

[No. 157, S.] [Published March 26, 1887.]

CHAPTER 149.

AN ACT to amend the charter of the city of Oshkosh, and the several acts amendatory thereof.

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

SECTION 1. Section 1, of chapter 9, of chapter 183, of the laws of 1853, is amended to read as follows: The common council shall have power to take for the use of the city in the manner hereinafter provided, any lots or any lands for public squares, grounds, streets and alleys, and to widen or straighten the same, or for the purpose of erecting a public hall, market house, fire-engine house, or any other lawful municipal purpose, or for any needful or convenient purpose in connection with or to execute and accomplish any other power, right or privilege conferred on or granted to the city by its charter, or any act amendatory thereof, or any act of the legislature, and may take the same, within the city by conveyance from the owner upon a bargain, or upon a donation thereof, or in a manner as follows: Whenever it shall in the opinion of the common council be necessary, said council shall declare by resolution that it is necessary to take any such lots or lands for any of the purposes above set forth, giving a description of the premises, defining separately each parcel thereof, and the purpose for which they are to be taken. The common council shall thereupon cause a written notice, as prescribed in the next section to be served upon the occupant or occupants of such lands, and the owner or owners of the same, if the place of residence of such owner or owners is known or can be ascertained by reasonable diligence when such residence is within the state and in case such owner or owners are non-residents of this state, or their place of residence after due diligence by the city clerk of said city cannot be ascertained, such fact shall be made to appear by his affidavit, then the common council shall cause service of such notice to be made on such non-

Amendment.
power to take
lands for public
purposes.

resident owner or owners, or on the owner or owners, the residence of whom cannot be ascertained, by causing the same to be published for six weeks in a newspaper published within the county of Winnebago, at least once in each week, and by causing such notice to be mailed postpaid to the address of such owners within five days from the time of the first publication of such notice, when the post-office address of such owner is known, and if such owner or owners shall not reside within this state, but have an agent in the county of Winnebago known to said city clerk, in addition to the publication thereof, a copy of such notice shall be served on such agent or tenant of the owner thereof.

Amendment
notices—how
signed.

SECTION 2. Section 2, of said chapter 9, is hereby amended to read as follows: Such notice shall be signed by the city clerk or city attorney, and shall state the adoption of the resolution and embrace a copy thereof, and further, that at a time and place therein named, not less than ten days after the service of such notice, or the expiration of such publication, as the case may be, application will be made to the county judge of said county of Winnebago, for the appointment of twelve jurors to inquire and determine whether it is necessary to take the land or any part thereof, described in such resolutions, for the purposes therein specified. Such notice shall further state the time and place at which such jury so to be applied for, shall meet to discharge such duty, and the judge aforesaid shall fix the time and place so named in the precept hereinafter mentioned, and no other notice thereof shall be necessary.

Amendment
regarding the
appointment of
jurors.

SECTION 3. Section 3, of said chapter 9, is hereby amended to read as follows: At the time fixed in said notice for the appointment of such jurors, the judge named in said notice, upon proof of the service of the same on the owner or owners of the premises described in such notice, which proof shall be in the same manner as is now required to make proof of the service of a summons in civil actions in courts of record in this state, shall appoint twelve competent persons having the qualification of jurors in and for the county of Winnebago, and not residents of the ward in which such premises are situated and not interested in such

application, but residents of the city, shall not be disqualified by reason of such residence, nor because they may be tax payers in said city. The same rights of challenge peremptorily, or for favor or cause may be exercised by the city attorney and by such land owner whose land is sought to be taken, by his agent or attorney, as a party to a civil action in a circuit court is entitled to have and the judge shall decide the same in like manner, and replace the name of any juror successfully challenged by the name of some other competent person until a jury of twelve be chosen. The said judge shall thereupon issue his precept directed to such jurors, requiring them and each of them to appear before him at the place and on the day named in the notice for such jurors to meet for the discharge of their duties under such appointment. The precept so issued may be served by the sheriff of said county, or by any public officer of said city. The jurors so chosen shall, before entering upon the performance of their duty, take an oath before such judge faithfully and impartially to discharge their duties as such jurors and a true verdict give, whether it is necessary to take such land or any part thereof, mentioned in such resolution for the purposes therein specified.

