

## CHAPTER 62.

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62.01 Saving clause. That no inconvenience may arise by reason of change of government of cities from special charter to general charter, or by reason of the revision of the general charter law, it is declared that:

(1) All vested rights, pending actions and prosecutions, and existing judgments, claims, and contracts, both as to individuals and bodies corporate, shall continue as though no change had taken place.

(2) Processes issued, or proceedings commenced under special charters or under the general charter law shall be unaffected by the revision, and all such proceedings commenced or pending when sections 62.01 to 62.26, inclusive, are enacted [Jan. 1, 1922] may be continued and concluded under and by virtue of such charter, or the general law applicable at the time they were commenced.

(3) Ordinances in force, so far as not inconsistent herewith, shall continue in force until altered or repealed.

(4) All offices, the terms of office and the manner of selection of officers shall continue until changed pursuant to law.

(5) Nothing herein shall change the time for paying taxes as provided in any special city charter until the council shall by ordinance change the same to conform to general law. [1935 c. 421 s. 3]

62.02 Repeal of special charters. All special charters for cities of the second, third and fourth classes are hereby repealed and such cities are hereby incorporated under chapter 62 of the statutes. The city clerk shall forthwith certify the boundaries of such city to the secretary of state, who shall file the same and issue to such city a certificate of incorporation as of the date when said chapter 62 became effective, and record the same.

**62.03 First class cities excepted.** (1) The provisions of chapter 62 of the statutes shall not apply to cities of the first class under special charter.

(2) Any such city may adopt by ordinance the provisions of chapter 62 of the statutes or any section or sections thereof, which when so adopted shall apply to such city.

**62.04 Intent and construction.** It is declared to be the intention of the revision of the city charter law, to grant all the privileges, rights and powers, to cities which they heretofore had unless the contrary is patent from the revision. For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that sections 62.01 to 62.26, inclusive, shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof.

**Note:** Under 144.07 (4) municipality is authorized to issue its general obligations for the construction or enlargement of a disposal plant or system jointly with an adjoining municipality, and to follow the procedure provided in chapter 67. Behnke v. Neenan, 221 W 411, 266 NW 781.

**62.05 Classes of cities.** (1) Cities shall be divided into four classes for administration and the exercise of corporate powers as follows:

(a) Cities of one hundred and fifty thousand population and over shall constitute cities of the first class.

(b) Cities of thirty-nine thousand and less than one hundred and fifty thousand population shall constitute cities of the second class.

(c) Cities of ten thousand and less than thirty-nine thousand population shall constitute cities of the third class.

(d) Cities of less than ten thousand population shall constitute cities of the fourth class.

(2) Population of cities shall be determined by the last national census except in newly incorporated cities when a census is taken as provided by law. Cities shall pass from one class to another when such census shows that the change in population so requires, when provisions for any necessary changes in government are duly made, and when a proclamation of the mayor, declaring the fact, is published according to law.

**62.06 Incorporation.** (1) **POPULATION REQUIRED.** In addition to the method provided in section 62.06 (1) any district containing a population of 1,500 or more, and consisting of, or containing an incorporated or unincorporated village, may become a city. Territory of the area and density of population required by section 61.01 constitutes an unincorporated village. Unless the required population is shown by the last national census, a census shall be taken as provided in section 61.02 and a record thereof attached to the petition.

(2) **PETITION.** Petition for submission of the question to the electors of the district shall be in writing signed by one hundred or more persons, each an elector and taxpayer of said district, and in case territory adjacent to said village is included in the district, written consent of a majority of the electors and the owners of at least one-third of the taxable property in such adjacent territory shall accompany the petition. The number of electors shall be determined by the poll list of the last general election and the taxpayers and amount of taxable property by the last assessment roll. The petition shall be filed with the clerk of the village, if incorporated, otherwise with the clerk of the town containing the greater portion of the population of the district.

(3) **REFERENDUM.** At the next regular meeting the trustees of such village or the town board of such town shall by resolution provide for a referendum to the electors of the said district. Such resolution shall determine the number and boundaries of wards of the proposed city, the time of voting, which shall not be earlier than six weeks thereafter, and the voting place for electors in adjacent territory, if any, and may direct a census in the manner provided in section 61.02.

(4) **NOTICE OF REFERENDUM.** Notice of the referendum shall be given by publication of the resolution in a newspaper published in such village, if there be one, otherwise in a newspaper designated in the resolution, once a week for four successive weeks, the first publication to be not more than four weeks before the referendum.

(5) **RETURN.** The referendum shall be conducted in the same manner as elections for village trustees, and the form of the ballot shall be "for a city" or "against a city." The inspectors shall make return to the clerk of such village or town.

(6) **CERTIFICATE OF INCORPORATION.** If a majority of the votes are cast in favor of a city the clerk shall certify the fact to the secretary of state, together with the result of the census if any, and 2 copies of a description of the legal boundaries of the district and 2 copies of a plat thereof, whereupon the secretary of state shall issue a certificate of incorporation, and record the same in a book kept for that purpose. One copy of the

description and plat shall be forwarded by the secretary of state to the highway commission.

(7) CITY POWERS. Every city thus incorporated shall thenceforth be a body corporate and politic, with the powers and privileges of a municipal corporation at common law and conferred by this chapter and generally by these statutes.

(8) EXISTING ORDINANCES. Ordinances in force in the territory or any part thereof, so far as not inconsistent with the provisions of chapter 62, shall continue in force until altered or repealed.

(9) INTERIM OFFICERS. All officers of the village or town embracing the territory thus incorporated as a city shall continue in their powers and duties as theretofore until the first meeting of the common council at which a quorum is present. Until a city clerk shall have been chosen and qualified all oaths of office and other papers shall be filed with the clerk, with whom the petition was filed, who shall deliver them with the petition to the city clerk when he shall have qualified.

(10) FIRST CITY ELECTION. Within ten days after incorporation of the city, the board with the clerk of which the petition was filed shall fix a time for the first city election, designate the polling place or places, and name three inspectors of election for each place. Ten days' previous notice of the election shall be given by the clerk by publication in the newspapers selected under subsection (4) hereof and by posting notices in three public places in such city, but failure to give such notice shall not invalidate the election. The election shall be conducted as is prescribed by chapter 5, except that no registration of voters shall be required. The inspectors shall make returns to such board which shall within one week after such election, canvass the returns and declare the result. The clerk shall notify the officers elect and issue certificates of election. If the first election shall be on the first Tuesday in April the officers so elected shall commence and hold their offices as for a regular term, as shall also their appointees. Otherwise they shall commence within ten days and hold until the regular city election and the qualification of their successors, and the terms of their appointees shall expire as soon as successors qualify.

(11) REORGANIZATION AS VILLAGE. If the population of the city shall fall below one thousand as determined by the United States census, the council may upon petition of fifteen per cent of the electors submit at any general or city election the question whether the city shall reorganize as a village. If three-fifths of the votes cast on the question are for reorganization the mayor and council shall file a certified copy of the return in the office of the register of deeds and the clerk of the circuit court, and shall immediately call an election, to be conducted as are village elections, for the election of village officers. Upon the qualification of such officers, the board of trustees shall declare the city reorganized as a village, whereupon the reorganization shall be effected. The clerk shall forthwith certify a copy of such declaration to the secretary of state who shall file the same and indorse a memorandum thereof on the record of the certificate of incorporation of the city. Rights and liabilities of the city shall continue in favor of or against the village. Ordinances, so far as within the power of the village, shall remain in force until changed. [1947 c. 113; 43.08 (2)]

**Note:** Where the mayor and a real estate agent who held an option of purchase of land from the city made false representations inducing the city's grantor to execute to the city a release from the conditions in a deed which reserved to the grantor the right to wreck the buildings on the land and to purchase the salvage, the grantor could not recover from the city because of the false representations, since the land purchased by the city was not acquired for any of the purposes specified in section 62.22 (1) and hence the transactions were void and afforded no basis for an action for fraud against the city. *Waisman v. Wagner*, 227 W 193, 278 NW 418.

**62.07 Annexation and detachment of territory.** (1) ANNEXATION PROCEDURE. Territory adjacent to any city may be annexed to such city in the manner following:

(a) A petition therefor shall be presented to the council (1) signed by a majority of the electors in such adjacent territory and by the owners of one-third of the taxable property thereof according to the last tax roll, or (2) if no electors reside therein by the owners of one-half of said taxable property, or (3) by a majority of the electors and the owners of one-half of the real estate in assessed value; provided, that no petition for annexation shall be valid unless at least thirty days and not more than forty-five days before any such petition is caused to be circulated, a notice shall be posted in at least eight public places in the municipality in which the adjacent territory is located, and a copy of such notice published in a newspaper of general circulation within the county in which said adjacent territory is located, at least fifteen days prior to the time when such petition is caused to be circulated, such notice to set forth that an annexation petition is to be circulated, and including an accurate description of the territory involved.

(b) An ordinance annexing such territory to the ward or wards named therein shall be introduced at a regular meeting of the council after the filing of the petition, be published once each week for four successive weeks in the official paper and thereafter be adopted at a regular meeting by three-fourths of all the members of the council.

(2) **DETACHMENT PROCEDURE.** Territory may be detached from any city and be attached to the city or cities, village or villages, town or towns, to which it shall be adjacent, and be made taxable therein in the manner following:

(a) A petition therefor describing the territory to be detached and naming the city or cities, village or villages, town or towns, to which it shall be annexed, shall be presented to the council of the detaching city, signed by a majority of the owners of three-fourths of the taxable real estate in a section adjacent to the boundary lines of said city and which it is proposed to detach.

(b) An ordinance detaching such territory and annexing the same to such city or cities, village or villages, town or towns, shall be adopted by three-fourths of all the members of the council of the detaching city and its terms accepted by an ordinance adopted by three-fourths of all the members of the governing body of the city, village or town to which such territory shall be annexed.

(c) The governing body of any city, village or town involved, including the detaching city, may, or if a petition signed by five per cent of the electors thereof demanding a referendum thereon be presented to it within ninety days after the passage of either of the ordinances herein provided for, shall cause the question to be submitted to the electors of the city, village or town at the next ensuing election, and none of the ordinances so provided for shall then take effect nor be in force unless a majority of the electors voting thereon shall approve the same.

(3) **TIME OF TAKING EFFECT.** The ordinance authorized by subsection (1) (b), and the final ordinance of acceptance authorized by section 62.07 (2) (b), shall not operate to attach or detach the territory until 90 days after the passage thereof, or in case of referendum, 90 days after its approval, nor shall the adoption of the ordinance authorized by said paragraph (b) require the board of school directors in any city of the first class to administer the schools in the territory detached or annexed to any city of the first class until July 1 following the date of the adoption of such ordinance. At that time 2 copies of a certificate and plat signed by the clerk of the city, village or town describing the territory attached or detached, the boundaries of the city, village or town after such alteration, and naming the cities, villages or towns to which the detached territory was annexed, shall be filed in the office of the secretary of state. One copy of the certificate and plat shall be forwarded by the secretary of state to the highway commission. The validity of the proceedings shall not be collaterally attacked, nor in any manner called in question in any such court unless the proceedings therefor be commenced before the expiration of either of the 90-day periods herein provided for.

(4) **RECORD OF CITY BOUNDARIES.** The duty to file the certificate required by subsection (3) of this section shall be a continuing duty until performed as to all alteration of boundaries subsequent to incorporation. Any city may direct a survey of its present boundaries to be made, and when properly attested such survey may be filed in the office of the register of deeds in the county or counties in which such city is located and when so filed such survey and plat shall be prima facie evidence of the facts therein set forth, and after the lapse of one year such a survey and plat shall be conclusive evidence of such facts. Any citizen may, by appropriate legal procedure, test the correctness of said survey and plat. The time such action is pending shall be excluded from the above limitation of time. Subsequent extensions of the boundaries of such cities may be surveyed and such surveys filed in the manner above provided and may be tested in the same manner and with like effect as a survey and plat of the original boundaries.

(5) **EXISTING SPECIAL TAXES.** Where in any territory annexed to any city in accordance with the provisions of this section certain property is charged with a special tax for any special improvement, such special tax shall be collected by the municipality to which such territory has been attached, in the same manner as other special taxes of such municipality are collected. Upon annexation of such territory the clerk of the municipality from which such territory was detached shall certify to the clerk of such city all outstanding special assessments against such detached territory.

(6) **ILLEGAL ANNEXATION; CITY SPECIAL TAXES.** Where the proceedings annexing certain territory to a city are later declared invalid, but prior to such declaration and subsequent to such attempted annexation, such city has charged against certain property in such territory a special tax for a special purpose, such special tax shall be collected by the municipality to which the territory has been reannexed, in the same manner as other special taxes of such municipality are collected. Upon the reannexation of such territory the clerk of such city shall certify to the clerk of such municipality all outstanding special assessments against such reannexed territory. [1933 c. 283, 393; 1939 c. 359; 1941 c. 147; 1947 c. 113]

**Note:** As between a proceeding for annexation to a city under this section and for incorporation as a village under 61.01 to 61.14, the proceeding first instituted has preference; consequently, denial of an application for incorporation of a village because of a pend-

ing proceeding, not void on its face, for annexation of part of the land involved to an adjacent city was proper, notwithstanding a pending action attacking the validity of the annexation proceeding. In re Incorporation of St. Francis, 208 W 431, 243 NW 315.

