limits of the city.

SECTION 28. The common council shall have power, by ordinance or resolution:

Fire limits. 1. To create a fire district or fire limits within said city, and from time to time to alter and enlarge the same, and to prevent the erection of wooden and other combustible buildings or erections within such boundaries, and to prevent any material enlargement of any wooden or other combustible building or erection already within such boundaries, whether made under color of repairing the same or otherwise, and to ordain penalties to be incurred for each and every violation of such ordinance or resolution, and to provide, if the council see proper, that each day's labor or part of a day's labor on such erection or enlargement, after notice to cease, given by the mayor, any alderman, or by direction of the common council, shall be and constitute a separate violation of such ordinance or resolution.

Brick or stone walls. 2. To control and regulate the manner of erecting brick or stone walls, and the thickness of the same, and to prohibit or require the removal of any such as they may deem dangerous to life or injurious to property.

Razing buildings. 3. To provide for the razing or demolition of any building or erection, which, by reason of fire or any other cause, may become dangerous to life or health, or may tend to extend a conflagration.

Suits. SECTION 29. The common council shall also have the power and right, cumulative to the remedy given in the last section, to bring suit, in the name of the city of Fond du Lac, against the owner or occupant or contractor violating such ordinance or resolution as may be enacted under the provisions of the last section or

any or all of them, to compel them or either of them, by injunction, to refrain and desist therefrom. And a complaint, duly verified, showing a violation in fact or a threatened violation of the provisions of any ordinance or resolution, passed or created and in force under the provisions of the preceding section, by the defendant or defendants in such complaint named, shall entitle the complainant to preliminary injunction as of course.

SECTION 30. The fire district or fire limits existing in said city at the time of the passage of the act, with the ordinances and resolutions relating thereto, shall remain and be in force until changed or abolished by the common council. Fire districts.

SECTION 31. The common council shall have power to procure fire engines and other apparatus for the extinguishment and prevention of fire, and have the charge and control of the same; and, also, to purchase, lease, erect, or provide secure places for the keeping of all fire apparatus and fixtures; also, Fire engines, etc.

1. To employ suitable persons to operate, manage and have the care of such engines and apparatus and property, and fix their compensation; and to purchase or hire teams and tackle for the use and operation of said engines and apparatus; Care of engines.

2. To provide for the management and protection of the fire engines, hose, hooks, ladders, and all the apparatus and fixtures, for the extinguishment and prevention of fires, belonging to the city; Fire apparatus.

3. To compel the owners or occupants of houses or other buildings, to have scuttles in the roofs and stairs or ladders leading to the same; Scuttles.

4. To prevent the deposit of ashes in unsafe places, and to cause all buildings and inclosures, as may be in a dangerous state, to be put in a safe condition; Ashes.

5. To regulate and prevent the improper construction and unsafe conditions of chimneys, fire-places, hearths, stoves, stove-pipes, ovens, boilers and apparatus now in and about any buildings or manufactory, and to cause the same to be removed or put in a safe condition. Chimneys, etc.

SECTION 32. The common council shall have power by ordinance or resolution, to cause all out and in lots within said city of less size than ten acres each, that have not been platted and recorded by the owner or owners thereof, as required by law to be platted and recorded, and to tax the charges for the platting and recording thereof against the lot or lots so platted and Collection of taxes.

recorded, to be collected in the same manner as other special city assessments and taxes.

Contracts let to lowest bidder.

SECTION 33. The common council shall let, by proposals to the lowest bidder, and not otherwise, all contracts for services, or work and materials, or supplies, and order payment for the same except as is specially otherwise provided for by this act; and may from time require any officer to furnish reports, information or estimates, and perform other and further duties than herein prescribed, if the council shall deem that the interests of the city so require.

Auditing and adjusting accounts.

SECTION 34. The common council may examine, audit and adjust the accounts of the city and of the several officers or agents of the city whenever it shall deem expedient; but it shall so examine, audit and adjust at the end of each year and before the time for which the officers of said city are elected or appointed shall have expired, and cause to be made a full record of all such settlements and adjustments.

TITLE V.

ORDINANCES AND HOW ENACTED.

Ordinances, how enacted.

SECTION 35. Every ordinance or resolution of the common council (except in the special instances in this chapter provided) shall, before it takes effect be presented, duly attested by the city clerk, to the mayor. If he approves it, he shall sign it, in which case it shall take effect immediately, unless otherwise provided for in the ordinance or resolution. But if the mayor do not approve it, he shall within three days thereafter, file in the office of the city clerk his reason in writing, stating why the same should not go into effect; in which case such resolution or ordinance shall not go into effect or have any legal operation, unless at the next regular meeting of the common council it shall be re-passed by a vote of two-thirds of all the members elect, exclusive of the mayor; and if it be re-passed, or if the mayor omit to file his reasons aforesaid, it shall go into effect according to its terms: *provided*, no ordinance or resolution shall be in force until it shall have received, at least, one publication in either a daily or weekly newspaper published in said city, and proof of such publication by the affidavit of the foreman, printer or publisher of such newspaper be filed with the city clerk; and the ordinance or resolution, and the proof of the publication thereof, be recorded in books provided for that purpose.

SECTION 36. The record of every ordinance or resolution with the proof of the publication thereof, made as provided in the preceding section, and certified copies of such record, shall be received as evidence in any and all the courts of this state as proof of the proper passage and publication of such ordinance or resolution.

Record of ordinances.

SECTION 37. All ordinances and resolutions now in force in said city, not conflicting with the provisions of this act, shall continue and remain in force until repealed, changed or otherwise altered by the common council.

Ordinances now in force to continue until repealed by council.

TITLE VI.

POWERS AND DUTIES OF OFFICERS.

SECTION 38. The mayor shall be the chief executive magistrate of the city. He shall, when present, preside at all the meetings of the common council, but shall have no vote except when the votes of the other members are tied; in which case he shall have the casting vote; he shall see that the laws or ordinances of the city are enforced, and exercise a constant supervision over the conduct of all subordinate officers. He shall receive and examine into all complaints against all subordinate officers for misconduct or neglect of duty, and report the fact to the council with his recommendation in reference thereto, and may summarily suspend or remove the chief of police or any policeman; but in all cases of suspension or removal, he shall report the same with his reasons therefor, to the common council; and the common council shall forthwith act upon said report; and if the action of the mayor in such suspension or removal be not sustained by the vote of a majority of all the members elect of the council, such suspended or removed officer shall at once be reinstated. He shall recommend from time to time to the common council such measures as he shall deem expedient and necessary, and in general to maintain the peace and good order and advance the prosperity of the city. He shall possess all the power and authority conferred upon mayors of cities by any general statute of the state. He shall have power, with force if necessary, to suppress all tumults, riots and unlawful assemblies, all revelling, quarreling or other disorderly conduct, to the disturbance or annoyance of the peaceable inhabitants of said city. He shall have the control of the chief of police and the entire police force of the city, and they and each of them shall be at

Duties and powers of mayor.

all times subject to his orders. He shall have the power to administer oaths or affirmations, and to take and certify acknowledgements of deeds or other instruments in writing authorized to be taken by the laws of the state. He shall have power to admit to bail, or to discharge without bail, any and all persons arrested by the police force of the city without warrant. He may call special meetings of the common council by appointment in writing, to be filed with the city clerk; and when such appointment is filed, it shall be the duty of the clerk to serve, or cause to be served, on all the members of the common council a copy thereof, personally or by leaving the same at the place of residence or business of each member to be served. He shall sign all the appointments made by the common council, and all orders drawn upon the treasury. And it shall be his duty to communicate to the common council at the first meeting after his election, and as often thereafter as he shall deem expedient, a general statement of the affairs of the city, in relation to its finances, government and improvement. In case of the absence or inability of the mayor to act, or if there shall be a vacancy, the president of the council shall be vested with all the powers and perform all the duties of mayor of the city, until the mayor shall resume the duties of his office, or the vacancy shall be supplied according to law. The mayor, or the president in his place, as aforesaid, shall possess all such other powers, and perform all such other duties as are incident to and are necessary for the faithful discharge of his duties under this act. And the president of the council, in addition to his duties and powers aforesaid, shall be ex-officio president of the board of education.

Duties of clerk.

SECTION 39. The city clerk shall attend the regular and special meetings of the common council, and keep a record of its proceedings, and shall have the custody of the corporate seal, and shall keep all papers that by any provision of law, or by the direction of the common council, are required to be kept in his office or filed by him; and copies, printed or written, or partly printed and partly written, of all papers filed in his office, and transcripts from the records of the proceedings of the common council and copies of the ordinances, by-laws, resolutions and regulations of the city, shall be evidence in all courts and in all places, in like manner as if the originals were produced and proved. He shall see that all ordinances, orders, resolutions, notices and other matters requiring publication are

promptly and correctly published in such paper as the council may have directed, and that the proof thereof be made and recorded as in this chapter provided. He shall record all papers and proceedings required by any of the provisions of this act to be recorded in his office. He shall be clerk of the board of education, and the board of health. He shall attest all orders drawn upon the treasury, and keep a full and accurate account of the same, and of the fund to which chargeable. He shall have power to administer oaths and affirmations. He shall serve or cause to be served all notices required to be given under this act except when otherwise especially provided; he shall countersign all licenses granted by the common council, and enter in an appropriate book the name of every person to whom a license shall be granted, the date thereof, the time during which it shall be in force and the sum paid therefor; he shall perform such other duties, not here enumerated, as may be required of him in his said capacity, by the common council, or by the general laws of the state of Wisconsin, in relation to the assessment and collection of taxes in said city. In case of sickness, absence or disability of said city clerk to act, the common council may supply the vacancy by an appointment pro tempore; in which case such appointee shall have all the powers, and discharge all the duties of city clerk.

SECTION 40. The comptroller, shall keep an accurate and detailed account of the financial condition of the city in such manner as the common council shall prescribe. He shall make copies of the assessment of the property of the city, when required. He shall keep an accurate account with the city treasurer and charge him with all the taxes levied, and sums of money paid into the treasury. He shall annually at the commencement of the fiscal year, furnish the council with a list of all the outstanding city bonds and coupons, to whom, when and where payable, and the rate of interest they may respectively bear, and the amount of money necessary to be raised in the current year to meet the interest on said indebtedness and such of the principal as may mature within the year. He shall also report at the same time, and as often as the council may require, an estimate of the expenses of the city, and the revenue necessary to be raised for the current year; stating particularly the several purposes for which money is required, and the amount for each, respectively classified under proper heads. He shall countersign all contracts made in behalf of the city,

Duties of comptroller.

and all orders drawn upon the city treasury, and shall keep a record of the same; and no contract entered into shall be of any validity unless countersigned by him. He shall keep a record of all the reports of fines awarding damages, and of commissioners assessing benefits on the occasion of any improvement being made, and also of all certificates for work done chargeable to any lot or lots under the provisions of this chapter, and shall do and perform all the duties in relation thereto devolving upon him by any of the provisions of this chapter. He shall annually report, at the close of the fiscal year, a full list of all damages awarded and benefits assessed, and all special assessments levied during the year, stating in detail the amount of the property chargeable therewith, and the purpose for which it was awarded, assessed or levied. He shall report to the common council monthly what contracts have been entered into in the month preceding, chargeable to the city or to any fund thereof, and state in what ratio the actual expense already incurred bears to his estimate for the same. He may negotiate such temporary loans as he shall deem expedient in anticipation of the revenue of the current year; but such loans can only be made by the approval of the common council, by vote of two-thirds of the members elect. He shall examine the books, reports, papers, vouchers and accounts of the treasurer, and from time to time perform such other and further duties as the common council may direct. He shall keep a record of all his acts and doings, which shall be open to the inspection of all persons interested. He shall not be directly nor indirectly interested in any contract or job to which the city may be a party. He shall have power to administer oaths and affirmations. And all claims and demands against the city, except as herein otherwise provided, shall be presented to and adjusted or audited by the comptroller before presentation to the common council; and when so presented, the common council may modify, correct, or disallow the same.

Council may consolidate offices of city clerk and comptroller.

