

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 4, 1879.

[No. 236, A.]

[Published March 13, 1879.]

CHAPTER 227.

AN ACT to amend sections one, two, three and four of chapter six of chapter one hundred and eighty-four of the laws of 1874, entitled an act to revise, consolidate and amend the charter of the city of Milwaukee, approved February 20, 1852, and the several acts amendatory thereof, in relation to the taking of property for streets and other public purposes in said city.

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

SECTION 1. Section one of chapter six of chapter one hundred and eighty-four of the laws of 1874 is hereby amended so as to read as follows: Section 1. The common council shall have power to lay out public squares, grounds, streets and alleys, and to extend, enlarge and widen or vacate the same, as follows: Any ten or more freeholders residing in any ward may, by petition, represent to the common council that it is necessary to take certain lands within the ward where such petitioners reside, for public use, for the purpose of laying out, extending, enlarging or widening a public square, ground, street or alley, setting forth in such petition the courses, distance, metes and bounds of the lands proposed to be taken, together with the names and residences of the owners of such premises, so far as the same shall be known to the petitioners, and praying that such lands may be taken for such purpose according to law. 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 in the city, and shall make and annex to such petition his affidavit that he is a resident and freeholder in said ward, and that the names and residences of the owners of the lands proposed to be taken, so far as they are known to him, are correctly set forth in such petition, and such signer making such affidavit shall thereupon be taken to be such resident and freeholder, and the names and residences of the owners of the lands proposed to be taken shall be deemed to be correctly stated in such petition, so far as the names and residences of such owners are

Laying out of public squares, grounds, streets and alleys.

Petition of freeholders.

Deemed to be
freeholders.

known, and such petition shall be valid and effectual, although it may afterward appear that such signers, or some of them, were not such residents and freeholders, or that the names and residences of the owners of the lands proposed to be taken were not correctly stated in such petition, so far as known, or both. Persons in actual possession of real estate, under valid contracts for the purchase thereof, shall be deemed to be freeholders within the meaning and for the purposes of this section. Before such petition shall be acted on by the common council the petitioners shall execute and deliver to the treasurer of the city, for the use of the city, a bond in the penal sum of one thousand dollars, with or without sureties, to be approved by the comptroller as to its sufficiency, and by the city attorney as to its form and execution, conditioned that said petitioners will prosecute their application to effect, and pay all costs and charges which the city, or any ward thereof, may sustain in consequence of such application.

Notice to be
given of taking
of land for pub-
lic uses.

SECTION 2. Section two of said chapter six of chapter one hundred and eighty-four of the laws of 1874, is hereby amended so as to read as follows: Section 2. Such bond to the treasurer having been executed and delivered, the common council shall thereupon cause notices of such application to be given to the owners of the the lands proposed to be taken, which notice shall contain a description of the lands proposed to be taken, and shall state that a certain time and place therein named, which time shall not be less than four weeks after the first publication thereof, application will be made to the judge of the circuit or county court of Milwaukee county for the appointment of twelve jurors to view said premises and to determine whether or not it is necessary to take said premises for the purposes specified in said petition, at which time and place any person interested in the land proposed to be taken may appear before said judge and make objection to the appointment of any juror proposed to be appointed by said judge, stating the grounds of such objection. Such notice shall be published in the official papers of said city for four weeks, at least once in each week, prior to the time therein fixed for the appointment of jurors, and shall be served upon each of the owners of the land proposed to be taken, residing in the city of Milwaukee and known to the petitioners, as it shall appear by the petition, personally, by delivering to and leaving with him a copy of such notice, if he can be found in the city of Milwaukee, and if he

Publication of
notice.

cannot be found in said city, then by leaving a copy of such notice at his last and usual place of abode, with some member of his family of suitable age and discretion, or if such place of abode shall be closed, or no person of suitable age and discretion found there, then by posting a copy of said notice on the principal outer door of such place of abode. Such service shall be made by the chief of police or some police officer of said city, who shall make return under oath, in writing, of the facts of such service, which return shall have the same effect as a sheriff's return of the service of a summons in a civil action. As to unknown owners of such land proposed to be taken, and owners not residing in the city of Milwaukee, such publication in the official paper shall be a sufficient service of such notice upon them. Upon the presentation of such application, and upon proof of the publication and service of the notice hereinbefore required, the said judge shall appoint twelve reputable freeholders, residents of the city, but not residents of the ward in which the premises may be situated, and not interested in the result of such application. The said judge shall thereupon issue his precept, directed to said jurors, requiring them within thirty days to view said premises to be specified in such precept, and to make return under their hand to the common council, whether or not, in their judgment, it is necessary to take said premises for the purpose specified in such application. If any of the jurors so appointed shall be disqualified for acting, the judge shall appoint others in their places, and a memorandum of such substitution shall be indorsed on the precept: *provided however*, that not more than four jurors shall be so substituted.

Notice to unknown owners.

Duty of Jurors.

SECTION 3. Section three of said chapter six, of chapter one hundred and eighty-four, of the laws of 1874, is hereby amended so as to read as follows: Section 3. The jurors so appointed shall, before proceeding to view the premises in question, and before meeting to pass upon the question submitted to them, severally take and subscribe an oath or affirmation, which shall be filed with the city clerk, to the effect that they will faithfully and honestly discharge the duty imposed upon them, and determine whether or not it is necessary to take the premises in question for the public use designated in the application; and it shall be the duty of every person appointed as such juror to act, unless excused for reasonable cause by the judge appointing him; and every person so appointed and duly

Jurors to act under oath.