SECTION 4. Section 7, of said chapter, is hereby amended so as to read as follows: The said jurors shall at such time as is named in said precept, proceed in a body to view the premises in question, and shall hear such testimony as may be offered by any party interested, which testimony shall be reduced to writing by one of the jurors, and either of the jurors shall be authorized to administer the necessary oath to the witnesses. After viewing the premises in question and hearing such testimony as may be offered, the jurors shall make a report of their proceedings, which shall be signed by them respectively, and which shall state whether, in their judgment, it is necessary to take the premises in question for the public use, which said report, testimony and precept shall be returned to the common council within the time limited in said precept, or when ordered by the council. Should the jurors report that it is necessary to take said premises the common council shall enter an order among its proceedings confirming

Amendment,
viewing the
premises by
jurors.

said report and directing the same jurors within ninety days, thereafter, or such further time as shall be necessary to again view said premises, for the purpose of ascertaining and determining the amount of damages to be paid to the owner or owners of said property proposed to be taken, and also what lands or premises will be benefited by such taking, and to assess and return within the time limited such damages and benefits to the common council. After the jurors shall have made their report as to the taking of any lands or premises under this act, and the same shall have been confirmed, the judge who may have issued the precept, as provided in section 3, of this chapter, shall have power to appoint new jurors in place of any who shall neglect or refuse to serve; and the jurors before entering on the discharge of their duties in the premises, shall severally take an oath before some competent officer, that they are freeholders in said county, and are not interested in the premises to be taken, and that they will faithfully and impartially discharge the trust imposed in them, which oath shall be filed in the office of the city clerk, and the judge who may have issued the precept as provided in this chapter shall have power to issue a new warrant or attachment against any juryman who shall neglect or refuse to serve, wherein the city of Oshkosh shall be nominal plaintiff, and such juryman or juryman defendants, and compel the attendance of such juryman, and punish him for contempt in the same manner as juryman are punished by law in the courts of record for contempt, and also the said judge shall have power to issue subpoenas for witnesses to attend before such jury and issue attachment and punish for contempt in case of neglect or refusal of witnesses to appear and testify before the jury, in the same manner as in case of neglect and refusal of juryman in courts of record, and all the costs and witness fees are to be added in with the expenses of the jury.

Amendment,
further, regard-
ing viewing the
land by a jury.

SECTION 5. Section 8, of said chapter is hereby amended so as to read as follows: The said jurors within the time limited or at the time specified in said precept shall view and examine the premises proposed to be taken, and all such other premises as in their judgment will be injured or benefited thereby, and receive and hear such testimony as

they may deem necessary in the premises, and thereupon determine and apportion and award to the owner or owners the value of the real estate proposed to be appropriated and the injury to them respectively as damages, after making due allowance, which such owners respectively may derive from such improvement. If there are any buildings in part or whole upon the land proposed to be appropriated, the jury shall assess separately the value thereof, less what its value will be if removed from the land appropriated, and of the removal which the owner will necessarily be obliged to make of the same; and if there is any interest in such property, as lessee or otherwise, less than an estate in fee simple and not in the nature of a lien by mortgage or judgment, mechanic's lien, or a lien for taxes or assessments, the jurors shall estimate separately the damage which the owner or owners of such interest shall sustain thereby, and in estimating the damage sustained by the owner the same shall be deducted therefrom. In awarding damages as aforesaid the jurors shall not be compelled to award the same to any person or company by name, but the same may be awarded to the owner or owners of the property appropriated or injured or to the party or parties interested therein; and not less than five days before proceeding to assess such damages the said jury shall cause to be served upon the owner or owners of such premises a notice of the time when they shall so proceed; said notice shall be served as provided in section 1, of this chapter. At the time and place designated in said notice such jury shall hear all parties interested who appear; and said jury shall cause to be reduced to writing all the testimony offered, which testimony shall be filed with their report.