In view of the provisions of 370.01 (19), the names signed to a petition for annexation of territory must be the actual signatures of electors. Their names signed by others in their presence is not valid. De Bauche v. Green Bay, 227 W 148, 227 NW 147.

A city has no power to bring an action to abate a public nuisance. Juneau v. Badger Co-operative Oil Co., 227 W 620, 634, 279 NW 666.

What constitutes a public place for the purpose of posting a notice is considered at length in this case. Town of Wilson v. Sheboygan, 230 W 483, 283 NW 312.

62.075 [Repealed by 1939 c. 513 s. 18]

**62.08 Alteration of wards.** (1) Any city may change the numbers and boundaries of its wards, create new wards, or consolidate old ones by an ordinance introduced at a regular meeting of the council, published in the official paper once in each week for four successive weeks, and thereafter adopted by a two-thirds vote of all the members of the council; but no further such change shall be made in any such ward for two years except by adding thereto territory newly attached to the city.

(2) Wards shall be in as compact form and contain as nearly equal population as practicable, which shall not be less than eight thousand nor more than twenty thousand in cities of the first class, nor less than fifteen hundred in cities of the second class, nor less than one thousand in cities of the third class, nor less than five hundred in cities of the fourth class having more than four wards.

(3) Whenever the boundaries of wards are altered, or new wards created, every ward or precinct officer residing within the territory of a new or altered ward shall hold the same respective office therein for the remainder of his term; and all other vacancies shall be filled as provided by law for the filling of such vacancies.

(4) The common council of any city may not more frequently than once in 2 years by a two-thirds vote of all its members at any time redistrict, readjust and change the boundaries of wards so that they shall be as nearly equal in population as may be, and to that end such council may create new wards and consolidate old ones. In redistricting such cities the original numbers of the wards in their geographical outlines shall as far as possible be retained, and the wards so created and those the boundaries of which are changed shall be in as compact form as possible. [1947 c. 388]

**Note:** City is entitled to elect supervisor of each ward irrespective of population. 21 Atty. Gen. 465.

City by increasing number of wards creates vacancies for supervisors which may be filled by mayor or city manager with consent of council; such appointed officer serves until regular city election if no appointment is made more than thirty days before election. No special election can be held to fill such vacancies. 22 Atty. Gen. 870.

**62.09 Officers.** (1) **ENUMERATION AND CHANGE.** (a) The officers shall be a mayor, treasurer, clerk, comptroller, attorney, engineer, one or more assessors, one or more justices of the peace and constables as determined by the common council, a health commissioner or board of health, street commissioner, a board of police and fire commissioners, except in cities where not applicable, chief of police, chief of the fire department, a board of public works, a board of education or of school commissioners, except in cities where not applicable, two aldermen and one supervisor from each ward, and such other officers or boards as are created by law or by the council.

(b) The council by a two-thirds vote, may dispense with the offices of street commissioner, engineer, comptroller, constable, and board of public works, and provide that the duties thereof be performed by other officers or board, by the council or a committee thereof. The council may, by ordinance, adopted by a two-thirds vote of all its members, and approved by the electors at the general or special election, provide that there shall be one alderman from each ward, and may also, in like manner, provide that, whatever the number of aldermen, the supervisor of each ward shall be the alderman or one of the aldermen. Any office dispensed with under this paragraph may be recreated in like manner, and any office created under this section may be dispensed with in like manner.

(2) **ELIGIBILITY.** (a) No person shall be elected by the people to a city office who is not at the time of his election a citizen of the United States and of this state, and an elector of the city, and in case of a ward office, of the ward, and actually residing therein.

(b) Except as otherwise expressly provided in these statutes, no alderman shall during the term for which he is elected be eligible to any other city office except mayor provided that the council may be represented on city boards and commissions where no additional remuneration is paid alderman representatives on such a body.

A petition for a referendum under section 10.43 for the enactment of an ordinance has no effect whatever on the ninety-day period limited by 62.07 (3). Such a petition does not stay the taking effect of an ordinance. Town of Wilson v. Sheboygan, 230 W 483, 283 NW 312.

Subsection (3) does not bar a town from attacking annexation proceedings more than 90 days after passage of the ordinance by a showing that the original petition filed with the council of the annexing city was invalid, such matter going to the jurisdiction of the council. (1) (a) does not require that the circulation of the petition be completed not more than 45 days after the posting of the notices but requires only that the circulation of the petition be commenced within such period. State ex rel. Madison v. Walsh, 247 W 317, 19 NW (2d) 299.

(c) No person shall be eligible to any city office who directly or indirectly has any pecuniary interest in any contract for furnishing heat, light, water, power, or other public service to or for such city, or who is a stockholder in any corporation which has any such contract. Any such office shall become vacant upon the acquiring of any such interest by the person holding such office.

(d) An appointee by the mayor requiring to be confirmed by the council who shall be rejected by the council shall be ineligible for appointment to the same office for one year thereafter.

(3) MANNER OF CHOOSING. (a) The mayor, aldermen, supervisors and justices of the peace shall be elected by the voters.

(b) The other officers except as provided in section 62.13 shall be selected by one of the following methods:

1. Appointment by the mayor.
2. Appointment by the mayor subject to confirmation by the council.
3. Appointment by the council.
4. Election by the voters.
5. Selection under any of the above methods, the selection to be made from an eligible list established pursuant to section 66.19.

6. Such other officers shall continue to be selected in the manner prevailing on April 15, 1939, provided one of the above plans was in force on that date. Such method shall be continued until changed in the manner provided by section 66.01.

(c) Any city may also proceed pursuant to section 66.01 to consolidate any such other office or offices.

(d) Whenever a city is newly created the officers other than those specified by paragraph (a) shall be appointed by the mayor until provided otherwise pursuant to paragraph (b).

(e) Appointments by the mayor shall be subject to confirmation by the council unless otherwise provided by law.

(4) QUALIFYING. (a) Every person elected or appointed to any office shall take and file the official oath within ten days after notice of his election or appointment.

(b) The treasurer, comptroller, chief of police and such others as the statutes or the council may direct, shall execute and file an official bond in such sum as the council may determine, with two or more sureties, provided that the bond of the treasurer may be furnished by a surety company as provided by section 204.07. The council may at any time require new and additional bonds of any officer. All official bonds must be approved by the mayor, and when so approved shall be filed within ten days after the officer executing the same shall have been notified of his election or appointment; and official bonds filed with the city clerk shall be recorded by him in a book kept for that purpose.

(c) When an appointive officer has filed the oath, and bond if required, the clerk shall issue to him a certificate of appointment. If the appointment is to a board or commission the appointee shall file the certificate with the secretary thereof.

(5) TERMS; SUBSTITUTES. (a) The regular term of office of mayor, alderman and supervisor shall commence on the third Tuesday of April in the year of their election. The regular terms of other officers shall commence on the first day of May succeeding their election unless otherwise provided by ordinance or statute.

(b) Except as otherwise specially provided the regular term of elective officers except supervisors shall be 2 years. The term of supervisors shall be one year. A different term for such officers or any of them may be provided by charter ordinance.

(c) The council may, by a record vote of two-thirds of all the members, by ordinance adopted and published previous to publication of the notice of the election at which aldermen are to be elected, provide for a division of the aldermen into two classes, one class to be elected for two years and the other for four years, and thereafter the term of aldermen shall be four years.

(d) If any officer be incapacitated or absent from any cause the common council may appoint some person to discharge his duties until he returns or until such disability is removed.

(6) COMPENSATION. (a) Salaries shall be paid the mayor or aldermen only when ordered by a vote of three-fourths of all the members of the council. Salaries heretofore established shall so remain until changed by ordinance.

(b) Whenever such salaries are to be changed or established the council shall, not later than the first regular meeting in February, fix the amount of salary of each officer entitled to a salary who may be elected or appointed for a definite term during the ensuing year. The salary of an officer so appointed or elected shall not be increased or diminished during his term of office. In cities newly incorporated the compensation of the first officers may be fixed during their terms.

(e) Salaries shall be paid at the end of each month unless the council shall at any regular meeting by ordinance order payment semimonthly.

(d) No officer receiving a salary shall receive for services of any kind rendered the city any other compensation, except as provided in subsection (5) of section 70.46 and section 70.48, but he may receive moneys from a pension fund, or for services rendered the school board of the city in any night school, social center, summer school or other extension activity. The council may assign various duties or offices to one individual and may fix compensation covering these consolidated functions, but no member of the council shall be eligible for such a position.

(7) GENERAL PROVISIONS. (a) The corporate authority of the city shall be vested in the mayor and common council.

(b) Officers shall have generally the powers and duties prescribed for like officers of towns and villages, except as otherwise provided, and such powers and duties as are prescribed by law and except as to the mayor shall perform such duties as shall be required of them by the council. Officers whose powers and duties are not enumerated in chapter 62 shall have such powers and duties as are prescribed by law for like officers or as are directed by the council.

(c) All officers and departments may make the necessary rules for the conduct of their duties and incidental proceedings.

(d) No city officer shall be interested, directly or indirectly, in any improvement or contract to which the city is a party, and whenever it shall appear that such is the case such contract shall be absolutely null and void and the city shall incur no liability whatever thereon. No city officer shall be accepted as surety on any bond, contract or other obligation made to the city. The provisions of this section shall not apply to the designation of public depositories for public funds, nor to temporary loans made to any county, town, school district, school board, city or village pursuant to section 67.12, nor to the publication of legal notices required to be published by any city, school district or school board, or by any city, school district or school board officer, at a rate not higher than that prescribed by law, nor to contract for the sale of printed matter or any other commodity, not exceeding \$300 in any one year, nor to health officers or hospitals in which they have an interest in cities of the third and fourth classes in furnishing hospitalization or medical services, or both, to persons receiving poor relief or medical aid from such cities. The term "temporary loan" as used in this paragraph means and includes any loan which matures not more than one year from the date of such loan.

(e) The general laws for the punishment of bribery, misdemeanors and corruption in office shall apply to city officers.

(f) Whenever a city official in his official capacity proceeded against or obliged to proceed before any court, board or commission, to defend or maintain his official position, or because of some act arising out of the performance of his official duties, and he has prevailed in such proceeding, or the council has ordered the proceeding discontinued, the council may provide for payment to such official such sum as it sees fit, to reimburse him for the expenses reasonably incurred for costs and attorney's fees.

(8) MAYOR. (a) The mayor shall be the chief executive officer. He shall take care that city ordinances and state laws are observed and enforced and that all city officers and employes discharge their duties.

(b) He shall from time to time give the council such information and recommend such measures as he may deem advantageous to the city. When present he shall preside at the meetings of the council.

(c) He shall have the veto power as to all acts of the council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to him by the clerk and shall be in force upon his approval evidenced by his signature, or upon his failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If he disapproves he shall file his objections with the clerk, who shall present them to the council at its next meeting. A three-fourths vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.

(d) Except in cities that have adopted subsection (6) of section 62.13, he shall be the head of the fire and police departments, and where there is no board of police and fire commissioners shall appoint all policemen, and he may, in any city, appoint watchmen to serve without pay, and in case of riot or other emergency, appoint as many special policemen as may be necessary.

(e) The council at its first meeting subsequent to the regular election and qualification of new members, shall after organization, choose from its members a president, who, in the absence of the mayor, shall preside at meetings of the council, and during the absence or inability of the mayor shall have the power and duties of the mayor, except that



he shall not have power to approve an act of the council which the mayor has disapproved by filing objections with the clerk. He shall when so officiating be styled "Acting Mayor."

(9) **TREASURER.** (a) The treasurer shall collect all city, county and state taxes, receive all moneys belonging to the city or which by law are directed to be paid to him, and pay over the money in his hands according to law.

(b) He shall keep a detailed account in suitable books in such manner as the council shall direct. He shall keep in a separate book an account of all fees received. His books shall at all reasonable times be open to inspection.

(c) He shall each month at the first meeting of the council and as often as it shall require make to the council a verified report of moneys received and disbursed and of the condition of the treasury. Ten days before each regular city election he shall file in the clerk's office a full and minute verified report of moneys received and disbursed, tax certificates, vouchers and other things of pecuniary value in his custody, and of all transactions of his office from the date of the preceding like report.

(d) He shall receive no fees or other compensation except the salary fixed prior to his election, except that in case of a sale by him of goods or chattels for payment of taxes he shall receive such fees as are allowed constables therefor. All other fees collected by him shall be paid into the treasury at the end of each day.

(e) He shall deposit immediately upon receipt thereof the funds of the city in the name of the city in the public depository designated by the board. Failure to comply with the provisions hereof shall be prima facie grounds for removal from office. When the money is so deposited, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the city treasury.

(f) He may in writing, filed in the office of the clerk, appoint a deputy who shall act under his direction and in his absence or disability, or in case of a vacancy shall perform his duties. The deputy shall receive such compensation as the council shall provide. The acts of such deputy shall be covered by official bond as the council shall direct.