SECTION 41. The common council shall have the power of consolidating the offices of comptroller and city clerk. Whenever the labor of the two officers can be performed by one person, or whenever the general interests of the city shall require it, and whenever the same are so consolidated, the officer appointed to perform the duties of both shall be the city clerk, and in such case, when by this act any duty is required to be performed by the city comptroller, the same shall be performed by the city clerk.

SECTION 42. The treasurer shall receive all moneys belonging to the city, and keep an accurate and detailed account thereof, together with an account of all disbursements, in such manner as the common council may direct. He shall collect all licenses, duties and moneys, all general and special taxes and assessments which may be levied and assessed upon the real and personal property in the city, and exercise the same powers and be subject to the same liabilities as treasurers of towns, except when a special direction and duty is imposed by this act: *provided, however*, that no fees shall be paid him for his services, except such salary as the city may allow. He shall pay all orders drawn upon the treasury under an order of the common council, when countersigned by the comptroller, or as he may be required under any special provision of this act. He shall report to the comptroller quarterly, and at such other times as the common council may require, a full and detailed account of all receipts and expenditures after the date of the last quarterly report, and also of the state of the treasury, a copy of which, certified by the comptroller, shall be filed with the city clerk. He shall, in addition to the duties here enumerated, do and perform all the duties herein provided to be done and performed by him, especially the duties under the provisions of the titles "of public improvements," and "of improvement of streets."

Duties of
treasurer.

SECTION 43. The city attorney shall conduct all the law business of the city, and of every branch thereof, and all other business in which the city shall be interested, and when requested shall furnish opinions, in writing to the mayor or common council upon any question submitted for his consideration. He shall keep a docket of all the cases in which the city is a party; which shall show in brief each step taken in the case, and which shall always be open to the inspection of the mayor or any committee of the common council. He shall draw all papers connected with the business of the city, draft all ordinances, resolutions and notices required by the common council, and do and perform in addition to the duties herein enumerated, all other duties in this act prescribed for the city attorney to do. But it is expressly provided that the common council may in its discretion, employ other and different council from the city attorney, whenever the interests of the city require it.

Duties of city
attorney.

SECTION 44. The city engineer and surveyor shall be a practical engineer and surveyor; he shall keep

Duties of engi-
neer and sur-
veyor.

his office at some convenient place within the city, and the common council shall prescribe his duties by ordinance or resolution. All surveys, plans, profiles and estimates made by him for the city shall be the property of the city and shall be carefully preserved in the office of the city clerk, and open to the inspection of all the parties interested, and all books and papers pertaining to said office, shall be turned over by the engineer at the expiration of the term, to the common council by deposit in the office of the clerk.

Supervisors.

SECTION 45. The supervisors elected under this act, shall be members of the county board of supervisors, and as such shall have the powers of the chairman of the board of supervisors in the several towns of this state; and in case of any vacancy in either of the wards in said office, the common council may supply the same by appointment, and the person so appointed shall have all the powers, and discharge all the duties of the office of supervisor.

Justices of the peace; powers and jurisdiction.

SECTION 46. The justices of the peace elected under this act shall have the same jurisdiction and perform all the duties of justices of the peace, as provided by the general laws of this state, and their official bonds shall be approved by the mayor and clerk.

Assessors.

SECTION 47. The assessors elected under this act shall, in all things pertaining to their office, be governed by the same laws as assessors under the general laws of this state, and their compensation shall be established by the common council.

Constables.

SECTION 48. The constables elected under this act shall have the same powers and be subject to the same liabilities as constables of the several towns of this state, and they shall qualify in like manner, except that their bond shall be filed with, and approved by, the city clerk.

Aldermen to be street commissioners; their duties.

SECTION 49. The aldermen of the wards shall be *ex-officio* street commissioners in their respective wards, and have charge of constructing, grading, improving and repairing the streets, crosswalks and public ways in their several wards, as may be hereafter, or by ordinance, resolution or by-law provided, excepting as to the repair of sidewalks, as hereafter made the duty of the sidewalk superintendent.

Duty of sidewalk superintendent.

SECTION 50. It shall be the duty of the sidewalk superintendent to make constant and careful inspection of the sidewalks, pavements, bridges and other public ways in all parts of the city, and whenever and wherever he shall find any defect or want of repair therein

he shall make a note of the same, in a book to be procured by him for that purpose. If such defect or want of repair be found to exist in a sidewalk, and will not cost to exceed three dollars to remove or put in repair, he shall forthwith notify in writing the owner or occupant of the premises adjacent, and to which said sidewalk shall belong, of the said defect or want of repair, and require, in said notice, such owner or occupant to repair or remove the same within twenty-four hours after service of said notice; and if such defect shall not within said twenty-four hours be repaired or removed, the sidewalk superintendent shall forthwith make such repairs or remove such defect in as expeditious and economical a manner as may be, make a bill of the expense thereof, present it to said adjacent owner or occupant, and receive and receipt the amount thereof, if paid; if not paid, he shall report and turn over the said account for repairs to the aldermen of the ward or either of them, in which such work shall be done, for assessment and collection against the lot or lots chargeable therewith, as provided in other cases of street or sidewalk work. He shall keep a strict account of all work done and materials furnished by him in the execution of his duties, and report the same, and pay over the moneys collected by him to the city clerk, on the first Monday of every month; and the clerk shall forthwith file such report, and pay such moneys into the city treasury: *provided*, if such defect or want of repair shall exist in a bridge and not cost over three dollars to repair, or if no resident owner or occupant of said adjacent premises to such sidewalk can be found, said superintendent shall make such repairs, without notice served, and turn over the account therefor to the aldermen as aforesaid. If in the opinion of said superintendent, the cost of repairs or removing such defect shall exceed three dollars, he shall forthwith report the defect or want of repair to the aldermen of the ward in which the same may exist, who shall without delay proceed in the lawful manner to repair or remove such defect, or cause the same to be done.

TITLE VII.

FINANCES.

SECTION 51. The fiscal year of the city of Fond du Lac shall commence on the first Monday of April. Fiscal year.

SECTION 52. All moneys, credits and demands belonging to the city of Fond du Lac, shall be kept by, Paying out money.

and deposited with the city treasurer and be under the control of the common council, and shall only be drawn upon the order of the mayor and city clerk authorized by a vote of the common council and countersigned by the comptroller, and in no other manner; provided that the school fund may be drawn out as provided by other provisions of this act.

Debts only to be authorized by council.

SECTION 53. No debt shall be contracted against the city, or certificate of indebtedness be drawn upon the city treasury, unless the same shall be authorized by a majority of all the members elect of the common council, and the vote authorizing the same shall be entered by ayes and nays, upon the journal of the common council, except in such cases as may be specially provided for in this act.

Forfeitures payable into treasury.

SECTION 54. All forfeitures and penalties accruing to the city for violation of this act or of any of the ordinances, by-laws, rules and regulations of the city, and all moneys, received for licenses and insurance percentage, and from all other sources, for the city, shall be paid into the city treasury and become part of the general fund; and all moneys received for tuition of scholars under this act shall be paid into the treasury and become part of the school fund.

Orders; how payable.

SECTION 55. All orders drawn upon the treasury of the city shall be made payable to the order of the person in whose favor they may be drawn, and shall be transferred only by indorsement. Each order shall specify upon its face the purpose for which it was drawn and from which fund the same is to be drawn, and the same shall be payable out of the proper fund, and all such orders shall be received in payment of any general tax levied and assessed.

No interest, unless authorized by all of council.

SECTION 56. No interest shall be allowed or paid on any city order or certificate of indebtedness, unless the same is expressly authorized by the common council, by a vote of a majority of all the members elect.

TITLE VIII.

CITY AND WARD EXPENDITURES.

Authority to contract debt limited.

SECTION 57. No officer of the city, or any other person, shall have power to make any purchase for, or contract any debt on behalf of the city, except specially authorized by the common council, or by the provisions of this act to do so.

Resolutions authorizing expenditures.

SECTION 58. All resolutions adopted by the common council authorizing the expenditure of moneys,

shall appropriately specify the amount to be expended, and no extra or additional compensation shall be allowed or paid on any contract, or on account of any contract, or to any officer, contractor, person or persons, for any service or work done, or materials furnished to or for the city.

SECTION 59. It shall be the duty of each common council, as soon as may be after the organization of the same in each year, to ascertain the amount of debts contracted by the common council and remaining unpaid from the previous year, and the purpose for which the same was contracted, and to cause the city clerk to publish once, in the official newspaper of the city, a list of the same, certified to by him, by the authority of the common council.

Ascertaining
annual expen-
diture.

SECTION 60. The aldermen of each ward shall have the power of expending their respective ward fund for such purposes and in such manner as they are authorized by this act or the ordinances or resolutions of the city or common council, by orders signed by the aldermen, or a majority thereof, of such ward, and countersigned by the comptroller, and said orders shall severally specify the purpose for which it is drawn, and be made payable to the order of the person in whose favor it shall be drawn, and shall be directed to the city treasurer.

Aldermen to
have expendi-
ture of ward
fund.

TITLE IX.

TAXATION.

SECTION 61. For the discharge of any legal debt of the city, or expenditure authorized by the common council under any of the provisions of this act or ordinance of the city, to defray the current expenses thereof, the common council shall have power by ordinance or resolution :

Powers of taxa-
tion.

1. To annually levy and collect a tax not exceeding two and one-half per cent. on the assessed value of all the real and personal property in the city made taxable by the laws of the state, to defray the contingent and other general expenses of the city, which tax shall belong to the "general fund."

General fund.

2. To annually levy and collect a tax, not exceeding twelve mills on the dollar, on such assessed value aforesaid, to meet the expenses of purchasing grounds for school buildings, building and repairing of school houses, purchasing school apparatus and fixtures, and supporting and maintaining schools within the city, and which shall constitute the "school fund."

School fund.

Library fund. 3. To annually levy and collect a tax on such valuation aforesaid, of not exceeding one mill on the dollar, which shall constitute the "library fund."

Bond fund. 4. To annually levy and collect a tax of one per cent., on such valuation aforesaid, to pay the interest accruing on the general bonded indebtedness of the city, and to provide a sinking fund to pay the bonds of said city as they mature, and for compromising bonds heretofore issued, and which shall constitute the "bond fund."

Two per cent. tax on insurance companies.

SECTION 62. All corporations, companies and associations, not incorporated under the laws of this state, engaged in said city in effecting fire insurance, shall pay to the city treasurer at the rate of two per cent. upon the amount of all premiums which shall have been received or shall have been agreed to be paid, for any insurance effected, or agreed to be effected on any property in said city, by or with such corporation or associations respectively, in manner and at the times as prescribed by the general laws of the state in relation thereto.

Subject to special taxes.

SECTION 63. Real estate, exempt by the laws of this state from general taxation, shall be subject to special taxes for the building of streets, sewers, sidewalks and the making of local and general improvements, and all the property of the city shall be subject thereto: *provided*, that the property of the city shall be exempt from all taxation except such special tax.

Assessment roll.

SECTION 64. The assessors of the city shall annually proceed to make an assessment roll of all the real and personal property liable to taxation therein, keeping the property in each ward separate and distinct from every other; at the times, in the manner, and in all things conforming to the provisions of the general laws of the state relating to the assessment and collection of taxes.

TITLE X.

PUBLIC IMPROVEMENTS.

Power of council in making improvements.

SECTION 65. Whenever a petition shall be presented to the common council, signed by at least ten freeholders and residents of any ward, praying for any improvement to be made or done in said ward, particularly specifying the same, and such improvements will not require the taking of private property against the consent of the owner, the common council may order the same to be done by resolution or ordinance, stating how and when the same shall be done. Every person

signing such petition shall write after his signature a brief description of his real estate, which makes him such freeholder, or of some part thereof, and of the place of his residence.

SECTION 66. Whenever a petition, signed and executed as provided in the last section (section sixty-five), shall be presented to the common council, asking for an improvement to be made, and particularly describing the same as aforesaid, stating the name or names of the person or persons or corporation owning the property proposed to be taken, if known to the petitioner; and it shall appear to the common council that in making the improvement sought by the petition, it will be necessary to take private property against the consent of the owner or owners thereof, such improvement shall not be ordered or made unless the common council, by a resolution in writing (which need not be published), declare by a vote of the majority of the members elect, that the improvement sought by the petition is a work of public necessity, and in addition thereto, that the necessity of taking private property therefor, and the compensation to be made to the owners thereof, be determined by a jury of twelve freeholders residing in said city.