Penalty for refusal to act.

summoned or notified to act as required by law, who shall, without being so excused, neglect or refuse to perform his duty as such juror, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than twenty nor more than one hundred dollars. It shall be the duty of the officer summoning such jurors to notify the city attorney of any violation of this section; and it shall be the duty of the city attorney to prosecute any person so offending.

Viewing of premises.

SECTION 4. Section four of said chapter six, of chapter one hundred and eighty-four, of the laws of 1874, is hereby amended so as to read as follows: Section 4. The said jurors, when so appointed and sworn, shall immediately proceed in a body to view the premises proposed to be taken. The city attorney shall thereupon prepare a notice in the following or some equivalent form:

Notice of meeting to view premises.

In the matter of the application for the (opening, extension, enlarging or widening, as the case may be) of _____, in the _____ ward of the city of Milwaukee

Notice is hereby given that the jurors lately appointed and summoned in the above matter, to pass upon the question of the necessity of taxing the lands described in said application for the purposes therein prayed, have viewed said lands, and will meet at _____ on the _____ day of _____, A. D. _____, at which time and place all persons having any interest in the lands proposed to be taken, may be heard before such jurors, and all evidence produced before them upon said question will be considered.

Dated at Milwaukee, the _____ day of _____, A. D. _____, _____, City Attorney.

Publication of same.

Such notice shall be published once in the official papers of the city, and shall be served upon the owners of the lands proposed to be taken, and known, the same as the notice provided for in section two of this chapter, and shall be returned in like manner as said notice is therein required to be returned, all of which shall be done prior to the day fixed in said notice for the meeting of the jurors and publication of said notice shall be a sufficient service thereof upon owners of lands proposed to be taken, not known, or not residing in the city of Milwaukee. At the time and place designated in said notice for that purpose, the said jurors shall meet and shall hear all persons interested in the lands proposed to be taken, and shall hear all evidence that shall be produced before them upon the subject of the necessity of taking the land described in

Hearing of jurors interested.

the petition for the purpose therein prayed, and may at the instance of any one or more of their number summons and examine witnesses upon the same question, and for that purpose either of said jurors may issue a subpoena, and either of the jurors or the city attorney may administer the proper oath to any witness produced before said jury. Said jurors may, if necessary, adjourn such hearing from day to day. It shall not be necessary for said jurors to reduce the evidence produced before them to writing, nor to return the same with their report. Said jurors shall make a report of their proceedings to the common council within the time limited in the precept, which report shall be signed by them respectively, and shall state, whether or not, in their judgment, it is necessary to take the premises in question for the public use proposed in the petition: *provided, however*, that in cases where it shall, in the opinion of the board of public works, be necessary to condemn land for the opening of any street or alley, which street or alley shall have been already partially opened, either by dedication or by condemnation proceedings heretofore or hereafter had, and which land shall not have been, in the opinion of said board, legally dedicated nor condemned, the common council may cause notice to be given and a jury to be appointed and summoned, and notice thereof to be given to the owners of the land proposed to be taken, as provided in section two of this chapter, upon the petition of the board of public works, and the same proceedings shall be thereupon had as in the case of a petition by freeholders. Such petition by the board of public works need not be verified by affidavits nor accompanied by a bond; and it need not be stated therein, that the petitioners are freeholders, and they need not be freeholders; but such petition shall contain a full description of the land proposed to be taken, and the names of the owners thereof so far as they are known to or can be ascertained by said board of public works. If in any former condemnation proceeding, an assessment of benefits and damages shall have been made by reason of the intended taking of such lands, the board of public works shall make a new assessment of damages, but the assessment of benefits previously made shall stand, and shall be validated by such new condemnation in so far as the same was invalid by reason of the failure to condemn such land properly in the proceeding in which such assessment of benefits was made: *provided, further*, that in all

Adjournment
from day to
day.

Report of pro-
ceedings.

Lands illegally
condemned.

Assessment of
benefits and
damages.

cases where lands shall be condemned without a petition under section twenty-six of chapter six of chapter one hundred and eighty-four of the laws of 1874, as amended by section twenty-eight of chapter one hundred and forty-four of the laws of 1875, the city attorney shall prepare a list of the owners of property to be taken, so far as the same are known, and shall certify the same to be correct, to the best of his knowledge; and notice of the calling of the jury and of the meeting of the jury shall be given, as in the case of condemnation proceedings upon petition: *provided, further*, that no order shall be made in any case for the condemnation of land in said city, without the consent of at least two of the aldermen of the ward in which the land proposed to be taken shall be situated.

Consent of aldermen necessary in condemning land.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved March 4, 1879.

[No. 281, A.]

[Published March 11, 1879.]

CHAPTER 228.

AN ACT to provide for the preservation of fish in the waters of Calumet county.

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

Catching of except with fish hook and line, prohibited.

SECTION 1. Hereafter it shall be unlawful for any person or persons to take, catch, kill, or in any way or manner, destroy any kind of fish in any of the rivers, ponds or waters of Calumet county, in any other way or manner than with hook and line.

Penalty for violation.

SECTION 2. Any person or persons violating the provisions of this act, or any of them, shall, upon conviction thereof, be subject to a fine of not less than five dollars, nor more than twenty-five dollars, together with the costs of prosecution, for each and every such violation, and shall be committed to the county jail until such fine and costs are paid, or the offender or offenders are discharged by law.

Jurisdiction of courts.

SECTION 3. Justices of the peace shall have jurisdiction to hear, try and determine all cases and actions arising under the provisions of this act, and upon the collection of any fine imposed by virtue of this act, one-half of the amount of such fine shall be paid to the com-