(10) **COMPTROLLER.** (a) The comptroller shall monthly report in writing to the council at its first meeting the condition of outstanding contracts and of each of the city funds and claims payable therefrom, and shall each year on or before October first file with the clerk a detailed statement of the receipts and disbursements on account of each fund of the city and of each ward or other financial district during the preceding fiscal year, specifying the source of each receipt and the object of each disbursement, and also an estimate of the receipts and disbursements for the current fiscal year.

(b) He shall each month and as often as reported examine the treasurer's accounts as reported and as kept, and attach thereto a report to the council as to their correctness and as to any violation by the treasurer of his duty in the manner of keeping accounts or disbursing moneys.

(c) He shall examine each claim presented against the city, and determine whether it is in proper form, and if it is on contract, whether authorized and correct. For these purposes he may swear witnesses and take testimony. If he finds no objection he shall mark his approval on the claim. If he disapproves in whole or in part, he shall report to the council his reasons. He shall in all cases report evidence taken. No claim shall be considered by the council or be referred to a committee until it has been so examined and reported on.

(d) He shall keep an indexed claim book showing as to each claim, its number, name of claimant, date of filing, amount of claim, date of comptroller's report, whether approved and for how much, date of allowance or disallowance by council, amount allowed, date and number of order issued to pay, and date of cancellation of such order.

(f) He shall countersign all contracts with the city if the necessary funds have been provided to pay the liability that may be incurred thereunder, and no contract shall be valid until so countersigned.

(g) He shall each year make a list of all certificates for the payment of which special taxes are to be levied, in time for the same to be inserted in the tax roll, and certify its correctness.

(11) **CLERK.** (a) The clerk shall have the care and custody of the corporate seal and all papers and records of the city.

(b) He shall attend the meetings of the council and keep a full record of its proceedings.

(c) He shall enter at length, immediately after it goes into effect, every ordinance in an "ordinance book," with proof of publication, date of passage and page of journal where final vote is recorded. He shall keep a record of all licenses and permits granted and record all bonds, in appropriate books.

(d) He shall draw and sign all orders upon the treasury in the manner provided by section 66.042, and keep a full account thereof in appropriate books. He shall carefully preserve all receipts filed with him.

(e) He shall keep an accurate account with the treasurer and charge him with all tax lists presented to him for collection and with all moneys paid into the treasury.

(f) He shall keep all papers and records in his office open to inspection at all reasonable hours.

(g) Within thirty days after the close of each fiscal year he shall publish in the official paper a statement showing the receipts and disbursements as to each fund during the preceding fiscal year. This shall not apply to cities operating under section 63.10.

(h) He shall have power to administer oaths and affirmations under these statutes.

(i) He may in writing filed in his office appoint a deputy, who shall act under his direction, and in his absence or disability or in case of a vacancy shall perform his duties, and shall have power to administer oaths and affirmations. The deputy shall receive such compensation as the council shall provide. The clerk and his sureties shall be liable on his official bond for the acts of such deputy.

(12) ATTORNEY. (a) The attorney shall conduct all the law business in which the city is interested.

(b) He shall keep a docket of all actions in courts of record to which the city is a party, in which shall be entered in brief all steps taken and which shall be open to inspection at all reasonable hours.

(c) He shall when requested by city officers give written legal opinions, which shall be filed with the clerk.

(d) He shall draft ordinances, bonds and other instruments as may be required by city officers.

(e) He shall examine the tax and assessment rolls and other tax proceedings, and advise the proper city officers in regard thereto.

(f) He may appoint an assistant, who shall have power to perform his duties and for whose acts he shall be responsible to the city. Such assistant shall receive no compensation from the city, unless previously provided by ordinance.

(g) The council may employ and compensate special counsel to assist in or take charge of any matter in which the city is interested.

(13) POLICE. The chief of police shall have command of the police force of the city under the direction of the mayor. It shall be his duty to obey all lawful written orders of the mayor or common council. The chief and each policeman shall possess the powers, enjoy the privileges and be subject to the liabilities conferred and imposed by law upon constables, and be taken as included in all writs and papers addressed to constables; shall arrest with or without process and with reasonable diligence take before the police justice or other proper court every person found in the city in a state of intoxication or engaged in any disturbance of the peace or violating any law of the state or ordinance of such city and he may command all persons present in such case to assist him therein, and if any person, being so commanded, shall refuse or neglect to render such assistance he shall forfeit not exceeding ten dollars. They shall collect the same fees allowed to constables for similar services.

(14) ALDERMEN POLICEMEN. Every alderman shall have the powers of a city policeman. [1931 c. 86; 1931 c. 296 s. 2; 1933 c. 435 s. 3; 1935 c. 199, 206, 421, 520, 553; 1937 c. 22, 137, 270, 432; 1939 c. 86, 152; 1941 c. 80, 129; 1943 c. 66; 1945 c. 23, 67, 505; 1947 c. 312, 362]

**Note:** Where the common council of a city of the fourth class provided that the duties of comptroller be performed by the city clerk, and the council, acting as the board of public works and as such managing the city's utilities, designated the city clerk as cashier of such utilities without additional salary, the duties of comptroller and cashier were lawfully delegated to the clerk as part of his official duties as clerk, and were covered by the clerk's bond, which was renewed after the extra duties had been imposed upon him. *Rice Lake v. United States F. & G. Co.*, 216 W 1, 255 NW 130.

Words "every person" within statute providing for arrest of every person in city engaged in violating law or ordinance held to include female offenders. *Janesville v. Tweedell*, 217 W 395, 253 NW 487.

City's action for penalty for disorderly conduct because of unlawful assemblage need not be dismissed on motion of city attorney, and, where he then withdrew, court properly called member of bar to appear for city, as against contention that only city council could appoint attorney, and

that, in absence of such appointment, resort to mandamus was only remedy. *Guinther v. Milwaukee*, 217 W 334, 258 NW 865.

A city engineer who, after receiving the full amount of his fixed salary, returned ten per cent of it at the city's request for use for relief purposes, was not entitled subsequently to recover such amount from the city, since it constituted a voluntary contribution to the city. Where, however, the city levied a forty per cent contribution on the city engineer's fixed salary, and the city engineer entered into a compromise by which the city retained only twenty per cent, he was entitled to recover the amount retained, since in such situation he did not make a voluntary contribution to the city. *Schuh v. Waukesha*, 220 W 600, 265 NW 699.

The provision of (10) (f) that no contract with a city shall be valid until countersigned by the comptroller, is inapplicable to city orders. *Lurye v. State*, 221 W 68, 265 NW 221.

Mandamus will not lie to compel the issuance of orders on the city treasury unless it

appears that there are funds in the treasury to pay them. *Silgen v. Fond du Lac*, 225 W 335, 274 NW 256.

The purchase of a bank building for use as a city hall was void because of participation in the purchase of a city clerk who held a disqualifying interest within the meaning of the statute by virtue of ownership of stock in the bank from which purchase was made. Qualified members of the council who did not know of the clerk's disqualification did not render themselves personally liable to reimburse the city for the illegal disbursements. The city clerk could not avoid the liability to reimburse the city on the ground that his action was in good faith but he was liable to reimburse the city for the amount illegally disbursed. His responsibility was several so that recovery from him in the action by a taxpayer for reimbursement was authorized, although his liability was shared by other officers who were not parties. *Reetz v. Kitch*, 230 W 1, 283 NW 343.

The purpose of 62.09 (6) (a) and (b) was to remove questions of compensation of officers from the influence of partisan elections and to inform a candidate in advance of his election as to the salary he would receive. In enacting 10.43 the legislature did not intend to overrule the public policy embodied in 62.09 (6) (a) and (b), relative to the fixing or changing of salaries, and did not intend to permit the electors to do what the council was prohibited from doing. An ordinance proposing to change the salaries of aldermen, initiated by a petition under 10.43, presented to the common council after its first regular meeting in February, was not presented to the council at a time when it might lawfully change salaries so as to affect aldermen to be elected at the spring election. *Feavel v. Appleton*, 234 W 483, 291 NW 830.

Although a city officer cannot be coerced to waive part of his salary, he may voluntarily make a gift of a part of his salary to the city, and a determination of whether he has made a gift should not be made to turn on the mere mechanics of the operation nor be made to depend on the system of bookkeeping used in effecting the gift. Payments made to the city treasurer in excess of his legal salary were unlawful, and could be recovered by the city. *Maxwell v. Madison*, 235 W 114, 292 NW 301.

Offices of city attorney and municipal judge are incompatible. 19 Atty. Gen. 138.

City council names depository for school funds in city of third class. No special provisions are necessary to make the city treasurer's bond cover school board funds. No separate bond for school funds is necessary. 20 Atty. Gen. 59.

Alderman subjects himself to penalties prescribed in (2) (c) and 348.28 by accepting position of bandmaster for city high school and receiving compensation therefor. 20 Atty. Gen. 834.

Choosing of members of board of police and fire commissioners may be made elec-

tive under procedure outlined in (3) (b). 21 Atty. Gen. 350.

City official who is merchant violates (7) (d) in receiving any money appropriated by city for relief purposes. 22 Atty. Gen. 321.

If member of city council obtains contract for printing proceedings of council the contract is void under 62.09 (7) (d), Stats. 1933. 23 Atty. Gen. 587.

Ward supervisor is not eligible to office of city relief director. 25 Atty. Gen. 48.

Office of assemblyman or state senator is compatible with office of alderman. 25 Atty. Gen. 254.

City attorney may not be paid, in addition to his salary, compensation for services rendered municipally owned public utility. 25 Atty. Gen. 406.

Hardware and electric dealer drawing salary as mayor cannot be paid by municipal light and water commission to solicit business. He cannot bid for or sell board of education appointed by council any equipment or wiring on new high school. 25 Atty. Gen. 407.

(6) (d), Stats. 1935, prohibiting additional compensation to salaried city officers, and 70.46 (5), fixing maximum compensation for members of board of review, may not be abrogated by charter ordinance. 25 Atty. Gen. 624.

Charter ordinance purporting to abandon city-manager form of government under chapter 64, Stats. and restore mayor-alderman plan under chapter 62 must not conflict with chapter 62. 26 Atty. Gen. 48.

Office of alderman and employment as teacher in city schools in same city are incompatible. 26 Atty. Gen. 532.

It would seem that governing body of city of fourth class may grant police officers right to accept recognizances or admit to bail for violation of city ordinance, but in absence of such action by city council police officers of city have no right to accept recognizances or admit to bail. 27 Atty. Gen. 307.

Alderman may be elected to and hold office of police justice provided his term as alderman expires prior to time he takes office as police justice. 27 Atty. Gen. 478.

Removal of supervisor from ward from which he was elected vacates his office but, unless vacancy is filled, he may act on county board as de facto supervisor for such ward. 27 Atty. Gen. 704.

Under (7) (d) city official may sell insurance to city if amount of annual premium does not exceed \$300. 27 Atty. Gen. 841.

Under (7) (d) it is unlawful for supervisor elected from ward in city to county board to sell insurance to city if annual premium exceeds \$300, irrespective of his share of commission thereon. 31 Atty. Gen. 93.

Under 60.55 (22), 62.09 (13) and 361.03, a city police officer may go anywhere in the state to make an arrest, but may not be sent outside the state to return a fugitive who has waived extradition unless he be first sworn in as a deputy sheriff so as to be within 59.29. 34 Atty. Gen. 44.

**62.10 Official newspaper.** (1) In cities of the second and third class, the clerk shall, on or before the second Tuesday of April, advertise in the official city newspaper, or if there be none, in a newspaper published in the city, for separate proposals to publish in English (a) The council proceedings, and (b) the city advertising, respectively, for the ensuing year, inviting bids from all daily newspapers which have been published regularly in such city for the two years preceding, if there be more than one such paper, otherwise from all newspapers which have been published regularly at least once a week for such period, also stating the security required with each bid, which shall be previously fixed by the council, and requiring delivery of the bids in writing, sealed, at the clerk's office by twelve o'clock noon of the first Tuesday of May. At that hour, the clerk shall, in the presence of the mayor or an alderman, open the bids and enter them in a record kept for that purpose. No bid from other than a newspaper legally invited to bid, or for more than the legal rate for like work, shall be of any effect. The paper making the lowest effective bid for either the council proceedings or the city advertising shall be awarded the contract therefor. If two or more effective bids are for the same price, and no lower effective bid is filed, the clerk shall transmit such tie bids to the council at its next meeting and the council shall designate the successful bid. If no effective

bid shall be received, the council may direct the clerk to readvertise as before. Each successful bidder shall execute a contract in accordance with the bid and file such bond for its performance as the council shall require. No such paper shall receive more or less than the contract price nor any other compensation for the work. The paper securing the contract for the city advertising shall be the official city newspaper.

(2) In cities of the fourth class, the council, at its first meeting or as soon as may be, shall designate one or more newspapers published in the city, if any, otherwise published in the county and having a general circulation in the city, for publication of the council proceedings and as the official city newspaper for the publication of the city advertising for the ensuing year. The council shall fix the price at not to exceed the legal rate for like work. In cities in which no newspaper is published, all proceedings and advertising, required to be published, shall be posted in three public places in the city.