Petition for improvement.

SECTION 67. Whenever it shall be necessary to have a jury of freeholders for the purpose in the last section specified, the common council shall by resolution (which need not be published), direct the city attorney to apply to the judge of the county court of Fond du Lac county, or to the circuit judge of and in said county, for the drawing and impaneling the same, and for a hearing upon the matters mentioned in said petition, and to give notice thereof to all whom it may concern, in the manner hereafter provided.

Jury.

SECTION 68. The notice required by the last section shall briefly state in substance, that the common council has determined to make an improvement, describing it as described in the petition, and stating what particular property will be taken in making such improvement and that on behalf of the city of Fond du Lac, the city attorney will apply to the county judge of the county of Fond du Lac county, at his office on a day and hour in such notice to be specified; which time shall not be less than ten days after the date of the last publication next hereinafter provided; to have a jury of twelve freeholders drawn and impaneled to determine the necessity for taking and using the private property therein described for public use in making

Notice for hearing matters relating to improvements.

the proposed improvement. And in case it shall determine such necessity to exist, to fix the compensation to be paid therefor, and also stating that such jury will meet at the office of said county judge immediately after they shall be impaneled and sworn, and proceed to the discharge of all the duties required of them by this act, which notice shall be signed by the city attorney.

Notice to be published.

SECTION 69. The city attorney shall cause a copy of such notice to be published in such daily or weekly newspaper printed in said city, as the common council, by resolution, may designate, two successive weeks, once in each week. And he shall also cause personal service thereof to be made upon the owners or occupants of the premises proposed to be taken, whenever they can, with reasonable diligence, be found within the city; but in case any owner or occupant cannot so be found, then, and in every such case, a copy of such notice shall be posted in a conspicuous place upon the premises so owned or occupied by the person or persons who are not able to be found within the city. Such publication and such service personally or by copy posted, must be perfected and complete at least five days before the date specified in said notice for drawing and impaneling said jury.

Filing of original petition.

SECTION 70. It shall be the duty of the city attorney, immediately after the publication is complete and the service is made as in the last section provided, and at least three days before the time fixed in said notice to file in the county court of Fond du Lac county the original petition asking for the improvement, with the resolution of the common council, as provided in section two of this chapter, attached thereto, and certified to by the city clerk under the seal of said city. Also proof of the publication, service and posting of said notice, as in the last section provided; and thereupon the said court and the judge thereof shall be vested with full jurisdiction in the premises, and the owners of the property and all persons interested therein shall take notice of and be bound by all subsequent proceedings without further notice: provided, however, that the court or the judge thereof, at any time before the final termination of proceedings before the jury, upon its being made to appear that injustice has been done to any owner of property or other person interested therein, by reason of want of notice to such person or persons, shall have the power to give such owner or persons interested an opportunity to be heard,

and to take such steps as may be necessary to protect his or their interests; but this shall in no case be construed to give power to extend the time for a right to appeal.

SECTION 71. It shall be the duty of the judge of said court, upon the papers being filed in said court as is required in the last preceding section, to nominate and select without delay, twenty-four disinterested freeholders of said city, qualified by law to serve as jurors, and make a list of the same and attach his certificate thereto, showing the purpose of the list and the date of selection, and file the same as a part of the papers in the proceeding. Judge to choose jury.

SECTION 72. When the said judge shall have made and filed said list, he shall thereupon issue a writ of summons, under the seal of said court, directed to the chief of police or any policeman of said city commanding him to summon the several persons so selected and nominated, as in the last section provided, to be and appear before him at his office on the day and hour in said notice specified, to serve as jurors in the matter of the application of the city of Fond du Lac for the condemnation and appraisal of private property for public use, against all whom it may concern. Summons.

SECTION 73. The chief of police or policeman serving this writ, shall read the same to each person therein named; if to be found within the city, and make return of his doings thereon on or before the time at which such writ is returnable, by an affidavit thereon, sworn to before some officer authorized to administer oaths in said city. Service of summons.

SECTION 74. Each and every person named and summoned as a juror as provided in the two preceding sections, shall be bound to attend and serve as jurors until discharged. And said judge shall impose a fine of not less than five dollars upon each and every juror who shall neglect to obey the said summons when served, provided that the judge for good cause shown may remit such fine or excuse any juror from serving as such. Liability of jurors.

SECTION 75. The judge, upon the return of the summons, shall write the name of each person, personally served upon separate slips of paper and deposit the same in a box preparatory to impaneling said jury. And at the hour specified in said notice, shall call the parties to the proceedings as designated in said summons, and if the city of Fond du Lac be present, he shall at once proceed to draw said jury in Drawing of jury.

the same manner as petit jurors are drawn in the circuit court; but if said city shall fail to appear, the proceedings shall abate. And if from any cause a sufficient number of jurors from the original jurors summoned, can not be had to fill the panel, the said judge shall designate talesman and direct the chief of police or some policeman to summon the same, until the panel shall be completed.

Challenge.

SECTION 76. The right of challenge shall be allowed as in civil cases under the laws of the state: *provided*, that no person shall be incompetent to serve as judge, juror, or officer to summon a jury, by reason of his being a resident or tax payer in said city: *and provided, further*, that the parties adversary to the city shall be entitled, in all, to three peremptory challenges and no more.

SECTION 77. The jury so empaneled shall be sworn by the judge that they are freeholders of said city and not interested in the property proposed to be taken, and that they will faithfully and impartially discharge their duties according to the best of their abilities, when they may appoint or choose a foreman.

Trial.

SECTION 78. After the jury shall have been impaneled and sworn as aforesaid, said court shall be in session for all the purposes of such hearing, and the judge may exercise the same power and control over the jury as in civil cases under the laws of this state. Immediately after the commencement of the session of the court by the swearing of the jury, the petition shall be read to them and a copy of said notice shall be furnished them, and the judge shall send out said jury upon the premises to view the intended improvement, and the property intended to be taken therefor and described in the notice. The jury may be accompanied in taking their view, by the city attorney and city surveyor, and such other persons as the judge may direct. Before said jury shall leave court to view the premises as aforesaid the judge may caution the jury or instruct the jury as to their duties and the law applicable to the case, and shall fix the time when the jury shall return into court after taking such view, and adjourn the court and proceedings to that time. At the time fixed by the adjournment, the jury, having taken their view, shall return into court and shall immediately proceed to inquire into the necessity of taking the property described in said petition for public uses, the value thereof, and the just compensation to be allowed therefor, and may examine witnesses touching the same, and

shall hear the proofs and allegations of the parties if any be offered: *provided*, that no person shall be heard or allowed to contest the taking of his property unless he shall first file his objections thereto in writing in the office of the county judge, before or at time of the coming in of the jury, which objections shall state particularly the interest of such person in the property proposed to be taken, and the facts to be presented against such taking, and shall be verified by the affidavit of the party. All objections shall be heard together, and separate hearings shall not be allowed.

SECTION 79. The hearing before the court and jury shall be conducted in the following order: ^{Order of hearing.} After hearing the proofs and allegations of the parties, if any be offered, which shall in the first instance be confined to the necessity of making the proposed improvement and the taking of the property specified in the petition therefor, the jury shall first determine whether it is necessary to take such property for public use against the consent of the owner or owners thereof, and if they shall decide this question in the negative, the proceeding shall abate; but if decided by them in the affirmative, then they shall make and each sign a verdict in writing in proper form to that effect, stating their decisions, and return the same into court, which shall be filed by the judge with the papers in the proceeding, and upon filing such verdict, the court shall thereupon forthwith enter judgment, briefly reciting the proceedings had, the property to be taken, and adjudging that it is necessary to take such property for public use so specified in the petition. Upon a return of a verdict in the affirmative, the jury shall then immediately proceed to hear the proofs and allegations of the parties, if any be offered, as to the value of the property proposed to be taken, and the damages and compensation to be awarded therefor, and shall award to the respective owner or owners of the property to be taken such damages or compensation as they shall deem just.

SECTION 80. The judge of the court shall administer the oaths to witnesses, decide all questions of law as to the admissibility of evidence or other matters arising on such hearings, and may at any time instruct the jury as to their duties and the law applicable to the case, and in the event of an issue or contest, the trials, so far as practicable, shall be conducted in the same manner as in civil cases in circuit courts under the laws of the state. The judge may at any time send out the jury to review the premises described ^{Judge to administer oaths, etc.}

in the petition. The judge shall also have power, for good cause, to adjourn such hearings from time to time, not exceeding thirty days in all, provided that this shall not exclude his power to recall the jury to revise or reconsider that verdict or report, and all persons interested shall take notice and be bound by all adjournments and proceedings of the judge, court and jury had or made at, and after the time named in the notice of the city attorney for the appointment of the jury.

In case of building on land proposed to be taken.

SECTION 81. Whenever there shall be any building or buildings standing in whole or in part upon any street, alley or other place proposed to be opened, the jury shall estimate the cost of the removal of said building or buildings from the line of said street or alley, or other improvement, provided said buildings can be moved and located on the same lot or premises upon which they are situated, and which is owned by the person or persons to whom the compensation is to be paid therefor; in such case the jury shall award damages for the removal of such building or buildings.

Jury to estimate and award damages.

SECTION 82. Whenever such building or buildings in the last section specified cannot be removed as therein provided, the jury shall estimate and award as damages the cost of taking down that portion of the building upon the line of improvement, deducting therefrom the value of the materials so taken down; and shall also estimate and award damages for that portion of the building remaining, aside from the value of the land taken, provided that if the owner, or the person having the right thereto, shall appear before the jury and agree to remove said building or buildings off the line of said street, alley or improvement, the jury may award damages for the removal thereof, instead of damages for the taking down of said building or buildings, as above provided.

Council may cause removal of building.

SECTION 83. The person or persons to whom damages are awarded under the two preceding sections, shall remove or take down, as the case may be, the building or buildings on the line of the street, alley or other improvement, within ten days after the common council shall so direct, and in case of a neglect or refusal to do so within such time, the common council may cause the same to be removed or taken down, and the costs and expenses thereof shall be deducted from the amount awarded such person or persons. But if the costs and expenses exceed the award, the surplus shall be a charge and lien on the premises, and a certificate for the amount thereof shall be issued and collected the same

as all other certificates for benefits and costs are issued and collected under the provisions of this act.

SECTION 84. If the property taken, or any part thereof, shall be subject to a valid mortgage, lien, lease or agreement, or either, and such facts shall be made to appear to the jury, then the said jury shall apportion the award of compensation to the owner of the property the parties in interest to such mortgage lien, lease or agreement, in such manner as they shall deem legal and just.

In case of mortgage.

SECTION 85. Said jury, after completing the aforesaid duties, shall make in writing, and each sign a report to the county court of Fond du Lac county of their doings after their verdict, and in the award of damages or compensation for the property to be taken, which shall be known as the report of the jury, and shall file the same in said court immediately upon the completion of their duties, and the judge shall give notice thereof to the city attorney.

Report of jury.

SECTION 86. In all cases where said jury shall find that it is necessary to take private property for said improvement, they shall state in their report the just compensation ascertained and awarded by them to the owner of any private property, or to any person claiming an interest therein by virtue of any valid mortgage, lien, lease or agreement to which said property may be subject, together with the name of such owner or claimant, if known, and a description of the property intended to be taken; and in all cases where compensation is awarded to any person claiming an interest in such property by virtue of any valid mortgage, lien, lease or agreement to which such property may be subject, the report shall state, in addition to the name of the claimant, if known, the date of the mortgage, lien, lease or agreement or assignment, by virtue of which such claimant has an interest in the property intended to be taken.

Compensation for private property taken.