SECTION 6. Section 3, of chapter 3, is hereby amended to read as follows: There shall be the following city officers elected annually by the qualified electors of the city at large: A mayor, a city clerk and a city treasurer. There shall also be elected three assessors at the city election of 1887, one to be elected by the qualified electors of the First and Fifth wards, who shall hold his office for the term of three years, one to be elected by the qualified electors of the Second and Fourth

Amendment.
list of city
officers.

wards, who shall hold his office for the term of two years, and one to be elected by the qualified electors of the Third and Sixth wards, who shall hold his office for the term of one year, and thereafter upon the expiration of the terms of said assessors, there shall be elected for the term of three years an assessor from the district where the term of office of such assessor expires.

Amendment,
time extended
for collection
of taxes.

SECTION 7. Section 4, of chapter 7, of said chapter 183, laws of 1883, is hereby amended by striking out the words, "thirty days" in the twenty-third line of said section and inserting the words, "forty-five days" in lieu thereof, so that the proviso therein contained shall read as follows: Provided that the common council shall have power to extend the time for collecting such taxes not exceeding forty-five days from the expiration of the original warrant.

Amendment,
regarding re-
pair of streets.

SECTION 8. Section 35, of chapter 183, of the laws of 1883, is amended so as to read as follows: Section 35. All streets heretofore or hereafter once gravelled, paved or planked at the expense of the property fronting, adjoining or abutting thereon; such street, so far the same has been gravelled, paved or planked (except sidewalks) at the expense of the property on the street, to be so maintained and kept in order at the expense of the ward in which such street or streets are located so long as such street shall remain so gravelled, paved or planked as aforesaid; but should either be changed to paving with either wooden blocks or stone, then the same shall be chargeable to the lots abutting thereon; and thereafter the ward shall keep the same in repair as such paved street. All the taxes, therefor, made necessary to be levied and collected the same as ward taxes upon the taxable property of the ward in which such street is located, anything in this chapter or charter to the contrary notwithstanding.

Amendment,
power of
mayor.

SECTION 9. Section 1, of chapter 5, of chapter 183, of the laws of 1883, is amended by adding to said section, at the end thereof, the following words: He shall also have power to remove or suspend any officer elected by the common council, verbally or in writing and stop his pay, subject to the approval of the said council. In such case he shall report the fact of such suspension

and stoppage of pay to the council at the next regular meeting thereafter.

SECTION 10. All acts and parts of acts inconsistent with or contravening the provisions of this act, or any of them, are hereby repealed.

Approved March 26, 1887.

[No. 159, S.]

[Published March 26, 1885.]

CHAPTER 150.

AN ACT to amend the charter of the city of Oshkosh.

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

CEMETERY GROUNDS.

SECTION 1. The city of Oshkosh is hereby authorized and empowered to purchase, hold, take and convey such tracts of land without the limits of said city for the purpose of establishing such cemeteries for the interment of the dead therein, as the common council of said city may think necessary, which shall be exempt from tax under any laws of this state.

May procure land for cemeteries.

SECTION 2. The said city is hereby authorized and empowered to take, hold and dispose of any and all real estate without the limits thereof, heretofore transferred to it by gift, grant, bequest or devise for cemetery purposes, by any and all persons and corporations whatsoever, whether the same have been transferred in terms to said city, by its proper style, or by any other designation, or to any other person or persons, or body, for the use of said city.

Relating to cemeteries.

SECTION 3. The common council of said city shall have power to pass such ordinances, rules and regulations with regard to the improving, preservation, laying out and ornamenting of said cemeteries and the burial of the dead therein as they may think necessary.

Punishment of offenders.