(3) The publisher, before the claim for the publication is audited, shall file with the clerk proof of publication by affidavit of the printer or foreman, attached to a copy of the matter published, stating the date or dates of publication. Such affidavit shall be conclusive evidence of publication for the purpose of audit.

(4) If for any reason any city shall at any time be without an official city newspaper, matters required to be published may be published in any newspaper in the city designated by the council, at not more than the legal rate for like work, or if there be none such, shall be posted for a like length of time in two public places in each ward.

(5) Nothing herein shall prohibit cities from advertising for needed help in any newspaper, in addition to, but not in lieu of the official city newspaper, and for materials, equipment or public work in trade papers or magazines, in addition to the official city newspaper at not more than the legal rate for like advertising. [1945 c. 568]

**Note:** Publisher cannot recover on quantum meruit for printing done for city where he did not comply with statutes covering contracts with municipality. *Journal P. Co. v. Racine*, 210 W 222, 246 NW 425.

**62.11 Common council.** (1) **HOW CONSTITUTED.** The mayor and aldermen shall be the common council. The mayor shall not be counted in determining whether a quorum is present at a meeting, but may vote in case of a tie. When the mayor does vote in case of a tie his vote shall be counted in determining whether a sufficient number of the council has voted favorably or unfavorably on any measure.

(2) **TIME OF MEETING.** The council shall meet at least once a month, and on the first Tuesday unless a different day be fixed by the council. More frequent regular meetings may be established by the council, and the mayor may call a special meeting by written notice to each member delivered to him personally or left at his usual abode at least six hours before the meeting. Following a regular city election the new council shall first meet on the third Tuesday of April.

(3) **PROCEDURE.** (a) The council shall be the judge of the election and qualification of its members, may compel their attendance, and may fine or expel for neglect of duty.

(b) Two-thirds of the members shall be a quorum, except that in cities having not more than five aldermen a majority shall be a quorum. A less number may compel the attendance of absent members and adjourn. A majority of all the members shall be necessary to a confirmation. In case of a tie the mayor shall have a casting vote as in other cases.

(c) Meetings shall be open to the public; and the council may punish by fine members or other persons present for disorderly behavior.

(d) The ayes and noes may be required by any member. On confirmation and on the adoption of any measure assessing or levying taxes, appropriating or disbursing money, or creating any liability or charge against the city or any fund thereof, the vote shall be by ayes and noes. All aye and nay votes shall be recorded in the journal.

(e) The council shall in all other respects determine the rules of its procedure.

(f) The style of all ordinances shall be: "The common council of the city of .... do ordain as follows."

(4) **PUBLICATION.** (a) Proceedings of the council shall be published in the newspaper designated under section 62.10 in such manner as the council shall direct. Except as hereinafter provided all ordinances shall be published in the official city newspaper within fifteen days of passage, and shall not be in effect until so published.

(b) All ordinances passed by the governing body of any city of the second class between January 1, 1914, and January 1, 1924, which were or may have been required to be published before becoming effective, but which were not published, shall be valid to the same extent as if they had been published in the first instance, as required by law, providing said ordinances and all amendments thereto are printed in the official journal of any such body together with the record of the passage of the same; however, the provisions of this paragraph shall not be effective in any city unless the governing body thereof shall so elect by a vote of two-thirds of its members.

(c) Whenever the governing body of any city shall, by resolution, authorize the preparation of a code consolidating and revising the general ordinances of such city, or any portion thereof, it shall not be necessary to print such code at length in the official journal following its introduction in such governing body, but the same may be referred to therein by title, and after the adoption and passage of any such code, the same may be published in book form and such publication shall be sufficient even though the ordinances thus consolidated and revised were not published in accordance with the provisions of paragraph (a) of subsection (4) of this section; a copy of such code shall be kept on file and open for public inspection in the office of the city clerk.

(5) POWERS. Except as elsewhere in the statutes specifically provided, the council shall have the management and control of the city property, finances, highways, navigable waters, and the public service, and shall have power to act for the government and good order of the city, for its commercial benefit, and for the health, safety, and welfare of the public, and may carry out its powers by license, regulation, suppression, borrowing of money, tax levy, appropriation, fine, imprisonment, confiscation, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants, and shall be limited only by express language. [1931 c. 104; 1939 c. 107; 1943 c. 66]

**Note:** A municipality may enact ordinances, not conflicting with the statutes, providing for punishment of offenses punishable under state law. This power includes a liquor prohibition ordinance, and repeal of state prohibition act did not render such ordinance contrary to public policy or prevent its future enforcement. *Hack v. Mineral Point*, 203 W 215, 233 NW 82.

An ordinance forbidding the keeping of a junk yard without a license did not vest in the city council purely arbitrary power to grant and revoke licenses. But the council's act in denying a permit for a junk yard should not be disturbed except for clear abuse of discretion. *Lerner v. Delavan*, 203 W 32, 233 NW 608.

Neither members of a city council nor the city building inspector are liable individually in damages for the revocation of a building permit, in the absence of malice, corruption or bad faith. *Lindemann v. Kenosha*, 206 W 364, 240 NW 373.

An ordinance providing for the revocation of a license by the mayor "for the good order of the city" was not a delegation of a legislative function, as it leaves to the mayor only the administrative function of ascertaining the existence of facts because of which revocation is necessary or expedient for such good order. A licensee, seeking to set aside the revocation of a license, is precluded from asserting that the ordinance under which the license was granted and under which he claims is invalid. *State ex. rel. Bluemound Amusement Park v. Mayor*, 207 W 199, 240 NW 847.

In an action to restrain the city from interfering with the use of real property, the evidence is held to show that refusal by the council of a permit for erection of a filling station was not arbitrary, it appearing with reasonable certainty that the application was denied because the council believed that the establishment of such a station at the point in question would create an additional traffic hazard. *Wadhams Oil Co. v. Delavan*, 208 W 578, 243 NW 224.

The absolute privilege under secs. 15 and 16, art. IV, Const., of members of the legislature does not apply to proceedings before the common council of cities; and while situations may arise under which statements made or published by a council member in such proceedings are privileged as a matter of law, the privilege involved is nevertheless a qualified or conditional privilege, and it is essential to a conditional privilege that the statements be made or published in good faith. *Branigan v. State*, 209 W 249, 244 NW 767.

While a city may install in its streets such water mains as it may deem necessary for supplying water to its residents and for fire protection, it cannot compel a public utility, lawfully occupying a street pursuant to authority granted by the city, to relocate its property without just compensation, in the absence of a contract so requiring. *Mil-*

*waukee E. R. & L. Co. v. Milwaukee*, 209 W 656, 245 NW 856.

Ordinance imposing penalty of fine, jail imprisonment, or both for possessing intoxicating liquor, did not exceed city's authority. Court cannot ignore plain, comprehensive language of the statute as going beyond people's will in granting broad police powers to cities; remedy lying with legislature. *Janesville v. Heiser*, 210 W 526, 246 NW 701.

The safety requirements fixed by the industrial commission for buildings pursuant to chapter 101 are to be considered as minimum requirements, and they do not preclude city ordinances including severer regulations, when reasonably necessary, than the state code. Sec. 62.11, empowering cities to enforce their ordinances by suppression, confiscation and other convenient means, does not give a city the right to create remedies to be applied by the courts, or entitle a city to an injunction against an ordinance violation not constituting a nuisance per se. *Caeredes v. Platteville*, 213 W 344, 251 NW 245.

Person who has secured building permit and has started to construct building may enjoin city from interfering with his right to proceed under the permit. *Wasserman v. Kenosha*, 217 W 223, 258 NW 857.

City may contract as indemnitor, as well as indemnitee, whether contract is to its advantage or results disadvantageously to it, and in connection with things done in its governmental, as well as proprietary, capacity. *H. Hohensee C. Co. v. Chicago, M., St. P. & P. R. Co.*, 218 W 390, 261 NW 242.

The right of an owner of land to fence his property is a property right which cannot be unreasonably interfered with. Barbed wire is not a nuisance per se. A city ordinance prohibiting erection of fences consisting wholly or in part of barbed wire is invalid as an unreasonable interference with right of property owner to fence his property, as applied to owner who proposed to erect fence six feet high with barbed wire attached at top to arms extending inward, and all within property line. *Williams v. Hudson*, 219 W 119, 262 NW 607.

A city ordinance prohibiting hawkers and peddlers from selling or soliciting orders for the sale of goods for mercantile houses in other cities than the city passing the ordinance, without having obtained a license therefrom, is held unconstitutional as discriminatory. *Whipple v. South Milwaukee*, 213 W 395, 261 NW 235. So is an ordinance requiring registration of such peddlers. *Edgerton v. Slatter*, 219 W 381, 263 NW 83.

Municipal corporations: Their powers are considered at great length under the following headings: Unauthorized or illegal contracts; Liability and recovery thereon or for money, goods, or services furnished municipality pursuant thereto; Ratification; Requisites and sufficiency; Unjust enrichment; Right to recover payments made or to restrain performance of contract; Services performed on city works project under

agreement with mayor; Acquiescence of city council and acceptance of benefits; Implied contracts; Quasi contracts; Estoppel; Against municipality. *Shulse v. Mayville*, 223 W 624.

The city may determine and may change the public use to which land dedicated as a public square without restriction may be devoted and no prescriptive right can be acquired to any particular form of public use. A city ordinance which prohibited peddlers and transient merchants from occupying any part of the public square longer than fifteen minutes is construed as intended to prohibit the use of the square by peddlers and transient merchants for vending purposes and as so construed is valid. *Stevens Point v. Bocksbaum*, 225 W 373, 274 NW 505.

A city ordinance prohibiting any marathon, walkathon or similar endurance contest was not superseded by or in conflict with the subsequent statutory enactment (section 352.43) prohibiting like contests wherein any person participates for a stated period. *Fox v. Racine*, 225 W 542, 275 NW 513.

For power of cities to prohibit gambling devices see note to 66.05, citing *Dallman v. Kluchesky*, 229 W 169, 232 NW 9.

Under the police power the city may repeal an ordinance licensing the operation of a rendering plant for a period of fifty years and may enact other ordinances regulating the business within said period. *La Crosse Rendering Works v. La Crosse*, 231 W 438, 235 NW 393.

A city ordinance providing merely that, before proceeding with the erection of any building within fire limits, the owner shall first obtain a permit from the mayor and chief engineer, and that they are authorized in their discretion to grant permits, is void for want of prescribing any standard to control the granting or the refusing of a permit. *Algoma v. Peterson*, 233 W 82, 238 NW 809.

A city ordinance imposing a license tax of \$10 per day for carrying on the business of a transient photographer is beyond the power of the city and void as designed to suppress, rather than to regulate, a lawful business. *Racine v. Weyhe*, 241 W 133, 5 NW (2d) 747.

Under its police power, broadly granted by 62.11 (5) a city has authority to prohibit the use or occupancy of a building for failure to comply with valid requirements of a building ordinance where the owner or occupant fails to make the building comply after notice of his violation thereof; and such prohibition does not violate the due-process clause of either the state or the federal constitution. *Miller v. Foster*, 244 W 93, 11 NW (2d) 674.

Where a contract by which a city agreed to pay money to a corporation if the corporation would move its plant to the city was ultra vires, and where the acts of all concerned did not result in a benefit to the city nor proceed so as to create special circumstances, the city may recover from the corporation the money paid, but the directors of the corporation, acting in good faith and not knowing that the city would rescind the transaction, are not individually liable. In respect to individual liability for the return of money received by a corporation pursuant to a transaction subsequently rescinded by the other contracting party, the corporate officers and directors are not "agents" and the corporation is not their "principal" in the usual sense, but they are the alter ego of the corporation in acting in the transaction; and the corporation itself, acting per se by means of its own authorized organization, is alone responsible in its ordinary and usual transactions, unless its officer injects his individual responsibility by doing some act such as a wilful wrong. *Kiel v. Frank Shoe Mfg. Co.* 245 W 292, 14 NW (2d) 164.

A state liquor law (176.01 et seq.) is, as expressly declared in 176.44, an enactment of state-wide concern, designed to obtain uniform regulation. *State ex rel. Martin v. Barrett*, 248 W 621, 22 NW (2d) 663.

Whether a municipality operates in a proprietary capacity or in a governmental capacity, it is subject to the same constitutional limitations. *Roberts v. Madison*, 250 W 317, 27 NW (2d) 233.

A city has a right to pass a milk ordinance for the welfare and health of its citizens, but such an ordinance must be reasonable and not arbitrary, must not go beyond the reasonable demands of the occasion, and must tend to accomplish the purpose of its adoption. *Dyer v. City Council of Beloit*, 250 W 613, 27 NW (2d) 733.

It is against public policy for registered pharmacist who owns and operates drug store, holds pharmacist's liquor permit and is member of city council to serve on license and ordinance committee of council. 24 Atty. Gen. 292.

Municipalities may pass ordinances strictly regulating abandoned wells, require permits on installation of private wells and provide penalties for failure to comply with ordinances. 24 Atty. Gen. 404.

See note to 62.23, citing 25 Atty. Gen. 422. Cities may by ordinance prohibit slot machines and pin ball games as potential gambling devices. 26 Atty. Gen. 535.