SECTION 87. The city attorney, upon receipt of notice that the report of the jury is filed, shall apply to the court in which it is filed for an order confirming the same, and thereupon the court shall make an order reciting briefly that the jury have rendered a verdict establishing the necessity of taking private property for public use, describing it as in the petition, that judgment has been entered upon such verdict in accordance therewith, and that the jury have made a report of the damages and compensation to be awarded for the property to be taken, and fixing a time when the report of

Order confirming report of jury.

the jury and the objections thereto, if any, will be considered by the court, which time shall not be more than ten days after the filing of the application of the city attorney for the confirmation of the report.

Notice of hearing.

SECTION 88. The city attorney shall give notice of the time and place fixed for the consideration of such report by publishing a copy of the order of said court in a weekly or daily newspaper published in said city, at least five days before the time fixed in such order for the hearing. And proof of the publication of such order, as herein directed by the affidavit of the printer or publisher of the newspaper in which the same was published, made and filed with the court before the hearing, shall be sufficient evidence of service to charge all persons interested with notice of such hearing and of the entry of judgment on the verdict of the jury.

Objections may be filed.

SECTION 89. The city of Fond du Lac, and each and every person having an interest in the property proposed to be taken or any part thereof, may file in said court at any time before the time fixed for the hearing of objections in writing to the confirmation of the report, particularly specifying the ground of each objection, and no general objection shall have any force or effect or be considered at any stage of the proceedings in the county court or upon appeal.

Report and objections considered.

SECTION 90. At the time fixed in said order the said court shall proceed to the consideration of the said report and the objections filed thereto, but the said court shall disregard all objections as to the matter of form, and consider only objections of law and to matter of substance, but in all cases the compensation awarded to any person or persons, for any lot or part of lot, premises or sub-divisions, if objected to by such person or persons or the city of Fond du Lac, as being excessive or small, may be inquired into and considered by the court: *provided*, that if for any cause the court shall deem it proper, at the time fixed for the hearing, or after the hearing shall have commenced, to adjourn the same, it may be so adjourned from time to time in the discretion of the court.

Order confirming report, final.

SECTION 91. If no objections are filed as aforesaid, the court shall make an order confirming the report, and such order so made shall be final and not subject to appeal or review, except for errors in the proceeding going to the jurisdiction of the court.

Jury may revise report.

SECTION 92. If objections are filed in form as hereinbefore provided, the court after considering the same, may, in its discretion, confirm or set aside the report,

or may refer it to the same jury for reconsideration and revision as to the jury may seem just and necessary, after being instructed by the court in reference to the errors complained of, and which are the cause of the resubmission. And thereupon the said jury may revise, review, correct and alter such report in such particulars as they may deem just, and return the same into court so revised and corrected, or without change therein, within twenty-four hours after the same shall have been resubmitted to them (Sundays excepted). And thereupon, without further notice, the court shall make an order confirming or setting aside said report.

SECTION 93. At any time before the time fixed for the hearing upon the report of the jury, any person interested who was not personally served with notice of the application for the appointment of the jury and had not personal knowledge thereof, feeling aggrieved by the verdict of the jury and the judgment entered thereon, may file his objections thereto, particularly specifying his interest in the property to be taken, the grounds of complaint, that injustice has been done him, and upon affidavits showing such facts and excusable neglect for not appearing prior to the time of filing his objections, the court after notice to the city attorney and an opportunity given him to file affidavits in opposition thereto, in its discretion may reopen the judgment as to such party, fix the time of hearing and recall the jury into court, to hear the proofs and allegations of such person. If the jury after such hearing, shall decide that it is necessary to take the property of such person for public use, they will find and return a verdict to that effect to the court, and thereupon the court shall enter an order setting aside the order reopening the judgment as to such person, and ordering that the former verdict and judgment shall stand as the verdict and judgment in the case, and such rehearing shall not in any way affect or prejudice the proceeding subsequent to the entry of such judgment, but if the jury shall find that it is not necessary to take the property of such person for public use, and that the proposed improvement cannot be made without taking such property, then all the proceedings in the county court subsequent to filing the petition and resolution therein shall abate. The judgment of the court entered upon the verdict of the jury shall be final and not subject to appeal or review, except for error in the proceedings going to the jurisdiction of the court.

Before hearing report, any person may file objection thereto.

Failure of jury
to agree.

SECTION 94. In case the jury fail to agree or find a verdict against the necessity of taking the property described in the petition for public use, or their verdict is set aside, or from any cause the jury fail to find a verdict as hereinbefore provided, the city attorney by direction of the common council may apply for a second jury in the matter, as hereinbefore prescribed, and all the steps and proceedings after such application shall be the same as if no previous proceeding had been had under the petition and resolution of the common council, filed in the court as aforesaid.

Report may be
set aside.

SECTION 95. If the jury shall have rendered a verdict establishing the necessity of taking the property specified in the petition, for public use, against the consent of the owner or owners thereof, but if said jury shall fail to agree upon the damages or compensation to be awarded, or fail from any cause to make their report, or such report be set aside by the court, and the verdict and judgment has not abated or been set aside, the city attorney when directed by the common council, shall apply to the judge of said court for the appointment of a new jury for the purpose only of determining and awarding the damages or compensation to be paid the owner or owners of the property to be taken, and give notice thereof to all whom it may concern as hereinafter provided.

City attorney
may apply for
jury.

SECTION 96. The notice required in the last section shall briefly state the substance of the verdict of the former jury, with a description of the property to be taken, and that on behalf of the said city, the city attorney will apply to the judge of the county court of Fond du Lac county, at his office on a day and hour in such notice specified, which time shall not be less than five days after the date of the last publication next hereinafter provided, to have a jury of twelve freeholders drawn and impaneled to determine, fix and report the damages or compensation to be awarded for the property taken; and also that such jury will meet at the time and place fixed for such application, or as soon thereafter as a jury can be obtained and sworn; which notice shall be signed by the city attorney.

Evidence of ser-
vice.

SECTION 97. The notice prescribed in the last section shall be published two successive weeks once in each week, in a daily or weekly newspaper published in said city, the last publication to be at least five days prior to the time of such application of such notice as herein directed by the affidavit of the printer or publisher of the newspaper in which the same was pub-

lished, made and filed in the matter with the court. Two days before the time of such application shall be sufficient evidence of services to charge all persons interested with notice of the proceeding.

SECTION 98. It shall be the duty of the judge, upon filing said notice and proof of service as required in the last preceding section, to nominate and select twenty-four freeholders to serve as jurors in the manner provided in section seven of this chapter, issue his writ of summons as provided in section eight except that the object for which the jury is called shall be stated to suit the case, and the said jury shall be summoned, drawn, impaneled and sworn as hereinbefore provided for obtaining a jury in the first instance, and said new jury shall assemble, proceed and discharge the same duties, and have the same power as hereinbefore prescribed for the first jury subsequent to the verdict, and all the steps and proceedings shall be the same as hereinbefore provided, except that the jury shall not be required to determine upon the necessity of taking private property for public use.

Judge shall
nominate new
jurors.

SECTION 99. In case of a vacancy in any jury impaneled under this act (after such jury has been sworn), from death, sickness or any other cause, the court in its discretion may fill such vacancy or vacancies by the appointment of some suitable person or persons qualified to act as jurors in the premises, who shall be sworn and possess the same powers and be subject to the same duties and liabilities as the jurors previously sworn: *provided*, that in all such cases the vacancy or vacancies shall be filled by a person or persons designated for that purpose by an order of the court in writing, which shall be preserved and be a part of the record in the proceeding.

Vacancies;
how filled.

SECTION 100. Whenever the report of a jury shall be confirmed under the provisions of this chapter, by the county court, the city attorney shall apply to the judge of said court for an order appointing three commissioners to apportion and assess the compensation awarded for the property necessary to be taken for the proposed improvement, by the report of the jury as confirmed by the courts as aforesaid, and in addition thereto for the cost and expense of such improvement, if certified to said judge by the city clerk as hereinafter provided.

City attorney
shall apply to
judge to ap-
point three com-
missioners.

SECTION 101. It shall be the duty of the city attorney, before making the application provided in the last section, to cause a notice of such application to be pub-

Notice of appli-
cation.

lished in a weekly paper published in said city, at least ten days before the time stated in such notice when the application will be made.

Form of notice. SECTION 102. The notice mentioned in the next preceding section shall be directed "to all whom it may concern," and shall state in substance that upon a time therein stated the city attorney, on behalf of the city, will apply to the county judge of Fond du Lac county for the appointment of three suitable persons, commissioners to apportion and assess upon the lots or parts of lots, subdivisions and premises benefited by the proposed improvement, describing it as described in the original petition, the gross amount of compensation to be paid for the property proposed to be taken for such proposed improvement, as fixed by the award of the jury in the matter, confirmed by the order of the county court of Fond du Lac county, giving the date of such order, and also, if certified to by the city clerk, the costs and expenses of the improvements, stating the amount thereof, which notice shall be signed by the city attorney.

Nomination of commissioners. SECTION 103. At the time and place specified in such notice, upon proof being made and filed, of the publication of such notice, as in the last section provided, by the affidavit of the person publishing the newspaper in which such notice was published, the judge shall nominate three discreet, respectable, disinterested freeholders, residents of the city, to make the apportionment and assessment designated in the notice prescribed in the last preceding section. But every person having an interest in the property affected thereby shall have the right to appear at the time and place fixed for the appointment and make objection, if any there be, to the fitness of any or either of the persons nominated as commissioners by the judge, and if it shall appear that any of the objections are valid, the said judge shall nominate some other person or persons until the three persons nominated shall have no valid objections presented against either of them, which persons shall be, by the said judge, appointed such commissioners by an order under his hand.

Notice to commissioners so appointed. SECTION 104. It shall be the duty of the judge to notify the persons so appointed to appear before him at some time and place, in such notice to be specified, to be sworn and enter upon their duties, at which time said persons shall appear as therein directed; but in case either or all of such persons shall fail to appear or be excused by the judge from serving, said judge shall

appoint anew or fill any and all vacancies in the commission without further notice, and shall notify the persons appointed anew or to fill any and every vacancy, to appear forthwith before him, until said commission shall be filled by three persons qualified as aforesaid who shall appear, to be sworn and enter upon the duties of the commission.

SECTION 105. Every person appointed a commissioner, as hereinbefore provided, and who shall fail to report when notified by the judge as aforesaid, or who shall fail to accept the appointment and discharge the duties, shall pay a penalty of not less than ten dollars, to be imposed as a fine by the said judge, or be collected in the name of the city: *provided*, that the judge for good cause shown under oath, may excuse any person or persons so appointed, and such, when so excused, shall be relieved from the penalty fixed by this section.

Failure to accept.

SECTION 106. It shall be the duty of the said judge to swear the persons appointed as commissioners to discharge their duties faithfully and to the best of their ability, and when so sworn to issue to them, under his hand and seal of office, a warrant or order, directing them to impartially apportion and assess the compensation awarded to be paid by the report of the jury, confirmed by the county court of Fond du Lac county, specifying the date of such confirmation, which report and order of confirmation shall be attached to the said warrant or order, together with the costs and expenses of the proposed improvement, stating the amount of the costs and expenses, and including all certified to the judge, by the city clerk, and including the commissioner's fees upon the lot, parts of lots, subdivisions, and premises by them deemed benefited by the proposed improvements, in proportion as they deem the same to be benefited, and to make return of their doings under said warrant into the county court of Fond du Lac county, on some day therein to be named, not more than five days from the date of said warrant or order, but in case the commissioners are required to assess benefits for the costs and expenses of the improvement, in addition to the amount awarded, as compensation, the warrant shall be returnable at such time as the judge shall fix, not more than thirty days from its date.

Oath of commissioners.

SECTION 107. In the execution of their duties under said warrant said commissioners may hear and examine witnesses, under oath, touching the matter intrusted to them, and for that purpose either of said commissioners are hereby authorized to administer the oath.

Commissioners may examine witnesses.

Report of commissioners.

SECTION 108. The commissioners, after having fully considered the premises, shall within the life of their said warrant or order, fully obey the the mandate thereof, and in their return to the county court, state particularly each lot, part of lot, sub-division and premises, together with the name of owner or owners thereof, when the same is known or can be ascertained by diligent inquiry.

Notice to confirm.

SECTION 109. Upon the return of the said warrant executed in accordance with the provisions of the last section, the said judge shall give notice thereof to the city attorney, who shall thereupon give notice of an application on behalf of said city to the county court of Fond du Lac county, to confirm the apportionment and assessment of the said commissioners.

Notice; how directed.

SECTION 110. The notice required in the last section shall be directed "to all whom it may concern," and shall state in substance that the warrant to the commissioners issued in the matter of the proposed improvement, stating the improvement as described in the original petition, has been returned executed and filed in county court of Fond du Lac county, and is open for inspection, and at a time therein to be named, not less than five days from the date of such notice, the city attorney, on behalf of the city of Fond du Lac will move the said court for an order confirming the assessment of the commissioners, made in pursuance thereof, which notice shall be signed by the city attorney.

Notice; how served.

SECTION 111. The notice prescribed in the last section shall be personally served on each of the persons in the assessment of the said commissioners, if to be found within the city of Fond du Lac after diligent inquiry, before the day fixed therein for the hearing, and by publication in a daily or weekly newspaper printed in the city of Fond du Lac, prior to the date of such hearing.

Proof of service.

SECTION 112. The same proof of services and publication required on the application to confirm the report of a jury shall be made and filed in the court before the time fixed for the hearing mentioned in said last notice.

Court may confirm or set aside assessment.

SECTION 113. The court shall at the time specified in the last mentioned notice, in case the proof of service, in the last section provided, shall have been filed, or at any other time or times, as it may be postponed or continued, such hearing may consider such report and assessment of commissioners, and the objection thereto, if any, shall have been filed, and may confirm

or set aside the said assessment or offer it back to the said commissioners for revision, reconsideration or correction.

SECTION 114. The provisions of this chapter relating to the hearing on the application to confirm the report of the jury, and the decision thereof, and the rights of the parties therein and thereafter, shall apply to and govern the proceedings on the application to confirm the assessment of the commissioners.

This chapter shall apply to assessment of commissioners.

SECTION 115. Any person who has filed objections to the confirmation of the report of the jury, as provided in this chapter, and who may feel aggrieved by the decision of the county court confirming the same, or any person interested who may feel aggrieved by the verdict of the jury and the judgment entered thereon, may appeal from such judgment or order confirming the report, to the supreme court, but not otherwise, upon giving notice of appeal, particularly specifying the errors complained of, with an undertaking, as upon appeals from interlocutory orders by the laws of this state: *provided, however*, that such notice of appeal must be served and undertaking given within ten days after the entry of the judgment or order appealed from: *provided*, that such appeal shall not be effectual to stay proceedings, unless the appellant shall, within the time aforesaid, give a further undertaking, with two sufficient sureties, running to the city of Fond du Lac, in such sum as the judge shall fix, not less than five hundred dollars, conditioned to pay all damages which may be sustained by reason of the appeal in case the judgment or order appealed from is affirmed in whole or in part. The sureties shall make affidavit, indorsed upon, or attached to, the undertaking, that each is worth the sum therein specified over and above all his liabilities, in property and exempt from execution, and such undertaking shall be approved by the judge of said court.

Right of appeal

Notice of appeal must be served in ten days.

SECTION 116. The provisions of the last section relating to and limiting appeals shall apply to and govern the right of appeal from the order confirming the assessment of the commissioners.

Last section to apply to appeal from order confirming assessment.

SECTION 117. In case of any appeal as herein provided, it shall be the duty of the county court to transmit to the supreme court a certified copy of the record and proceedings in the case, with the notice of appeal and undertaking, within twenty days after the service of such notice and undertaking: *provided, however*, that no such return shall be required to be made until the

Failure to deposit fees a waiver of appeal.

party appealing shall deposit with the judge of the court the fees therefor, and a failure to make such deposit shall be taken to be, and shall be, a waiver and abandonment of such appeal, and no further proceedings shall be had thereunder.

Hearing appeal. SECTION 118. Upon the hearing of any appeal from any judgment, order or proceeding under this chapter the supreme court may reverse or affirm the judgment, order or proceeding appealed from: *provided*, that no reversal shall be had or made, except for errors of law, and only in regard to the appellant or appellants.

Reversal of error to bar further right of appeal. SECTION 119. If there be a reversal for any error which may be corrected or supplied in the county court, with due regard to the public interest and the rights of individuals the appellate court shall remand with instructions to the county court to correct or supply the error, and thereupon said last named court shall correct or supply the error and the judgment or order appealed from shall stand without any further right of appeal.

Common council have power to discontinue proceedings. SECTION 120. Whenever any judgment or order appealed from under the provisions of this chapter shall be reversed as to any appellant the common council on behalf of said city may elect to pay the compensation claimed by the appellant or appellants, or remit such portion of any assessment as the appellant or appellants may demand, and upon filing a resolution in the county to that effect within twenty days after notices of such reversal, the order of the county court shall be reviewed and confirmed as to all persons interested therein, except such appellant or appellants, and without further right of appeal. But if the common council fails so to elect, all the proceedings shall be null and void, except in case of a reversal and remanding, with direction as in the last section provided. But the common council shall have the right and power to abandon and discontinue proceedings under this act at any time before the final confirmation of the assessment of the commissioners.

Final confirmation. SECTION 121. The final confirmation of the order confirming the report of the jury, and the assessment of the commissioners shall be final and conclusive as to all persons interested in the premises affected thereby, and the assessment made by the commissioners from the date of the final confirmation, thereof, until they are paid and satisfied, shall be a lien upon the premises as assessed respectively.

Judge shall SECTION 122. Whenever the report of the jury and

the assessment of the commissioners shall be confirmed and the time for appeal passed, the judge of the county court shall make up a judgment roll which shall contain all the original papers filed in the matter of the condemnation and assessment, together with all the judgments or orders made therein, and the notices and proofs filed therein, and all papers and orders relating to any and all appeals taken therein, and the decision thereon if filed in said court; and shall append thereto his certificate under his seal of office, stating that "such judgment roll contains all the original papers in the matter of such condemnation and assessment, and that the same contains a true and correct history of the proceedings and of the whole thereof."

certify to correctness of proceedings.

SECTION 123. The city attorney shall file such judgment roll in the office of the city clerk, and said clerk shall thereupon record such judgment roll in the records of said city, and shall append to such record his certificate that the same is a true and correct copy of the judgment roll certified back by the judge of the county court of Fond du Lac county, in the matter of the condemnation of private property, and assessment of benefits by reason of a certain public improvement, designating it with reasonable certainty, and of the whole thereof.

Judgment roll to be filed in office of city clerk.

SECTION 124. The judgment roll herein provided shall be received in evidence in all courts and places, and have the same force and effect, and the benefit of the same presumptions as if it were the judgment of a court of general jurisdiction, and be conclusive evidence of the regularity of all the proceedings had in the matter, and the record thereof, made and certified by the city clerk, as aforesaid, on the records of the city of Fond du Lac, shall be received in evidence, and with the same force and effect as the original judgment roll.

Judgment roll, as evidence.

SECTION 125. The city clerk, after said judgment roll is filed in his office as aforesaid, shall make a copy of the award and assessment contained in said roll, and certify the same to the city treasurer.

City clerk shall make copy of said roll and certify same to treasurer.

SECTION 126. The city treasurer, upon receipt from the city clerk of the award and assessment, as in the last section provided, shall, as in the next section provided, notify all persons whose property is assessed in such assessment, to pay into the office of the city treasurer the amount of such assessment, after deducting therefrom the amount of any award due any person, which notice shall contain a copy of the assessment made by

City treasurer to give notice of such assessment.

the commissioners, and shall require all persons named therein, or having an interest in the property therein described, to pay the amount assessed against their property, less the award of compensation, if any, stating it, within sixty days from the date of such notice, or that in defiance thereof certificates will be issued against such premises for such amount, drawing interest at the rate of twenty-five per cent., and collectable as other taxes are collected.

Notice to be published.

SECTION 127. The notice designated in the last preceding section shall be published in one or more newspapers published in said city, for four successive weeks, once in each week, and the last publication thereof shall be at least ten days before the expiration of said sixty days from the date of such notice. And proof of the publication of such notice as herein directed, by the affidavit of the printer or publisher of the newspaper in which the same was published, made and filed with the city treasurer, shall be conclusive evidence of such publication, and shall be sufficient evidence of the service of such notice on all persons therein named or interested in the property or any part thereof therein described.

Affidavit of policeman.

SECTION 128. The affidavit of any policeman, of inability to make personal service of any notice under this act because of inability to find the party to be served, within the city, shall be conclusive evidence of diligence, and the affidavit of any person to the fact of service of any notice in either of the methods prescribed in this act, shall be presumptive proof that the service was rightly and properly made as therein stated. Proof of the publication of the notice required in the last section shall be made and filed with the city treasurer, and a duplicate thereof shall be made and filed in the office of the city clerk, and by him attached to the judgment roll and recorded in the records of the city.

Proof of publication to be made.

Delinquent taxes.

SECTION 129. The city treasurer, as soon as may be after the lapse of time specified in the notice, shall certify to the comptroller a list of the assessments remaining unpaid and delinquent, specifying particularly the property chargeable therewith, and the name of the owner thereof, if known, accompanying the same with the proofs of the notice aforesaid.

Certificates to be made out.

SECTION 130. It shall be the duty of the comptroller, forthwith to make out certificates upon the several lots, parts of lots and premises, in said list shown to be delinquent, stating the amount chargeable to such lot, part of lot and premises respectively, which certifi-

cates shall bear date the day succeeding the sixty days given by the notice, or the proof of service shall show the same to be, and shall upon their face draw twenty-five per cent. interest and shall be transferable by indorsement and shall each be numbered, and when complete he shall present the same to the city clerk, who shall sign the same, and the said comptroller shall thereupon enter in the books of his office, a complete list thereof, and shall countersign and deliver the several certificates to the city treasurer, to be held or collected for the benefit of whoever may be interested therein, and if the same shall be paid within thirty days next preceding the levying of the general city taxes, the same shall be entered in the tax roll against the premises in the certificate described, and collected the same as other taxes are collected.

SECTION 131. The common council shall within ninety days after the final confirmation of the condemnation proceedings and assessments of benefits, pay or tender to the respective persons entitled thereto, the several amounts awarded by the report of the jury as confirmed or elected as above provided for, to be paid by the common council, less the amount assessed to such persons respectively for benefits: *provided, however,* that every person claiming damages for the taking of land, shall before he or she shall be entitled to receive any pay for the same, present to and leave with the city attorney, for the use of the city and subject to his approval, an abstract of title of the premises taken, and in which damages may have been awarded, showing an estate in fee simple in the said claimant.

SECTION 132. But in case no person shall make the proper proof of title as provided in the last section, the common council may deposit the amount in the treasury of the city, subject to the order of the person or persons entitled thereto, on proper proof made, and upon such payment, tender or deposit, the city may enter upon, take possession of and convert the property and premises so condemned as aforesaid, for the use and purpose for which it was condemned.

SECTION 133. In all cases where any real estate subject to any mortgage, lien, lease or agreement shall be taken as aforesaid, all the covenants and stipulations thereof, so far as they relate to the lands taken, shall cease, determine and be discharged upon the final confirmation of the condemnation proceedings. And upon application of the city attorney the person holding the same shall release the land taken, from the ef-

Amounts
awarded to be
paid by com-
mon council.

Proof of title.

Real estate sub-
ject to mort-
gage.

fect of such mortgage, lien, lease or agreement, by an instrument in writing, executed and acknowledged so as to be entitled to record, according to the laws of the state.

In case of doubt.

SECTION 134. If in any case there shall be any doubt as to who is entitled to damages or compensation for land or property taken, the city may require of the claimant a bond, with good and sufficient sureties, to hold said city harmless from all loss, costs and expenses, in case any other person should claim said damages or compensation.

This chapter shall apply to all cases of public improvements only.

SECTION 135. All the provisions of this chapter relating to the appointment of commissioners, their powers and duties, and the method of collecting and payment of benefits assessed, shall apply to and govern in all cases of public improvement in said city, but shall not apply to the construction or repair of sidewalks, or any work or improvement designated in other chapters of this act, or the act of which this act is amendatory, unless by special reference the same are made applicable.

Council shall have power to order improvements.