**62.115 Defense of officers by city attorney.** (1) The common council of any city, however incorporated, may by ordinance or resolution authorize the city attorney to defend actions brought against any officer or employe of such city or of any board or commission thereof, growing out of any acts done in the course of his employment, or out of any alleged breach of his duty as such officer or employe, excepting actions brought to determine the right of such officer or employe to hold or retain his office or position, and excepting also actions brought by such city against any officer or employe thereof.

(2) Nothing in this section contained, nor any action taken by any city or by any city attorney pursuant to the provisions of this section, shall be construed to impose any liability, either for costs, damages or otherwise, upon such city or city attorney. [1943 c. 275 s. 26]

**62.12 Finance.** (1) **FISCAL YEAR.** The calendar year shall be the fiscal year.

(2) **BUDGET.** On or before October first, each year, each officer or department shall file with the city clerk an itemized statement of disbursements made to carry out the powers and duties of such officer or department during the preceding fiscal year, and a detailed statement of the receipts and disbursements on account of any special fund under the supervision of such officer or department during such year, and of the condition and management of such fund; also detailed estimates of the same matters for the current fiscal year and for the ensuing fiscal year.

(3) **ACCOUNTING.** The city treasurer shall keep separate all special funds, and the city clerk shall keep a separate account with the general fund for each officer or department through which disbursements are made from the general fund to carry out the powers and duties of such officer or department. The council shall examine and adjust the accounts

of the clerk, treasurer and all other officers or agents of the city after the same shall have been audited by the comptroller.

(4) **TAX LIMITATION.** The tax levied by the council for any one year for municipal purposes, together with all other taxes to be levied for any city purpose except as provided in section 67.035, shall not exceed  $3\frac{1}{2}$  per cent of the assessed value of the real and personal property in the city in that year, except that in addition a special tax for school purposes not exceeding 8 mills on the dollar of such assessed value may be levied.

(5) **LICENSE MONEYS.** Moneys received for licenses may be used for such purpose as the council shall direct in the absence of specific appropriation by law.

(6) **FUNDS; APPROPRIATIONS; DEBTS.** (a) Unless otherwise provided by law city funds shall be paid out only by authority of the council. Such payment shall be made in the manner provided by section 66.042.

(b) The council shall not appropriate nor the treasurer pay out 1. Funds appropriated by law to a special purpose except for that purpose, 2. Funds for any purpose not authorized by the statutes, nor 3. From any fund in excess of the moneys therein.

(c) No debt shall be contracted against the city nor evidence thereof given unless authorized by a majority vote of all the members of the council.

(7) **CITY DEPOSITORIES.** (a) The council shall designate a bank or banks within this state with which city funds shall be deposited, and when the money is deposited in such depository in the name of the city, the treasurer and his bondsmen shall not be liable for such losses as are defined by subsection (6) of section 34.01. The interest arising therefrom shall be paid into the city treasury.

(8) **CLAIMS.** (a) All claims and demands against the city shall be itemized and filed with the clerk, who shall deliver the same to the comptroller for examination. The comptroller shall within 30 days thereafter examine such claim or demand and return the same to the clerk with his report thereon in writing, who shall place the same before the council for action at its next meeting.

(b) Payment of regular wages or salary pursuant to the budget and salary schedule adopted by the council may be by pay roll, verified by the proper official, and filed in time for payment on the regular pay day. [*Spl. S. 1931 c. 1 s. 1; 1933 c. 435 s. 2; 1935 c. 421; 1939 c. 107; 1941 c. 129; 1945 c. 43; 1947 c. 201, 362*]

**Note:** The sureties on a depository bond securing municipal deposits are entitled upon payment of a judgment in favor of the city to offset against their indebtedness to the bank the amount paid on such judgment. *Rice Lake v. Citizens' State Bank, 204 W 228, 235 NW 398.*

Where a municipality has received money, goods or services and has accepted the benefits thereof, and it had power to acquire the money, goods or services and it has paid therefor, an action to recover the money back into the public treasury will not lie where it is inequitable and unjust to require the repayment, but otherwise where such repayment would be equitable. *Shulse v. Mayville, 223 W 624, 271 NW 643.*

A city has no authority to pay in advance for future services; and, therefore, the treasurer could not be mandamused to sign an order for payment of an advance retainer fee. *State ex rel. Madison v. Maxwell, 224 W 17, 271 NW 393.*

The purpose of requiring a claimant to present his claim to a city before bringing action is to give the city an opportunity to

pay or adjust the claim without unnecessary expense if it deems the claim valid; and no great amount of formality is required as to the form in which claims should be presented, and claims presented should not be narrowly construed. *Trustees of University Co-operative Co. v. Madison, 233 W 100, 288 NW 742.*

Failure of a superintendent of city schools which are governed by sections 40.50 to 40.60 to comply with 62.12 (8) or 62.25 is a bar to his action. *Seifert v. School District, 235 W 489, 292 NW 286.*

A city is not liable as for a nuisance merely for its failure to discharge the duty imposed on it to maintain the streets in a reasonably safe condition for travel as required by 81.15, the extent of its duty in that regard being fixed by the statutes. *Lindemeyer v. Milwaukee, 241 W 637, 6 NW (2d) 653.*

In absence of statutory authority city may not refund valid assessments paid by property owners for installation of water mains laid in streets fronting upon their property. *26 Atty. Gen. 208.*

**62.13 Police and fire departments.** (1) **COMMISSIONERS.** Each city shall have a board of police and fire commissioners consisting of five citizens, three of whom shall constitute a quorum. The mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing to be filed with the secretary of the board, one member for a term of five years. No appointment shall be made which will result in more than three members of the board belonging to the same political party. The members of the board shall receive no compensation. The board shall keep a record of its proceedings.

(2) **EXCEPTION.** Subsection (1) shall not apply to cities of less than four thousand population except by ordinance adopted by a majority of all the members of the council. A repealing ordinance may be adopted by a like vote.

(3) **CHIEFS.** The board shall appoint the chief of police and the chief of the fire department, who shall hold their offices during good behavior, subject to suspension or removal by the board for cause.

(4) **SUBORDINATES.** (a) The chiefs shall appoint subordinates subject to approval by the board. Such appointments shall be made by promotion when this can be done with

advantage, otherwise from an eligible list provided by examination and approval by the board and kept on file with the clerk.

(b) Any person who, on June 23, 1943 shall have served and acted as a full-time city police patrolman or police officer performing the services by virtue of regular assignment therefor under the orders and supervision of the chief of police of said city, and receiving his salary on the regular official pay roll of said police department for a continuous period of more than 10 years, although not regularly appointed from an eligible list, shall be deemed to have been regularly appointed, as of the time of the commencement of his service, and upon payment into the police pension fund of the amounts required by law since said time, shall be entitled to the same pension rights under this section as if employed for such period as a regular appointee.

(c) For the choosing of such list the board shall adopt, and may repeal or modify, rules calculated to secure the best service in the departments. These rules shall provide for examination of physical and educational qualifications, habits, reputation, and experience, and may provide such competitive examinations as the board shall determine, and for the classification of positions with special examination for each class. The board shall print and distribute the rules and all changes in them, at city expense.

(d) The examination shall be free for all citizens of the United States over 21 and under 55 years of age, with proper limitations as to residence, health, habits and character. They shall be practical in their character, and relate to those matters which will fairly test the capacity of the candidates for the positions they seek, and may include tests of manual skill and physical strength. The board shall control examinations and may designate and change examiners, who may or may not be otherwise in the official service of the city, and whose compensation shall be fixed by the board and paid by the city. In the case of veterans, other conditions being equal, a preference shall be given in favor of veterans of any of the wars of the United States. Preference is defined to mean that whenever an honorably discharged veteran competes in any examination he shall be accorded 5 points, and if such veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another 5 points, in addition to earned ratings therein, except that such preference shall not be granted to any veteran competing in such examination who has not obtained at least a passing grade.

(e) The council of any city of the second, third or fourth class may provide that one or more members of the police force shall be women. The fire and police commission shall select each such police woman from a list of three names submitted by the judge having juvenile jurisdiction in such city.

(5) SUSPENSIONS AND REMOVALS. (a) The board may suspend a chief upon its own initiative or pending investigation of written charges made by an elector of the city and filed with the president of the board. The board shall not remove a chief except upon such written charges.

(b) The board or the chief may suspend a subordinate for cause. If the chief suspends a subordinate he shall immediately report the same in writing, with the cause, to the president of the board. Any elector of the city may file written charges against a subordinate with the president of the board, and pending investigation thereof the board may suspend such subordinate. Only upon such written report or charges shall a subordinate be removed.

(c) Every person, chief or subordinate, against whom charges are filed shall be entitled to a copy thereof and shall have an opportunity to be heard in his own defense. Such hearing shall be public, and both the accused and the complainant may be represented by attorney and may compel the attendance of witnesses by subpoena which shall be issued by the president of the board on request and be served as are subpoenas in justice court.

(d) If the board shall determine that the charges are not sustained, the accused, if he has been suspended, shall be immediately reinstated. If the board shall determine that the charges are sustained, the accused, by order of the board, may be suspended, or reduced in rank, or suspended and reduced in rank, or removed, as the good of the service may require.

(e) Findings and determinations hereunder and orders of suspension, reduction, suspension and reduction, or removal, shall be in writing and, if they follow a hearing, shall be filed within 3 days thereof with the secretary of the board.

(f) Further rules for the investigation of charges may be made by the board.

(g) No person shall be deprived of compensation while suspended pending investigation.

(h) Any person suspended, reduced, suspended and reduced, or removed after investigation may appeal from the order to the circuit court by serving written notice thereof on the secretary of the board within 10 days after the order is filed. Within 5



days thereafter the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in said court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence was the order of the board reasonable? No costs shall be allowed either party and the clerk's fees shall be paid by the city. If the order of the board is reversed, the accused shall be forthwith reinstated and entitled to his pay as though in continuous service. If the order of the board is sustained it shall be final and conclusive.

(5m) DISMISSALS AND RE-EMPLOYMENT. (a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to his efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any cause set forth in this section shall be left on an eligible re-employment list for a period of two years after date of dismissal. If any vacancy occurs, or if the number of subordinates is increased, in the department, such vacancy or new positions shall be filled by persons on such list in the inverse order of the dismissal of such persons.

(6) OPTIONAL POWERS OF BOARD. (a) The board of fire and police commissioners shall have the further power:

1. To organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management.

2. To contract for and purchase all necessary apparatus and supplies for the use of the departments under their supervision, exclusive of the erection and control of the police and fire station buildings.

3. To audit all bills, claims and expenses of the fire and police departments before the same are paid by the city treasurer.

(b) The provisions of this subsection shall apply only if adopted by the electors. Whenever not less than thirty days prior to a regular city election a petition therefor, signed by electors equal in number to not less than twenty per cent of the total vote cast in the city for governor at the last general election, shall be filed with the clerk, he shall give notice in the manner of notice of the regular city election of a referendum on the adoption of this subsection. Such referendum election shall be held with the regular city election, and the ballots shall conform with the provisions of section 6.22 and 6.23, and the question shall be "Shall subsection (6) of section 62.13 of the statutes be adopted?"

(7) COMPENSATION. The salaries of chiefs and subordinates shall be fixed by the council. All other moneys of any nature received by them shall be accounted for in the manner provided in paragraph (a) of subsection (9) and paragraph (a) of subsection (10), respectively, and the chiefs shall make verified reports thereof to the council quarterly. Unless the council otherwise provides, in cities of the fourth class rewards for the apprehension of criminals may be retained by the person entitled thereto. Such salaries when so fixed may be increased but not decreased by the council without a previous recommendation of the board. The council may provide that the salaries shall increase with length of service, and nothing herein shall interfere with the power of the council to grant a pension to persons provided in subsections (9) and (10).

(7m) REST DAY. The council of every city of the second, third or fourth class shall provide for, and the chief of the police department shall assign to, each policeman in the service of such city one full rest day of twenty-four consecutive hours during each one hundred and ninety-two hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such day

of rest be had at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department.

(7n) HOURS OF LABOR. The council of every city of the second, third or fourth class, shall provide for a working day of not more than eight hours in each twenty-four except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such work day shall be extended beyond the eight-hour period at such time; and when such emergency ceases to exist, all overtime given during such emergency, shall be placed to the credit of such policeman, and additional days of rest given therefor.

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department, and for the management and equipment of either insofar as not otherwise provided for by law. In cities of the second and third classes having a paid fire department the full paid force shall be divided into two platoons, each of which shall be on duty alternately. The board shall fix the hours of duty, which shall be as nearly equal as practicable, and no fireman shall be continuously on duty longer than the board shall have thus determined, except in case of a peril which in the judgment of the officer in charge makes it a positive necessity.

(9) POLICE PENSION FUND. (a) *Sources of the fund.* 1. Each city of the second or third class shall have a police pension fund. There shall be paid into such fund the following: Two and one-half per cent of receipts from licenses; three and one-half per cent of the salary of each member of the department; twenty-five per cent of all fines imposed for violations of city ordinances; fines imposed on members for violation of department rules; deductions from salaries for time lost on account of sickness; rewards in moneys, fees, gifts or emoluments that may be paid or given for or on account of any service of the department or any member thereof, except when allowed to be retained by said member by resolution of the board of trustees of said fund, or given to endow a medal or other permanent competitive award; receipts from sales of unclaimed property; and earnings upon the deposit, loan or investment of said fund.

2. The board of trustees may take for such fund by grant, gift, devise or bequest any money, property or thing of value.

3. Any excess of annual income over the annual disbursements shall revert to the principal of the fund and become a permanent addition thereto until the market value of the securities, and cash, in the fund shall equal one hundred fifty thousand dollars for cities of the second class, one hundred thousand dollars for cities of the third class, and fifty thousand dollars for cities of the fourth class. The board of trustees shall thereafter refund to the city treasurer, at the close of each year, the excess of receipts over disbursements for that year.

4. The pensions provided by this section shall be paid in full when due and only from revenue received from the sources enumerated in subdivision 1 of paragraph (a) of this subsection. Temporary withdrawals may be made from the permanent fund to meet current disbursements when no other funds are available, but such withdrawals shall be included in the next succeeding tax levy and shall be replaced as soon as other funds can be obtained. Should the annual income received from sources defined in subdivision 1 of paragraph (a) of this subsection be insufficient to pay the pension requirements for that year, such deficit shall be included in the next succeeding tax levy. Such sums shall be transferred to the fund by the city treasurer on the ensuing June first, and such reimbursement shall be considered as a replacement of principal, and not as current income. The estimated excess, or deficit, in the annual account shall be certified by the secretary of the board of trustees to the city treasurer on or before August first of each year.

(b) *Board of trustees.* 1. The mayor, treasurer, comptroller, and the chief and three active subordinates of the department, shall be the board of trustees of the said pension fund. The three subordinates from the department shall be elected annually, by ballot, at least three days before the annual election of officers of the board. Each subordinate of the department shall be entitled to vote for such three members of the board upon one ballot, and the three persons receiving the highest number of votes shall be elected. The members of the board shall receive no compensation for service thereon.

2. The board shall meet at least once annually in January and select from its members a president and a secretary, and shall fill vacancies in such offices. The city treasurer shall be ex officio treasurer of such board, and as such, custodian of the fund and all securities and property belonging thereto. He shall keep books of account thereof in such manner as the board shall direct. Such books shall always be open to inspection by the board or a member thereof. The city treasurer shall be liable on his official bond for the performance of such duties.

3. The board shall have exclusive control and management of the fund. The moneys therein shall be paid out only upon warrant signed by the president and countersigned by the secretary of the board. No such warrant shall be drawn except upon order of the board duly recorded in its proceedings. The board may invest the fund or a part thereof in the name of the board in such securities as are authorized by chapter 320 for investment of trust funds, or in any bonds or securities issued under the authority of any municipality, whether the same create a general municipal liability or a liability of the property owners of such municipality for special improvement made therein and may sell such securities.

4. The board shall hear and decide all applications for pensions, and shall have power to compel witnesses to attend and testify before the board thereon and upon all matters connected with the fund, in the same manner as provided by law for taking testimony before notaries public. Any member of the board may administer oaths to such witnesses.

5. The board shall make the needful rules for its government, the conduct of its proceedings, and the management of the fund. It shall cause its secretary to keep a record of all its proceedings. It may appoint a clerk, and provide for the payment from the fund of clerk hire, printing, and other necessary incidental expenses.

(c) *Pensions.* The provisions of subsection (9) of this section shall apply only to members of the department regularly receiving compensation for their services, and such member shall have a vested right in and to said pension fund so that no payments made thereto shall be diverted or used, temporarily or otherwise, for any purpose other than provided by this subsection. Persons shall be entitled to pensions only as follows:

1. *Disability.* If any member of the department, while contributing to the fund, shall, within the hours when he was required to be on active duty, and while engaged in the performance of duty, or while engaged in the performance of any other duties under the direction of any superior officer, be injured, or contract a disease due to his occupation, and be found upon examination by a medical officer, if any ordered by the board, or by a licensed physician ordered by the board, to be permanently disabled, physically or mentally, by reason thereof, so as to render necessary his retirement from service in such department, the board shall retire him and order payments to him monthly of a sum equal to one-half his monthly compensation at the date of his retirement.

2. *Death.* If such injury or disease shall result in death, or if after retirement upon a pension or after ten years' service and while in the service, any member of the department shall die from any cause, and shall leave surviving a widow, a child under the age of eighteen years, or a dependent parent, the board shall order monthly pension as follows: (a) To the widow, one-third of the monthly compensation of the deceased at the time of his death or retirement on pension, unless she shall have married him after his retirement on pension. (b) To the guardian of each such child, twelve dollars for each child until it is eighteen years of age. (c) To the dependent parent, only in case no widow is entitled to pension, the amount the widow would have received, to be paid to but one parent, to be determined by the board. (d) If the widow dies or remarries, her allowance shall cease. (e) The total monthly pension paid all beneficiaries shall not exceed sixty-five per cent of the monthly compensation of the deceased at the date of his death or retirement, and if this is insufficient to pay the full schedule it shall be pro rated on the basis of the schedule. (f) If at any time the moneys available shall be insufficient to meet all pension requirements, each beneficiary shall be paid a pro rata amount. When the fund is replenished such beneficiaries as are still entitled to pension shall be paid all withheld amounts. It shall be the duty of the board of trustees to require annual sworn affidavits from all widow beneficiaries establishing the right to receive benefits under this section, and the board of trustees may withhold pension payments until such time as such affidavits are presented.

3. *Service.* A member of the department who has served twenty-two years or more may apply to be retired or may be retired on motion of the board, except that a member joining the police department after January 1, 1940, must also have attained the age of fifty-seven years. Upon such retirement, or upon discharge after such service, the board shall order to be paid him a monthly pension equal to one-half his monthly compensation at such time.

4. *Light duty.* The board on recommendation of the chief may assign any retired pensioner to light duty in the department.

5. *Law governing.* All pensions shall be paid in accordance with the law that was or shall be in force at the time the claim arose.

(d) *Exemption.* Money due or to become due to any pensioner or beneficiary from the pension fund shall be exempt from any process, or order of any court of this state, upon account of any claim or demand against any such pensioner or beneficiary.

(e) *Second and third class cities.* No person who, prior to January 1, 1948, had not contributed to a police pension fund established pursuant to this subsection shall be permitted to contribute to such fund or become a member thereof on or after such date; nor shall he or his widow, child or dependent parent be, or become, entitled to receive any benefit from such fund. Any person who, after December 31, 1947, becomes a member of the police department in a city of the second or third class, or who was a member of such department on said date, but who, in each such case had not, on or before such date, properly contributed to a police pension fund established pursuant to this subsection, and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.919. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

(9a) **FOURTH CLASS CITIES.** In cities of the fourth class the council may annually and from time to time provide by ordinance for the pensioning, out of the general fund or otherwise, of members of the police department who have served for a term of 20 years or more, and shall have reached the age of 55 years, or who shall be disabled or superannuated, and for the widows and orphans of deceased members. Such pension shall not exceed one-half the salary of such officer at the time of his pensioning or death. No person who, prior to January 1, 1948 had not contributed to a police pension fund established pursuant to this subsection shall be permitted to contribute to such fund or become a member thereof on or after said date; nor shall he or his widow or child be, or become, entitled to receive any benefit from such fund or under any such ordinance which may have been passed after December 31, 1947 pursuant to this subsection. Any person who, after December 31, 1947, becomes a member of the police department in a city of the fourth class, or who was a member of such department on said date, but who, in each such case had not, on or before such date, properly contributed to a police pension fund established pursuant to this subsection, and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.919. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

(10) **FIREMEN'S PENSION FUND.** (a) Each city of the second and third class having a paid fire department shall have a firemen's pension fund. There shall be paid into such fund the following: Receipts from taxation of fire insurance companies or agents; 3½ per cent of the salary of each member of the department; fines imposed on members for violation of department rules; deductions from salaries for time lost on account of sickness; rewards in moneys, fees, gifts or emoluments that may be paid or given for or on account of any service of the department or any member thereof, except when allowed to be retained by said member by resolution of the board of trustees of said fund, or given to endow a medal or other permanent competitive award; and earnings upon the deposit, loan or investment of said fund.

(b) The board of trustees may take for such fund by grant, gift, devise, or bequest any money, property, or thing of value, the amount of value of which does not exceed fifty thousand dollars.

(c) Such portion of the income in any year which shall not be required to be disbursed in that year under paragraph (e) of this subsection, shall be retained as a permanent fund, and thereafter when the amount in said fund shall be one hundred fifty thousand dollars, only the income therefrom, with the other revenues of said fund, shall be available for the payment of pensions. The council may then diminish the amount paid into said fund from taxation of fire insurance companies or agents, but to such extent only as will leave sufficient income to the said fund to meet the pension requirements.

(d) Should the income to be available in any year for the payment of pensions be less than the amount required for that year, the city treasurer shall on the first day of August pay into said fund from income tax receipts an amount equal to the deficiency. Temporary withdrawals may be made from the permanent fund to meet current disbursements when no other funds are available, but such withdrawals shall be replaced as soon as other funds can be obtained.

(e) The provisions of paragraphs (b) to (d) of subsection (9) shall apply to the firemen's pension fund, except that a member joining the fire department after July 1, 1917, and before January 1, 1940 shall not voluntarily retire after 22 years of service and be entitled to a pension, unless he shall also have attained the age of 52 years, and except, if any member of the department while contributing to the fund, shall sustain injury while not on duty, and be found upon examination by a medical officer, if any be ordered by the

board, or by a licensed physician ordered by the board, to be permanently disabled, physically or mentally by reason thereof, so as to render necessary his retirement from service in such department, the board shall retire him and order payment to him monthly of a sum equal to 10 per cent of his monthly compensation at the date of his retirement if such disability occurs at any time after the completion of 6 years of service, and an additional amount equal to 2½ per cent of the monthly compensation for each additional year of service over said 6 years service, but at no time shall the total monthly pension exceed the sum of 50 per cent of his monthly compensation excepting that no pension shall be paid where the disability or disease herein results from gross negligence or wilful misconduct.

(f) No person who, prior to January 1, 1948, had not contributed to a firemen's pension fund established pursuant to this subsection shall be permitted to contribute to such fund or become a member thereof on or after such date; nor shall he or his widow, child or dependent parent be, or become, entitled to receive any benefit from such fund. Any person who, after December 31, 1947, becomes a member of the fire department in a city of the second or third class, or who was a member of such department on said date, but who, in each such case had not, on or before such date, properly contributed to a firemen's pension fund established pursuant to this subsection, and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.919. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

(g) Each city of the fourth class shall install a pension system for full-time firemen pursuant to this subsection, unless the common council shall adopt a pension plan for such firemen in the same manner as provided for policemen by section 62.13 (9a), or unless the city shall act or shall have acted to become a participating municipality pursuant to sections 66.90 to 66.919, in which event members of the fire department shall be included under the provisions of sections 66.90 to 66.919 if they can otherwise qualify thereunder provided there is not existing in such city a system created pursuant to this section. No person who, prior to January 1, 1948 had not contributed to a firemen's pension system established pursuant to this paragraph or section 62.13 (9a) shall be permitted to contribute to such a system or become a member thereof on or after such date; nor shall he or his widow or child be, or become, entitled to receive any benefit from either such system or under any ordinance which may have been passed on December 31, 1947, pursuant to this paragraph or section 62.13 (9a). Any person who, after December 31, 1947 becomes a full-time fireman in a city of the fourth class or who was such a full-time fireman on said date, but who, in each such case had not, on or before such date, properly contributed to a firemen's pension system established pursuant to this paragraph, or section 62.13 (9a), and who can otherwise qualify, shall be, or become, a participating employe under sections 66.90 to 66.919. If any such participating employe shall be entitled to a prior service credit, he shall be given such credit at the 2 rate unless the municipality by which he is employed shall have elected to become a participating municipality under said section, in which case the rate elected by such municipality shall be used.

(11) FIREMEN, REST DAY. The common council of every city of the fourth class, having a population of five thousand or more and a fire department shall provide for, and the chief of such fire department shall assign to each full paid member thereof, a period of twenty-four consecutive hours off duty during each seventy-two hours, except in cases of positive necessity by some sudden and serious fire, accident or other peril, which, in the judgment of the chief engineer or other officer in charge demands that such day of rest be not given at such time. The provisions of this section shall not apply to cities having a two-platoon or double shift system.

(11a) FIRE DEPARTMENT, PLATOONS. (a) The common council, or other governing body of every city of the first, second and third class, whether organized under a general or special charter, having a paid fire department, shall provide for, and the governing power of the fire department shall divide the full paid fire fighting force in the fire department into 2 bodies or platoons. Each platoon shall work, or be on duty alternately an equal number of hours or as nearly so as the governing power of the fire department of each such city shall decide, provided however, that no member of said platoon shall be on duty for a longer continuous period of time than the governing power of the fire department shall designate, except in cases of positive necessity by some sudden and serious fire, accident, or other peril, which in the judgment of the chief engineer or other officer in charge demands.