SECTION 136. Whenever the petition presented to the common council as aforesaid shall ask for any improvement, particularly describing the same, which, in addition to the payment of the compensation for the property taken, will involve the expenditure of money or the doing of work, after the condemnation of the land, or require the letting a contract to do such work, then, in such case, after the confirmation of the report of the jury awarding the compensation for the property to be taken, and before applying for the appointment of commissioners, the city attorney shall procure and file in the city clerk's office a certified copy of the report of the jury awarding compensation, and the order confirming the same; whereupon the common council shall have the power to make, and may order the improvement made, and the city clerk by direction of the common council, shall advertise for such time as it may deem proper, in one or more of the newspapers printed in said city, for proposals for doing of said work, reserving the right to reject any and all bids; and the common council shall let the same to the lowest responsible bidder, reserving always the right to exercise its discretion, and to reject any and all bids; such contract when let, to be in the name of the city, but in no wise rendering the city at any time or in any manner liable for the work done under it; but if no bids are received or none are made acceptable to said

council it shall cause the work to be done at as low and reasonable sum as the same can be done.

SECTION 137. When the contract for doing the work mentioned in the last preceding section shall have been made, the city clerk by direction of the common council, shall certify the amount of the contract price for doing such work and the costs and expenses of making such improvement to the county judge and the said judge shall add the costs and expenses of making such improvement, to the sum awarded by the jury as compensation for the property to be taken, and in his warrant to the commissioners the judge shall require them to apportion and assess the gross amount upon the property by them deemed benefited by the improvement.

Costs and expenses of improvement.

SECTION 138. After the certificate of the city clerk shall be filed as aforesaid, the city attorney shall apply for the appointment of commissioners, and said commissioners shall be appointed by the judge in the same manner and with the same powers and duties as herein before provided, and the same steps and proceedings shall be had as in the appointment and assessment of the compensation awarded for the property taken, but the costs and expenses of making the improvement as certified by the city clerk, shall be added to the award of the commissioners and the gross amount as recited in their warrant, shall be apportioned and assessed by said commissioners upon the lots, parts of lots, subdivisions and premises by them deemed benefited by the proposed improvement.

Manner of appointing commissioners

SECTION 139. Whenever any improvement shall be made under the provisions of this chapter beyond the condemnation of property for public use, the city surveyor, at the request of the common council, shall make profiles, plans or specifications of the proposed improvement and shall cause estimates to be made of the whole expense thereof, and if deemed necessary by the common council, the number of cubic yards to be filled in or excavated in front of each lot or other subdivision of land, which plan and specification, together with the estimate, shall be filed in the office of the city clerk before advertising for proposals, but the failure to make or file the same shall not in any way affect or invalidate the assessment of benefits for such improvement.

Profiles, plans, etc., to be made.

SECTION 140. The jury and the commissioners in the discharge of their duties respectively may adjourn from day to day as they may think proper: *provided*,

Jury and commissioners may adjourn from day to day.

that there shall be no adjournment beyond the time in which they are respectively required to report.

County court to have special jurisdiction.

SECTION 141. The county court of Fond du Lac county shall be taken and deemed to be always open for the proceedings provided in this chapter, and there is hereby conferred upon the said court and the judge thereof, special jurisdiction to do and perform all the acts and duties of this chapter directed to be done by the said court and the judge thereof.

Compensation and fees.

SECTION 142. The compensation and fees to be paid the jurors and commissioners under this chapter shall be fixed by the common council by resolution, and the same shall be paid out of the city treasury: *provided, however* that in all proceedings under this chapter the common council before acting upon any petition, may require a bond with sufficient sureties to be given the city conditioned to indemnify and save the city harmless of and from all damages, costs and expenses by reason of any proceedings taken and had under the petition, if the same for any cause fail or be abandoned.

Council to have power to appoint superintendent.

SECTION 143. Whenever the common council shall decide to make any public improvement under this chapter, or any other chapter of the charter, such common council after having let the contract therefor shall have the power and authority to appoint a superintendent of the work of making such improvement, prescribe his powers and duties and fix the compensation to be paid him for his services.

TITLE XI.

IMPROVEMENT OF STREETS, ALLEYS, ETC.

Grades of streets, etc.

SECTION 144. The common council shall have the power to establish, alter and change the grade of any and every street, sidewalk, alley or lane in the city, and cause accurate surveys and profiles thereof to be made, which shall be filed and recorded in the office of the city clerk in books provided for that purpose.

Construction of sidewalks.

SECTION 145. The sidewalk superintendent and the street commissioners, respectively, shall have power to order, construct, build and repair as hereinbefore and hereinafter prescribed, all sidewalks, and cause them to be placed on the established grade, and also all necessary crosswalks and crossings, at the expense of the lots fronting on the same, or on the public square immediately adjacent thereto.

Notice to lot

SECTION 146. Whenever the sidewalk superintend-

ent or street commissioners, under their respective powers and duties shall deem it necessary to make any improvement or do any work as provided in the last section, (except as hereinbefore specially provided), he or they shall notify the owners of the lots, parts of lots or parcels of land, chargeable with the expenses thereof, by a notice in writing, specifying the improvement to be made or work to be done, and requiring such owner to do or cause the same to be done on or before a day in such notice to be named, such notice shall be personally served at least ten days before the expiration of the time named therein, upon the owners of the lots, parcels of land or parts of lots aforesaid, if such owner or owners can be found within the city; if any owner can not be found within the city, then such service shall be sufficient, if such notice be left at his or her residence, if he or she have a residence in said city, with some person above the age of ten years who may be found thereat, but if service cannot be made in either of the preceding ways, it shall be deemed sufficient if served upon the occupant of the premises, if there be any, and if not, by posting the same upon the premises.

owners to make
improvements.

SECTION 147. Whenever the notice shall have been given, as provided in the last section, and proof thereof made to the sidewalk superintendent or street commissioners, he or they shall advertise, for such time as they may deem proper, in one of the public newspapers printed in said city, for proposals for doing such work, and shall let the same to the lowest responsible bidder, reserving always the right to exercise their discretion, and to reject any and all bids; such contract, when let, to be in the name of the city, but in no wise rendering the city, at any time or manner liable for the work done under it; but if no bids are received or none are made acceptable to the said commissioners or superintendent, they shall cause the work to be done at as low and reasonable sum as the same can be done.

If work not
done, to let to
lowest bidder.

SECTION 148. Whenever a petition shall be presented to the common council, asking for the grading, graveling, planking or paving of any street, alley or lane in said city, or the construction of any sewer, designating the improvement and the boundaries thereof, the common council may, if it deems expedient, cause the same to be done to the center of such street, alley or lane, or according to the specifications of said sewer, at the expense of the lots and parts of lots on either side of such street, alley or lane, or fronting on the public

Grading streets.

Petition to be signed by three-fourths of property owners.

square bounded by such street, alley or lane to be improved, or adjacent to such sewer to be constructed: *provided*, that such petition be signed by three-fourths in number of the owners of the property chargeable with the expense of the desired improvement and not otherwise, and such notices and such proceedings shall be given and had, and contracts let as provided by the two next preceding sections and other provisions of this act.

Estimates of expense.

SECTION 149. Whenever any improvements shall be made under the provisions of this title, except repairs of sidewalks as aforesaid, the city engineer at the request of the common council shall cause estimates to be made of the whole expense thereof, and of the proportion to be assessed to each lot, and in case of grading streets, alleys, lanes or sidewalks, or the construction of sewers, of the number of cubic yards to be filled in or excavated in front of each lot and part of lot, and such estimate shall be filed in the office of the city clerk before the giving notice for doing the work provided in this title. And within the meaning of this title, lots shall be considered and taken to extend to the center of streets, alleys and lanes abutting the same; but whenever any improvement within the provisions of this title shall be at the intersection of two or more avenues, streets, alleys, lanes or highways, each portion of the cost and expenses thereof shall be assessed to and paid from the ward fund, when the work shall have been done.

Lots to extend to center of streets.

Street commissioner's certificate.

SECTION 150. Whenever any contract entered into under the provisions of this title shall have been fulfilled and the work completed, or whenever the work shall have been done without contract, in the case hereinbefore provided, the street commissioners shall prepare and certify to the comptroller the amount of work done by each contractor or person doing the same, and the nature of it, the date of it, the sum due therefor, and the property chargeable therewith.

Comptroller's certificates.

SECTION 151. The comptroller, upon receipt of any such certificates, shall prepare certificates to the person or persons entitled to receive the same in form as is prescribed in the next preceding title, shall procure the city clerk's signature to the same and shall countersign them and enter the same in his book kept for that purpose, and the same shall be entered on the tax roll and collection thereof enforced as in all cases of certificates for assessments made under this act.

Money to be

SECTION 152. All certificates issued under this title

shall be a lien upon the premises described therein from the date thereof, and shall draw interest at twenty-five per cent. and shall be transferable by indorsement, but the city treasurer shall not pay any money collected by reason of any such assessment on account of such certificate, except upon the surrender and cancellation of the certificate.

paid only on
surrender and
cancellation of
certificate.

TITLE XII.

VACATING STREETS, ETC.

SECTION 153. The common council may discontinue or vacate any street, alley, lane or highway in said city by a vote of two-thirds of the members elect of said council, upon the petition of two-thirds of the owners of lots abutting on any such street, alley, lane or highway.

Streets, etc.,
may be vacated
upon petition.

SECTION 154. Whenever any such petition signed as in the last section provided, shall be presented to the common council, accompanied by a bond to the city with good and sufficient surety to be approved by the mayor, conditioned to pay all the expenses attendant upon the proceedings incident to the vacating of streets, and to indemnify and save the city harmless of and from all costs, expenses and damages incident to, or which may grow out of the proceedings sought to be instituted by such petition, the council may consider the same, and if by a vote of two-thirds of the members elect it shall declare that the prayer of the petitioners ought to be granted, then it shall be the duty of the city attorney to publish in the official newspaper printed in said city a notice specifying that a petition has been filed with the common council praying the vacation or discontinuance of some street, alley, lane or highway in said city, specifying which, or, if only a part thereof, specifying what part; and that the common council has declared such vacation or discontinuance was expedient, and that the owners of property, and all others interested have until a day in such notice named, not exceeding ten days from the date thereof, in which to file claims for damages or compensation growing out of the proposed vacation or discontinuance, if granted, with the city clerk.

Notice of vaca-
tion.

SECTION 155. The notice required in the last section shall receive at least two publications before the day limiting the time for filing claims, and if at the expiration of the time so fixed no claims for damages or compensation shall have been filed, on proof of the

Notice to be
published.

publication of the notice aforesaid, the common council, by an order in writing, entered in the minutes, by vote of two-thirds of the members elect as aforesaid, may vacate or discontinue such street, alley, lane, highway, or any part thereof, as prayed; and the failure to file any claim for damages or compensation by any person or persons, shall be in all courts and places a waiver on the part of such person or persons of any such claim.

Estimates of damages and benefits.

SECTION 156. If any claim shall be filed, it shall then be the duty of the city attorney to file the petition, and a copy of the minutes of the action of the common council therein, certified by the city clerk, and also the claims for damages filed with the city clerk, in the county court of Fond du Lac county, and give notice in writing to the persons filing such claims that on some day in the notice mentioned, not less than three days from the date thereof, application will be made to the judge of said court for the appointment of three commissioners to hear, try and determine the claim or claims, and fix and assess the amount of damages and compensation, if any, that any and every claimant is entitled to receive, and apportion the same upon the property to be benefited by reason of the vacation or discontinuance. And all proceedings thereafter shall conform to and be governed by the provisions of title ten of this act, so far as the same relates to the appointment of commissioners and proceedings thereafter to the final confirmation of the assessment and the proceedings to collect the same, all inclusive.

Damages to be paid before vacation.

SECTION 157. It shall be the duty of the common council to pay or cause to be paid to the parties claimant, such damages and compensation as shall be awarded by the said commissioners, as confirmed, within ninety days after the order of final confirmation, and immediately, thereafter by "an order in writing," passed by the vote of two-thirds of the members elect of said common council, may vacate or discontinue such street, alley, lane or highway, or any part thereof, as prayed.