(b) The hours of duty of each member of the fire fighting force of the fire department in every city of the first class shall be limited to 72 hours in any one week. If any such

department shall be on a platoon system of hours of duty, 12 hours may be added to one of 2 successive weeks and such period of time deducted from the previous or succeeding week, as the case may be.

(12) LEGISLATIVE INTENT. The provisions of section 62.13 and chapter 589 of the laws of 1921 and chapter 423, laws of 1923, and chapter 586 of the laws of 1911, shall be construed as an enactment of state-wide concern for the purpose of providing a uniform regulation of police and fire departments. [1931 c. 94, 240; 1933 c. 58, 175; 1935 c. 193, 195; 1937 c. 94; 1939 c. 496; 1939 c. 513 s. 10; 1943 c. 165, 290, 344, 544; 1945 c. 55, 245, 368; 1947 c. 206, 362, 388]

**Cross Reference:** See also section 66.15, fire department platoons; 103.40, six-day week for firemen in second and third class cities; and 213.13, rest day for salaried firemen.

**Note:** For certiorari to review decision of city manager, see note to 252.04, citing State ex rel. Meissner v. O'Brien, 208 W 502, 243 NW 314.

A communication from the board of police and fire commissioners to the common council, offering a "suggested" plan of salary waiver, disclosed a substantial compliance with (7), requiring a "recommendation" of the board before the council may decrease policemen's salaries, and the council may not exceed the amount of decrease so recommended. Van Gilder v. Madison, 222 W 53, 267 NW 25, 268 NW 108.

The firemen's pension board cannot retire members of department for purpose of making positions available to those in whom board is interested or for purpose of creating positions in department for friends and relatives of members of board. Horlick v. Swoboda, 225 W 162, 273 NW 534.

A resolution of the board of fire and police commissioners that the city council be permitted to reduce salaries of police and fire department by such per cent as council should deem proper after careful study and survey was sufficient compliance with statute permitting reduction of salaries only on recommendation of the board. The resolution was valid even though the board was only a de facto board. Silgen v. Fond du Lac, 225 W 335, 274 NW 256.

Where policemen did not protest against reduction in salary made by city as emergency economy measure and accepted reduced salaries for several years the policemen were estopped to claim the amount deducted. Altenberg v. Superior, 228 W 272, 280 NW 342.

Where the city council abolished the fire and police commission, the powers of the commission were distributed between the city manager and council pursuant to the statute, irrespective of the council's superfluous act in purporting to assign those powers. Webb v. Beloit, 229 W 51, 231 NW 662.

Where a chief of police had been appointed by the board of police and fire commission and where the board thereafter had been abolished the chief of police could not be removed from office without proof of good cause. State ex rel. Monty v. Tilleson, 231 W 110, 285 NW 501.

A person who was appointed captain of police and authorized temporarily to act as chief was a subordinate police officer and not the chief of police. Walsh v. Richland Center, 231 W 265, 285 NW 791.

Under the provision that the "mayor shall not be counted in computing a quorum, majority or other proportion" of the common council and shall not vote except in case of a tie, and the provision of (2) that the requirement in (1) for a board of police and fire commissioners shall not apply to cities of less than 4000 population except by "ordinance adopted by a majority of all the members of the council," and that a "repealing ordinance may be adopted by a like vote," such a repealing ordinance was not adopted, where, all of the 8 aldermen and the mayor being present, 4 of the aldermen voted "Yes" and 4 voted "No" and the mayor voted "Yes," since the mayor could not be counted in determining the required majority and had no right to vote in the circumstances. Seelig v. Ripon, 237 W 533, 297 NW 368.

Under (9) (c) 1, the board is authorized to retire a disabled policeman only after such a finding has been made, and a policeman's petition, containing no allegation that the necessary finding by a medical officer or physician ordered by the board has been made, is insufficient to entitle him to a writ of mandamus to compel the board to retire him and award him a pension. [State ex rel. Weber v. Trustees of Policemen's Pension Fund, 119 W 436, applied.] State ex rel. Wendt v. Trustees of Police Pension Fund, 239 W 55, 300 NW 510.

A pipeman who was wrongfully dismissed in disregard of his civil service status under 62.13 (5m) (b), (c), and whose work was thereafter done by others, was not an "officer" but was merely an employe, and hence the dismissal of his complaint against the city for damages, on the ground that the situation was governed by the rule that when the salary of an "office" has been paid to a de facto officer the de jure officer cannot recover from the municipality the sums so paid, was error. Olson v. Superior, 240 W 108, 2 (2d) NW 718.

Under 62.13 (9), as amended by ch. 496, laws of 1939, the legislative declaration in (9) (c), Stats. 1939, that members of the police department shall have a vested right in police pension funds is not applicable to cities of the fourth class having a population between 3,000 and 10,000. State ex rel. McCarty v. Gantter, 240 W 548, 4 (2d) NW 153.

As to removal of a member of the police and fire commissioners, see note to 17.12, citing State ex rel. Kidder v. Steele, 241 W 198, 5 NW (2d) 764.

On an appeal to the circuit court from an order of a police and fire commission suspending a police captain and reducing him in rank, the sole question for determination is, as expressly prescribed by 62.13 (5) (h), Stats. 1943, authorizing the appeal, whether on the evidence the order of the commission was reasonable. Petition of Heffernan, 244 W 104, 11 NW (2d) 680.

Subsections (7), (7m) and (7n) give to a policeman the option to refuse to work over 8 hours on a working day and to refuse to work on a day of rest, except in emergency, or to get an express agreement for pay for overtime; and without such agreement a policeman employed at a fixed salary per month cannot recover for overtime either for working in excess of 8 hours on working days or for working on days of rest. Schoonover v. Viroqua, 244 W 615, 12 NW (2d) 912.

Ch. 586, laws of 1911, is applicable to the city of Milwaukee, but, by virtue of exclusionary provisions in 62.03 (1), the provisions of ch. 62, Stats., in particular 62.13 (5) (b), (c), relating in part to hearings for policemen or firemen suspended by the board or chief of a city, are not applicable to Milwaukee. State ex rel. Curtis v. Steinkellner, 247 W 1, 18 NW (2d) 355.

Under 62.13 (5) (d), Stats. 1943, if the board of police and fire commissioners determines that charges against a policeman are sustained, he may be "suspended, reduced in rank, or removed," but the board can impose only one of the three alternative penalties. State ex rel. Heffernan v. Board, 247 W 77, 18 NW (2d) 461.

A police patrolman of the city of Janesville was not a "public officer" either under the enumeration of officers in 62.09 (1) (a) or under any city ordinance, but was an employe, and, after certiorari proceedings in which it was determined that a board order suspending him for a year was invalid, he was not entitled to recover from the city

any salary for the period of suspension, where his earnings elsewhere during such period exceeded the salary he would have received from the city had he worked in the police department during such period. *Hefernan v. Janesville*, 248 W 299, 21 NW (2d) 651.

Cities maintaining fire department consisting of both paid and volunteer firemen shall have firemen's pension fund. All moneys received by such cities under two per cent of insurance premiums provision of 201.59 shall be paid into such pension fund. 25 Atty. Gen. 102.

Fire and police commissioners of city are not now required to be residents of city. 25 Atty. Gen. 490.

Pensioned fireman is not eligible to membership on board of police and fire commissioners. 25 Atty. Gen. 607.

Funds coming into hands of city treasurer as ex officio treasurer of retirement board of policemen's annuity and benefit fund are subject to public deposits law, chapter 34, Stats. 27 Atty. Gen. 298.

Moneys owing firemen's pensioner under 62.13 are not exempt under provisions of 62.13 (9) (d) from state's claim for income taxes owing by pensioner. Express provisions of 74.11 (3) (c) and (4) and 74.30 prevail over 62.13 (9) (d). State proceeding under 71.36 cannot reach pension by order of court in supplementary proceedings but can reach pension only by proceeding under 804.21. 28 Atty. Gen. 220.

62.135 [Renumbered 60.73 by 1945 c. 67]

**62.14 Board of public works.** (1) **HOW CONSTITUTED; TERMS.** There shall be a department known as the "Board of Public Works" to consist of 3 commissioners. In cities of the second class the commissioners shall be appointed by the mayor and confirmed by the council at their first regular meeting or as soon thereafter as may be. The members of the first board shall hold their offices, 1, 2 and 3 years, respectively, and thereafter for 3 years or until their successors are qualified. In all other cities the board shall consist of the city attorney, city comptroller and city engineer. The council, by a two-thirds vote, may determine that the board of public works shall consist of other public officers or persons and provide for the election or appointment of the members thereof, or it may, by a like vote, dispense with such board, in which case its duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council shall designate. The words "board of public works" wherever used in this chapter shall include such officer, officers, or boards as shall be designated to discharge its duties.

(2) **ORGANIZATION.** The members of the board of public works shall, on the first Tuesday in May of each year, choose a president of the board from their number, and in cities of the first class a secretary; in other cities the city clerk shall be the secretary of the board by virtue of his office.

(3) **COMPENSATION.** The commissioners of public works in cities of the second class shall receive a salary, but in all other cities the salaries of the attorney, comptroller and engineer respectively shall be in full for their services as members of such board.

(4) **RULES FOR, BY COUNCIL.** The council may make such rules from time to time as they may deem proper, not contravening any of the provisions of this chapter, for the government of the board of public works and the manner in which the business of said board shall be conducted.

(5) **QUORUM; RECORD; REPORT.** A majority of the board shall constitute a quorum for doing business. They shall keep a record of all their proceedings, which shall be open at all reasonable times to the inspection of any elector of such city, and shall make a report to the council on or before the first day of March in each year, and oftener if required.

(6) **DUTIES AND POWERS.** (a) *In general.* It shall be the duty of the board, under the direction of the council, to superintend all public works and keep the streets, alleys, sewers and public works and places in repair.

(b) *Unusual use of streets.* No building shall be moved through the streets without a written permit therefor granted by the board of public works, except in cities where the council shall, by ordinance authorize some other officer or officers to issue a permit therefor; said board shall determine the time and manner of using the streets for laying or changing water or gas pipes, or placing and maintaining electric light, telegraph and telephone poles therein; provided, that its decision in this regard may be reviewed by the council.

(c) *Restoring streets.* In case any corporation or individual shall neglect to repair or restore to its former condition any street, alley or sidewalk excavated, altered or taken up, within the time and in the manner directed by the board, said board shall cause the same to be done at the expense of said corporation or individual. The expense thereof, when chargeable to a lot owner, shall be certified to the city clerk by the board, and if not paid shall be carried into the tax roll as a special tax against the lot.

(7) **RECORDS OF CITY ENGINEER.** The city engineer shall keep on file in his office, in the office of the city clerk, a record of all his official acts and doings and also a copy of all plats of lots, blocks and sewers embraced within the city limits, all profiles of streets, alleys and sewers and of the grades thereof, and of all drafts and plans relating to bridges and harbors and of any buildings belonging to the city; and shall at the same place keep a record of the location of all bench marks and permanent corner stakes from which sub-

sequent surveys shall be started; which said records and documents shall be the property of the city and open to the inspection of parties interested, and shall be delivered over by said engineer to his successor or to the board of public works. Whenever requested, the engineer shall make a report of all doings of his department to the board of public works. [1943 c. 193; 1947 c. 388]

**Note:** The effect of 62.14(1) and 66.06 (10) (g) is that in a city of the fourth class a municipal utility may be managed either by a nonpartisan commission or by a board of public works, and that the board of public works, as constituted by 62.14 (1), may be dispensed with and its duties performed by such officers and boards as the common council may designate. *Rice Lake v. United States F. & G. Co.*, 216 W 1, 255 NV 130.

**62.15 Public works.** (1) **CONTRACTS; HOW LET.** All public work, the estimated cost of which shall exceed five hundred dollars, shall be let by contract to the lowest responsible bidder; all other public work shall be let as the council may direct. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids.

(2) **PLANS; CONTRACT; BOND.** When the work is required or directed to be let to the lowest responsible bidder, the board of public works shall prepare plans and specifications for the same, containing a description of the work, the materials to be used and such other matters as will give an intelligent idea of the work required and file the same with the city clerk for the inspection of bidders, and shall also prepare a form of contract and bond with sureties required, and furnish a copy of the same to all persons desiring to bid on the work.

(3) **ADVERTISEMENT FOR BIDS.** After the plans, specifications and form of contract shall have been prepared the board of public works shall advertise for proposals for doing such work by publishing a notice in the official newspaper for such length of time as it may think the interest of the city demands, not less than once a week for two successive weeks. No bid shall be received unless accompanied by a contract and bond with sureties, as prescribed by the form furnished, completed with the exception of the signatures on the part of the city. The city by resolution may provide that in lieu of the foregoing provision the bidder may accompany his bid with a certified check equal to five per cent of the bid payable to the city as a guaranty that if his bid is accepted he will execute and file the proper contract and bond within the time limited by the city. If the successful bidder so files the contract and bond, upon the execution of the contract by the city the check shall be returned. In case he fails to file such contract and bond the amount of the check shall be forfeited to the city as liquidated damages. The notice published shall inform bidders of this requirement.