Orders of vacation to be recorded.

SECTION 158. The order of the common council vacating or discontinuing any street, alley, lane or highway, or any part thereof, may be recorded in the office of the register of deeds of Fond du Lac county, and shall have the same force and effect as a release of title or a quit-claim deed from the city of Fond du Lac.

Costs and expenses; how paid.

SECTION 159. The costs and expenses of this proceeding shall be paid in the first instance out of the

city treasury; but if the same is not reimbursed to the city of Fond du Lac within thirty days after payment, it shall be deemed a breach of the condition of the bond, and an action will lie on behalf of the city, against the obligees until full indemnity is obtained.

TITLE XIII

BRIDGES, STREETS, SEWERS, PUBLIC BUILDINGS, ETC.

SECTION 160. The common council shall have the charge of the repairing and of the building of bridges, the paving and grading of streets, lanes and alleys, and the construction of sewers and reservoirs and sidewalks, except when otherwise herein provided; the building, care and protection of engine and school houses, markets, hospital and all other public buildings, to be built or kept in repair by the city. It shall have charge of all works for changing the stream, bed, channel or current, or for widening, deepening, straightening or dredging the Fond du Lac river or any of its branches, or any stream, creek or river, and of straightening, filling up and improving any slough, ravine or water course, in said city. The aldermen of the wards shall have the general supervision of the streets, alleys and public places in their respective wards and of cleaning, repairing and keeping in good order of the same. The common council shall control, superintend and direct the laying of gas or water pipes in the streets, alleys and public places of said city, and determine the location thereof: *provided*, that no contract shall have any force or effect until the same has been considered and approved by the common council and countersigned by the comptroller, except as otherwise herein specially directed.

Further powers of common council.

SECTION 161. All contracts for work, labor or material let by the common council, or any board or officer of the city under the provisions of this act, shall be drawn by the city attorney and shall be in the name of the city of Fond du Lac, and shall reserve to the city, through said council, board or officer, the right to decide all questions arising as to the proper construction of the work or the quality or fitness of the material; and in case of improper or defective construction, to order a reconstruction of the same or declare the contract forfeited, and relet the same, holding the original contractors' bond as indemnity to the city for any loss by reason of imperfect or defective work, or by reason of any increased cost and expense of doing the same or procuring it to be done, and shall fix the amount,

Contracts to be in the name of the city.

time and manner of payment, provided always, that not less than fifteen per cent. shall be retained from each and every estimate until the final completion of the contract and acceptance by the council or board or officer authorized thereto, and shall be in operation until approved by the common council and countersigned by the comptroller.

How contract to be let.

SECTION 162. The contract shall be signed on behalf of the city by the board or officer thereto authorized, and by the person to whom the same is awarded, and such execution shall be at the time of awarding the same; but if for any cause the person to whom the original award was made shall refuse or fail to sign the same the council, officer or board thereto authorized, may relet to any other bidder, at their option, who will sign the same; but not at an advanced price.

Bids, etc.

SECTION 163. If the city clerk shall open, or allow any other person to open, any bid or proposal left in his office in conformity to the provisions of this bill, except as herein directed, he shall forfeit to the city of Fond du Lac, to be recovered in its name and for its use a penalty of not less than fifty dollars nor more than one hundred dollars, and in addition thereto shall be removed from his office.

TITLE XIV.

THE DEPARTMENT OF EDUCATION.

Power of board.

SECTION 164. The board of education may make all necessary rules and regulations for its government and proceedings, and in the absence of the president of the council, may elect from its own number a presiding officer pro tempore; and in the absence of the city clerk may elect from its number a clerk pro tempore.

In case of tie vote.

SECTION 165. The board may meet from time to time, and at such place in the city as it may designate, and a majority of the commissioners shall always be required to constitute a quorum, and the president of the board may act as committee and participate in the deliberations of the board, but shall not be entitled to vote therein, except in case of a tie vote, when he may give the casting vote.

Duty of clerk.

SECTION 166. The clerk of the board shall keep a record of the proceedings of the board in a book to be provided for that purpose, and shall record copies of all official reports made by the board or the superintendent of schools. He shall also, under the direction of the board, take the annual enumeration of scholars

residing in the city at the time prescribed by law, and shall keep and preserve all books, records, papers or other property belonging to his office, and deliver the same to his successor in office.

SECTION 167. The board of education shall have power:

1st. To organize and establish such and so many schools in the city and in the several wards as it may deem necessary and required for the public good, and alter or discontinue the same at pleasure.

Establish schools.

2d. To have the custody and safe keeping of the books, furniture, school apparatus and appendages, and all the property belonging to the schools, except the buildings and realty.

Have custody of school houses, etc.

3d. To contract with and employ in behalf of the city, all teachers in the schools of said city under the direction of said board, and who shall have been licensed, and at its pleasure remove them.

Contract with teachers.

4th. To hire buildings suitable for school houses and lease sites for the same, and to purchase necessary fixtures, furniture and apparatus for the schools of the city; but only with the consent of the common council as hereinafter provided.

Hire suitable buildings, etc.

SECTION 168. It shall be the duty of the board of education, before the commencement of the school year, annually, to determine the amount of salaries or wages to be paid to the teachers in the several schools and grades, respectively, for the year then next ensuing, and report the same to the common council for its action. If the superintendent of schools concurs with the estimate and report of the board, he shall indorse his approval thereon; otherwise he shall make and submit an independent report to the common council.

Salaries to be paid.

SECTION 169. The common council shall consider the report or reports so made, and shall act thereon, and by resolution fix the salaries or wages to be paid to the teachers in the several schools respectively, according to grades, which resolution shall be certified by the city clerk to the board of education, and thereafter such board shall not contract for the payment of any salary or wages greater than the sum fixed in said resolution, except by the special order of the common council.

Common council to fix amount of salaries.

SECTION 170. The board of education shall also annually, before the close of the school year, make estimates of the expenses for furniture, apparatus, school room fixtures, incidentals, fuel, cleaning and care of rooms and rent of buildings necessary to be incurred

Estimates of the expense for furniture, etc.

in the then next ensuing year, and file the same with the comptroller; if the superintendent concurs in such estimate, he shall approve the same, otherwise he shall submit an independent estimate in accordance with his views.

Superintendent; his powers and duties.

SECTION 171. The superintendent of schools shall be the chief executive officer of the department of education in the city. He shall examine the estimate made by the board of education for teachers, wages and salaries and expenses for schools, which are in this title hereinbefore required to be made; and if he concur in the correctness and necessity thereof, he shall approve the same; otherwise he shall submit estimates of his own, as is hereinbefore provided. He shall examine all persons seeking employment as teachers in any of the school departments of the city, in the presence of the board of education, and shall give his advice to the board upon the fitness and qualification of each candidate. He shall visit all the schools as often as his duties will permit. He shall pay special attention to the classification of the pupils and to the assignment of studies to the several classes. He shall see that each teacher maintains proper discipline, and shall carefully watch and study the capacity of each teacher to impart knowledge, preserve order and command the respect and obedience of the pupils, and shall report to the board of education from time to time concerning such teachers, and the discipline, government and progress of the pupils in the several schools. He shall see that the orders and regulations of the board of education are executed; shall attend the meetings of the board when required, and shall advise the board in all matters relating to the schools and school property, and in all things exert himself to promote the interests and welfare of the pupils and teachers, and advance the efficiency of schools in the city.

Board to make rules, etc.

SECTION 172. The board of education shall, from time to time, make such rules and regulations for the government and organization of schools, for the instruction and reception of pupils, and their transfer from one school to another, and for the promotion and good order and discipline in schools, as to it shall seem expedient, and also for the care and management of the several school-rooms, fixtures, furniture and apparatus in the city, and shall establish the text-books to be used therein.

Non resident pupils.

SECTION 173. The board of education shall have power to allow the children of persons not resident in

said city to attend any of the schools therein, upon such terms as the board shall by resolution prescribe, fixing the tuition therefor: *provided*, that no such pupil shall be received until he or she shall have paid into the city treasury, in advance for the current term, the amount of tuition fixed by said board to be paid therefor.

SECTION 174. It shall be the duty of the board of education to report to the common council, on the first Monday of August in each year, the condition of the several schools in said city, the average number of pupils in attendance, the names and rate of compensation of the several teachers, the cost of supporting each and all of said schools, since its previous report, and also to do and perform all other duties that may be required by any general law of the state to entitle the schools of said city to participate in and enjoy the benefit of school money or school fund apportioned among the schools of the state.

Board to report annually.

SECTION 175. Teachers' wages, superintendent's salary, and all moneys due upon contract under this title, shall be audited by the comptroller, and paid by an order on the treasury, signed by the president of the board and countersigned by the comptroller, and specifying on its face the purpose for which it was drawn.

Moneys; how drawn.

SECTION 176. All the supplies of the several school houses and schools, so far as practicable, shall be furnished by contract let to the lowest bidder by the board of education, subject to the approval of the common council.

Contract for supplies to be let to lowest bidder.

SECTION 177. The rules governing the letting of contracts, as in this act provided, shall, so far as the same may be applicable, govern and apply to the advertising for and letting of contracts by the board of education.

SECTION 178. The common council shall from time to time, as necessity may require, appropriate such sum or sums as it may deem requisite to meet the contingent and incidental expenses of the department of education, not otherwise provided for, which shall be paid out under the direction of the board, without being first allowed by the common council, by order signed by the president of the board, specifying the purpose for which the order was drawn, such order being first countersigned by the comptroller; but no appropriation after the first shall be made until the board report in detail the items of expenditure by it made

Contingent expenses.

of the previous appropriation, and the same shall be approved by the common council.

Authority to incur debt limited.

SECTION 179. The board of education shall have no authority to incur any debt or liability except as herein provided, and only as herein provided.

TITLE XV.

POLICE DEPARTMENT.

Mayor to have general control.

SECTION 180. The mayor *ex-officio*, shall be the head of the police department of the city and shall have the general supervision, management and control of all members of the police force, including the chief of police, and of the watch-houses and lock-ups belonging to the city, and may suspend any or either of them, summarily, for any neglect or improper discharge of duty or for any misconduct or disobedience of orders.

Chief of police; his powers and duties.

SECTION 181. The chief of police, under the mayor, shall be the chief executive officer of the police department. He shall have the custody of the watch-house and city pound, and the general supervision and direction of the police force of the city. He may apprehend without process any person or persons while offending within his view against any law of this state, or against the laws, ordinances, by-laws, regulations of the city, and bring the person or persons so offending before one of the justices of the peace of said city having jurisdiction, and enter the proper complaint against him or them for trial. He shall have power to commit for safe keeping and detain in the watch house every person so arrested until he can be arraigned before a justice of the peace, or shall be discharged on bail or upon the written order of the mayor; but he shall in no case commit a prisoner to the lock-up when the arrest was made in the day time and before six o'clock in the evening, and a justice of the peace can be found before whom to arraign the prisoner, and lodge a complaint against him. He shall in addition perform all duties that may be prescribed by any ordinance, by law, regulation or direction of the common council. He shall repair to fires, all riots and tumultuous assemblies, take charge of the police present, protect property, preserve peace, disperse mobs, and arrest all persons who are disorderly and engaged in the disturbance of the peace. He shall report all complaints against policemen for misconduct, improper discharge of or delinquency in duty, and shall cause to be obeyed all the rules and regulations provided for the police depart-

ment. He shall receive as compensation for his services such salary as the common council may prescribe, and no other.

SECTION 182. Every policeman shall have the same power of arrest and commitment, and under the same restrictions as the chief of police. They shall perform the duties of night watchmen for the city, and any other duties which may be imposed upon or prescribed for them by the common council. They shall in all respects obey the orders of their superiors in the department and be at all times subject to the orders thereof. They shall receive such compensation for their services as the common council may allow and determine and no other.

Duties of policemen.

SECTION 183. It shall be the duty of the chief of police and every policeman appointed under this act to arrest and bring to trial all offenders against the ordinances, by-laws and regulations of the city, or serve and return all civil process in suits of the city against such offenders. They or each of them shall have authority to enter any house, store, saloon, building or place when any offender against any city ordinance, by law or regulation is harbored or secreted, or when any person has in their hearing or presence committed any breach of the peace or violation of any city ordinance, by-law or regulation, or when any riot, disorderly conduct, unlawful assembles, noise, outcry, alarm or other disturbance shall be made; and any person or persons, who shall obstruct any such officer or officers in the lawful discharge of his or their duty, shall, upon conviction before any court having jurisdiction, be fined in the sum of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail of Fond du Lac county, not less than one month nor more than six months, in the discretion of the court.

Arrest and trial of offenders.

SECTION 184. The mayor, chief of police or any policeman, may in case of necessity, call upon any bystander or other citizen to assist in arresting or carrying to prison any offender; and any and every person who shall refuse to aid such officer when lawfully called upon, shall upon conviction thereof before any court having jurisdiction, be fined in a sum not exceeding twenty-five dollars.

Fire; in case of refusal to assist.

SECTION. 185. The justices of the peace elected under this act are authorized and empowered, and jurisdiction is hereby conferred upon them to hear, try and determine all the offenses arising under this act.

Jurisdiction conferred on justices under this act.

Additional police force.

SECTION 186. The mayor in case of emergency or when he may deem proper, may appoint in addition to the police force hereinbefore provided, as many special police for temporary purposes, as he shall deem necessary, and each policeman so appointed, during the time of his appointment, shall have all the powers and discharge all the duties, and be subject to all the liabilities and regulations of regular policemen appointed by the common council under this act.

TITLE XVI.

THE BOARD OF HEALTH.

Board of health.

SECTION 187. It shall be the duty of the board of health to investigate the causes which tend to create sickness, and make diligent inquiry with respect to all matters affecting the health of the city, or any part thereof, and cause all nuisances to be abated or removed.

Care of sick, etc.

SECTION 188. It shall be the duty of said board to take all necessary precautions to prevent the spread of any pestilential or infectious disease; to make provision for the accommodation and care of all sick persons properly under the care of the city, and to make daily, weekly or monthly reports to the common council of the mortality of the city, as it may think proper.

Report of infectious cases.

SECTION 189. Every practicing physician in said city, who shall have a patient laboring under any malignant fever or other infectious or pestilential disease, shall forthwith, after the existence of any such disease be by him discovered, report the same to the mayor of the city; and any practicing physician who shall neglect to do so shall be subject to a fine of not less than ten dollars nor more than twenty-five dollars, in the discretion of the court trying the same.

Abatement of nuisances.

SECTION 190. Every member of the board of health shall have the power to direct or cause the removal or purification of all filthy substances or nauseous places tending to breed disease, and if the owner or occupant of the premises wherever such substances or places are found, shall fail or neglect, for twenty-four hours after the receipt of notice from the board of health, the health officer or any member of the board of health to remove or purify the same; such person, upon conviction thereof, shall pay a fine of not less than ten dollars nor more than fifty dollars, in the discretion of the court.

SECTION 191. Whenever the owner or occupant of any premises wherein any nuisance shall exist, or any matter or substance having a tendency to produce or spread disease may be, shall for twenty-four hours after notice, from either of the persons in the last section designated, to remove the same by purification or otherwise, fail or neglect so to do, it shall be the duty of the board of health to cause such nuisance, matter or substance to be abated or removed at as little expense as possible, and the amount of charges and expenses therefor shall be a lien and charge upon the lot wherein the said nuisance matter or substance shall have been, from the date of the abatement or removal thereof.

Expense of removing nuisances.

SECTION 192. It shall be the duty of the board of health to furnish to the person doing the work in the last section provided for, a certificate, stating the amount due, and the description of the land chargeable therewith, and the work done; and upon presentation of such certificate to the comptroller, he shall issue a certificate to such person, in form like, and having the same force and effect, and collectable in the same manner, as certificates for special assessments and improvements, as hereinbefore provided, and shall enter the same on his books and keep an accurate list of the same.

Certificate of work done.

SECTION 193. In case the owner of the property whereon the evil complained of exists is not a resident of and has no agent in the city, and the premises are unoccupied, the same proceedings shall be had as in the last two sections provided, except that the work may be done without notice.

In case of non-residents.

SECTION 194. Any member of the board of health, or officer thereof, shall have power to enter into any building, store or stable and cause the floors to be raised, if necessary, and examine the cellar, vaults, sinks, drains and grounds beneath, and to cause all stagnant waters to be drained off, and all pools, sinks, vaults and low grounds to be cleaned, filled up, purified or otherwise improved or changed, and to cause all privies to be cleaned and kept in good order, and to cause all dead animals, manures or unwholesome things to be buried or removed beyond the city, and the expense of doing the same shall be collected and enforced in the same manner as is provided in section one hundred and ninety-two of this title.

Board of health may enter buildings.

SECTION 195. The board of health shall establish rules and regulations for the preservation of health and

Rules and regulations.

the prevention of disease, and fix penalties for the violation thereof, which it shall report to the common council for approval; and if the same shall be approved by a majority of the common council, the mayor shall approve the same by order of the common council, and the clerk shall attest the same, and publish as ordinances are published and recorded; and when so published and recorded they shall have the force and effect and be considered as ordinances and regulations of the city.

Physician may be appointed

SECTION 196. The board of health may appoint a physician to attend exclusively to sick persons suffering under infectious or pestilential diseases, properly under the care of the city; which appointment shall be subject to confirmation by the common council.

Compensation.

SECTION 197. The compensation of the health commissioners and the health officer shall be determined and fixed by the common council.

Auditing accounts.

SECTION 198. The board of health shall audit all bills and accounts for the care, medical attendance and support of patients properly chargeable to the city; and no bill or account shall be allowed or paid except it first be acted upon by the said board and its action indorsed thereon.

Fines.

SECTION 199. Any person who shall knowingly and designedly bring or cause to be brought into said city any person not a resident therein, who shall at the time be affected with small-pox or any infectious or pestilential disease, shall upon conviction thereof pay a fine of not less than fifty dollars nor more than one hundred dollars, in the discretion of the court.

TITLE XVII

MISCELLANEOUS PROVISIONS.

Oaths and bonds of officers.

SECTION 200. All officers elected or appointed under the provisions of this act shall in all cases, when the method of qualification is prescribed by a general law of the state, conform thereto, and take such oath and file such bond, and do such other act as may be required by such law, in addition to any of the requirements of this act.

City property exempt.

SECTION 201. All property, real, personal and mixed, belonging to or which may hereafter belong to the city of Fond du Lac, and held by it for municipal purposes, shall be and is exempt by law from execution or any process to compel the collection of any debt or demand against the city.

SECTION 202. No execution shall ever issue upon any judgment against said city, but all judgments shall be collected and enforced in the same manner as payments against towns, and not otherwise.

Of executions and judgments.

SECTION 203. No action shall lie or be maintained against the city of Fond du Lac on contract, until the claimant shall have presented to the common council a statement of the claim and the amount thereof, and the circumstances out of which it arose, duly verified on the oath of the claimant, and the council shall have allowed a regular meeting to have passed without an adjustment with the claimant of such claim or demand.

Of actions against city.

SECTION 204. No action in tort shall lie or be maintained against the city of Fond du Lac, unless a statement in writing, signed by the person injured or claiming to be injured, of the wrong and circumstances thereof, and amount of damages claimed, shall be presented to the common council within ninety days after the occurring or happening of the tort alleged.

Of actions in tort.

SECTION 205. The city shall not be liable to or for any damages arising or growing out of any sidewalks, streets, drains, sewers, gutters, ditches or bridges in said city being in a defective or dangerous condition or out of repair, unless it be shown that previous to the happening of the same, the sidewalk superintendent or one of the aldermen of the ward in which the same is located, had knowledge thereof by notice thereof in writing; and no knowledge of such condition shall be presumed unless the defect out of which the same occurred, existed four weeks before such damages occurred.

Defective sidewalks, etc.

SECTION 206. In case of injury or damage by reason of insufficient, defective or dangerous condition of streets, sidewalks, drains, sewers, gutters, ditches or bridges produced or caused by the wrong, neglect of duty, default or negligence of any person or corporation, such person or corporation shall be primarily liable for all damages for such injury, in suit for the recovery thereof by the person sustaining such damages, and the city shall not be liable therefor until all legal remedies shall have been exhausted to collect such damages from such person or corporation.

Liability for damages.

SECTION 207. The duty of always keeping the sidewalks, gutters, drains and ditches on or adjacent to the lots and premises of any person, in safe condition and good repair is hereby expressly enjoined and imposed upon all owners or occupants of said lots and premises.

Owners of lots enjoined to keep sidewalks, etc., in good repair.

SECTION 208. The common council shall, at its first meeting after the annual charter election, or as

Council to fix salaries of officers and employes.

soon as may be thereafter, by resolution, fix the salaries and compensation to be paid to the city officers and employes, elected or appointed under the provisions of this act: *provided*, that no salary or compensation having been once fixed shall be increased to any officer or employe during his term of office or employment.

Actions to be
in name of
city.

SECTION 209. All actions brought to recover any penalty or forfeiture under this act, or the ordinances, resolutions, police or health regulations made in pursuance thereof, shall be brought in the corporate name of the city, by summons or civil warrant, and it shall be sufficient to declare or complain generally for a breach of any of the provisions of this act, stating the section by number, and claiming the forfeiture or penalty, or if the action arise under an ordinance, giving its title and number, if it have one, and claiming the penalty or forfeiture.

Of forfeitures
and penalties.

SECTION 210. In all actions for forfeitures and penalties under this act, or any ordinances or regulations made under it, in case of recovery by the city, the judgment shall be for the penalty or forfeiture and costs, and execution shall issue as in case of tort, and be collected in like manner: *provided*, the execution shall on its face state the term of imprisonment of defendant in default of payment or collection thereof for want of goods or chattels of defendant liable to execution.

Competency of
witnesses, etc.

SECTION 211. No person shall be an incompetent judge, witness or juror in any proceeding or action in which the city shall be a party in interest, by reason of being an inhabitant or tax payer in said city.

Rewards.

SECTION 212. Whenever any grave or heinous crime shall have been committed in said city, against life or property, the mayor, with the concurrence of the common council, may offer a reward for the arrest and conviction, or either of the perpetrators of such offense: *provided*, that such reward shall in no case exceed five hundred dollars.

Appropriations.

SECTION 213. All appropriations of money voted under any of the provisions of this act shall be by a vote of ayes and nays, and be entered in the journal.

Justice may issue
execution.

SECTION 214. The justice or justices of the peace who may have in his custody the dockets of the heretofore municipal judges of the city, may issue execution upon any judgment appearing upon said dockets in the same manner and with like effect as if such judgment had been rendered by him.

SECTION 215. No general law of this state shall be construed or taken to amend, modify, alter or repeal this act or any provision thereof, unless such purpose be set out in such law. No general law to repeal this act.

SECTION 216. This act, nor any part thereof, nor any act in any way affecting the municipal government of the city, or any part thereof, shall be altered, amended, repealed or passed, unless the same shall be recommended by a majority of all the members of the common council. How act may be amended or repealed.

SECTION 217. All acts and parts of acts, and particularly chapter fifty-nine of the private and local laws of 1868, and the several acts amendatory thereof, contravening the provisions of this act, are hereby repealed. Repealed.

SECTION 218. This act shall be considered a public act, and shall be in force and take effect from and after its passage and publication. Public act.

Approved March 5, 1879.

[No. 377, A.]

[Published March 14, 1879.]

CHAPTER 241.

AN ACT to incorporate the city of Seymour.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. All that district of country in the county of Outagamie hereinafter described, shall be a city, by the name of the city of Seymour, and the people now inhabiting and those who shall hereafter inhabit said district, shall be a municipal corporation, by the name of the city of Seymour, and shall have the general powers possessed by municipal corporations at common law, and in addition thereto shall have and possess the powers hereinafter specifically granted; and the authorities thereof shall have perpetual succession, and shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded in all courts of law and equity, and shall have a common seal and may change and alter the same at pleasure. Incorporated.

SECTION 2. The west half of section twenty-eight, the east half of section twenty-nine, the east half of section thirty-two, and the west half of section thirty-three, all in township number twenty-four north of Boundaries.