(4) **SURETIES, JUSTIFICATION.** The sureties shall justify as to their responsibility and by their several affidavits show that they are worth in the aggregate at least the amount mentioned in the contract in property not by law exempt from execution. A certified check in amount equal to five per cent of the bid, and a provision in the contract for the retention by the city of twenty per cent of the estimates made from time to time may be accepted in place of sureties.

(5) **REJECTION OF BIDS.** The power to reject any and all bids shall exist unless expressly waived. The board of public works may reject any and all bids, if, in their opinion, any combination has been entered into to prevent free competition. The council may, if it be of the opinion that any of the bids are fraudulent, collusive, excessive or against the best interests of the city, by resolution adopted by two-thirds of its members, reject any or all of the bids received and order the work done by the city directly under the supervision of the board of public works and the provisions of subsections (2) and (3) of section 61.54 shall apply to the performance of such work.

(6) **INCOMPETENT BIDDERS.** Whenever any bidder shall be, in the judgment of said board, incompetent or otherwise unreliable for the performance of the work on which he bids, the board shall report to the council a schedule of all the bids for such work, together with a recommendation to accept the bid of the lowest responsible bidder, with their reasons; and thereupon the council may direct said board either to let the work to such competent and reliable bidder or to readvertise the same; and the failure to let such contract to the lowest bidder in compliance with this provision shall not invalidate such contract or any special assessment made to pay the liability incurred thereunder.

(7) **PATENTED MATERIAL OR PROCESS.** Any public work, whether chargeable in whole or in part to the city, or to any lot or lots or parcels of land therein, may be done by the use of a patented article, materials or process, in whole or in part, or in combination with articles, materials, or processes not patented, when the city shall have obtained from the owner of the patented article, materials or process, before advertising for bids for such work, an agreement to furnish to any contractor, desiring to bid upon such work as a whole, the right to use the patented article, materials and processes in the construction of said work, and also to furnish to any contractor the patented article itself upon the



payment of what the authorities of said city charged with the duty of letting a contract for such public work shall determine to be a reasonable price therefor, which price shall be publicly stated and furnished upon application to any contractor desiring to bid on said work.

(8) **ALTERNATIVE PLANS AND SPECIFICATIONS.** Different plans and specifications for any public work may be prepared by the proper authorities requiring the use of different kinds of materials, whether patented or not, thereby bringing one kind of article, material or process in competition with one or more other kinds of articles, materials or processes designed to accomplish the same general purpose, and bids received for each such kind of article, material or process, and thereafter a contract let for one kind of article, material or process; provided, that before any contract is let all the bids received shall be opened, and considered before the kind of article or process to be used in such work shall be decided upon by the proper city authorities, and thereupon the proper city authorities shall first determine which kind of article, material or process shall be used in the work, and the contract shall be let to the lowest responsible bidder for the kind of article, material or process so selected for use in the proposed public work.

(9) **GUARANTY.** Any contract for doing public work may contain a provision requiring the contractor to keep the work done under such contract in good order or repair for not to exceed five years. The inclusion in the contract of any such provision shall not invalidate any special assessment or certificate thereof or tax sale certificate based thereon.

(10) **ESTIMATES; DEPOSIT; DEFAULT; COMPLETION.** As the work under any contract progresses the board of public works shall, from time to time, grant to the contractor an estimate of the amount and proportionate value of the work done, withholding in all cases ten per cent of said estimate, which shall entitle the holder to receive the amount thereof, less such ten per cent, from the proper fund. But all contracts shall contain a provision authorizing such board, in case the work under such contract is not completed within the time required, to take charge of the work and finish it at the expense of the contractor and his sureties. In no case shall the deposit described in subsection (4) be returned to a successful bidder until the contract is performed; but it, together with the ten per cent retained as aforesaid, shall be used in whole or in part to complete the work. If any of the deposit or the retained ten per cent then remains it shall be paid to such defaulting contractor.

(11) **STREET OBSTRUCTION.** All contractors doing any work which shall in any manner obstruct the streets or sidewalks shall put up and maintain barriers and lights to prevent accidents, and be liable for all damages caused by failure so to do. All contracts shall contain a provision covering this liability, and also a provision making the contractor liable for all damages caused by the negligent digging up of streets, alleys or public grounds, or which may result from his carelessness in the prosecution of such work.

(12) **CONTRACTS; HOW EXECUTED.** All contracts shall be signed by the mayor and clerk, unless otherwise provided by resolution or ordinance, and approved as to form by the city attorney. No contract shall be executed on the part of the city until the comptroller shall have countersigned the same and made an indorsement thereon showing that sufficient funds are in the treasury to meet the expense thereof, or that provision has been made to pay the liability that will accrue thereunder.

(14) **REPORT TO COUNCIL OF NONBID CONTRACTS.** Whenever the council of any city shall have provided by ordinance that any class of public work or any part thereof may be done directly by the city without submitting the same for bids as provided in subsection (1), and any such public work shall be done in accordance with such ordinance, the board of public works shall keep an accurate account of the cost thereof, including the necessary overhead expense. Upon the completion of such work said board shall make a complete report thereof to the council, stating in detail the items of cost and the total cost of doing such work, and the city clerk shall publish such report as a part of the proceedings of the council. Any member of the board of public works who fails to comply with the provisions of this subsection shall be liable to a forfeiture of fifty dollars to be recovered as in case of other penalties. [1937 c. 432; 1939 c. 80, 157]

**Note:** If a city refuses to act, a taxpayer may maintain an action in its behalf to recover from its officers money illegally paid out under street improvement contracts, but the city must be a party to the action. *Coyte v. Richter*, 203 W 590, 234 NW 906.

A municipality has no power to make contracts for public improvements unless it proceeds in the manner prescribed by law, and a contract entered into without complying with the charter provisions is void. Such a contract is not validated by complete performance but remains void. *Beckthold v. Wauwatosa*, 228 W 544, 277 NW 657, 280 NW 320.

A surety for the performance of a contract, who signed the contract, thereby bound himself. That was a substantial compliance with this statute. *Luebke v. Watertown*, 230 W 512, 284 NW 519.

By its terms, chapter 157, Laws 1939, amending (10), applies to all uncompleted contracts awarded prior to June 17, 1939.

A contract entered into by the utility commission of a city pursuant to authorization of the common council, whereby a firm of consulting engineers was employed and paid to make certain surveys and prepare plans and specifications relating to a proposed rebuilding and extension of the elec-

tric plant of the city, was not within (1), requiring that "public work" be let to the lowest responsible bidder. *Flottum v. Cumberland*, 234 W 654, 291 NW 777.

The provisions of ch. 67, relating to municipal borrowing and municipal bonds, alone govern a contract arising out of a bid for municipal bonds, and as to such a contract the provision in 62.15 (12) requiring that contracts by a city shall be countersigned by the comptroller and approved as to form by the city attorney, is inapplicable, at least to the extent that a city may not refuse to return the deposit of a bond bidder merely because of the absence of such countersigning or approval. *Milwaukee Co. v. Tomahawk*, 238 W 452, 300 NW 257.

As used in 62.15 (1) the term "public work" contemplates something more comprehensive than the mere purchase of materials, which only become a part of public work when other materials and labor are added. *Standard Oil Co. v. Clintonville*, 240 W 411, 3 (2d) NW 701.

Where a city entered into a contract for the construction of sidewalks, which specified that the contractor was to furnish sufficient filling, in the form of cinders, slag, or small broken stone, the city engineer had no authority to specify sand, and the contractor is not entitled to recover for the sand; nor is he entitled to recover as for extras, the contract making no provision for extras. *Probst v. Menasha*, 245 W 90, 13 NW (2d) 504.

**62.16 Street improvement and repair.** (1) **DEFINITIONS.** The word "street" as used in this section shall include "court" and "alley." The phrase "to improve" when used in connection with street paving or work shall include "to level grade, regrade, gravel, regravell, macadamize, pave and repave with asphalt, concrete, brick, stone, wood or other material or to improve in any other manner, and also the construction of a permanent curb or gutter, or both," and the words "street improvement" shall include any such work.

(2) **GRADE.** (a) *Establishment; damage.* The council shall have authority to establish the grade of all streets and alleys in the city, and to change and re-establish the same as it may deem expedient. Whenever it shall change or alter the permanently established grade of any street any person thereby sustaining damages to his property on such street shall have a right to recover such damages in the manner set forth in this chapter.

(b) *Record.* The grade of all streets shall be established and described, and the adoption of such grades and all alterations thereof shall be recorded by the city clerk. No street shall be worked until the grade thereof is established and recorded in the manner herein set forth.

(3) **CROSSWALK AND MAINTENANCE EXPENSE.** The expense of all crosswalks at the intersection of streets and across public grounds shall be paid by the city at large. The expense of maintenance, keeping in repair and cleaning of streets, in all cases where the streets shall have been constructed to the established grade and improved as required by the council, shall be paid out of the general fund of the city; but the provisions of this section shall not be construed as prohibiting the city from including in any contract for street improvement the provision authorized by subsection (9) of section 62.15.

(4) **STREETS, OPENING AND IMPROVING.** (a) *City may; expense; petition.* The city may cause streets to be opened, improved, swept, sprinkled and cleaned. The expense of such work or improvement may be paid in whole or in part by the city or by the property to be benefited thereby as the council shall direct, but in no case shall the amount assessed to any parcel of real estate exceed the benefits accruing thereto by such improvement, except in the case of sidewalks. Where the expense of any such improvement is made chargeable to particular property the city shall in no case be responsible for the payment therefor, except in cases when the cost of the improvement exceeds the benefits. No street shall be improved where the expense exceeds five hundred dollars except upon the vote of two-thirds of all the members of the council, unless the owners of more than one-half of the frontage of the lots upon that part of any street to be improved shall petition the council to improve such street or part of street. If, upon petition therefor, the council determines to improve a street or part of street with macadam the work may be done directly by the city without the intervention of a contractor.

(b) *Cost of curb and gutter.* Whenever any curb or gutter shall have been constructed, and the carriageway adjoining is thereafter permanently paved, the city may allow and credit to the property owner, the same share or part of the cost of the curb and gutter, that the city pays toward the cost of the pavement.

(c) *Sidewalk grade.* Whenever a street shall be improved for the first time or the grade thereof changed and the street improved so as to conform to the new grade, the grading of the sidewalk shall be considered a part of the improvement, shall be let by contract with the other work of improving such street, and the expense thereof shall be provided for and borne in all respects like that of improving the street, but the construction of the sidewalk shall be done by the owners of the abutting lots or parcels of land or at their expense as hereinafter provided.

(d) *Additional security; guaranty.* Any contract for paving a street containing a clause requiring the contractor to keep the work in good order and repair for a period not exceeding five years may provide for the retention by the city of ten per cent of the contract price during such period as a guaranty for the performance of such contract, in addition to the bond required by section 62.15.

(e) *Specifications.* 1. Specifications for laying street pavements may require that any material therein shall be of a specified kind of standard, naming it, or material, which in the opinion of the board of public works, shall be equal to the material thus specified; the decision of such board on such question to be conclusive.

(f) *Alleys; notice and hearing.* Irrespective of any other provision of the statutes, except in cities of the first class, prior to taking any action relative to the paving of any alley pursuant to this section the council shall order a public hearing on the proposed plan therefor. Not less than 10 days' notice of such hearing shall be provided by a notice stating the nature of the proposed improvement, the location thereof and the place and time at which all persons interested may appear and be heard. Such notice shall be delivered or mailed to the occupant of each premises abutting on the proposed improvement, so far as is known.

2. Two or more separate specifications based upon physical or chemical characteristics may be prepared providing for pavements or wearing surfaces for streets composed in whole or in part of different kinds of the same material, and separate bids may be called for thereon, and the contract let to the lowest responsible bidder for the pavement or wearing surface composed in whole or in part of the particular kind of material selected by the board of public works.

(5) ALTERNATIVE TYPES OF PAVEMENTS. (a) *Specifications.* The city may also improve streets in the manner prescribed in this subsection. Whenever any city shall direct that any street be improved with a permanent pavement the council may require the board of public works to prepare and report to the council detailed specifications for a suitable foundation for the pavement proposed to be laid, and for a wearing surface of not less than three of the accepted kinds of modern city pavements, whether patented or not. The council may change or amend such specifications in any particular, and may adopt the same as reported or as so changed and amended. After the specifications shall have been adopted the council shall direct the board of public works to advertise for bids in the manner prescribed by section 62.15.

(b) *Selection; kind.* 1. When the city clerk shall have received the bids and report of the board of public works thereon, he shall fix a time when the council will hold a meeting to consider the kind of pavement to be laid on such street or alley, and five days prior to such meeting he shall publish in the official paper a notice that such matter will be considered at such meeting, and post a similar notice in each block of the part of the street to be improved, such posted notices to be printed in type not smaller than pica.

2. At such meeting the council may, by the vote of a majority of all the members, select a certain kind of the kinds of pavement for which a bid or bids have been received, and award the contract therefor to the lowest responsible bidder on the kind of pavement so selected.

(6) ASSESSMENT OF BENEFITS AND DAMAGES. (a) *By board.* Before the council shall change or alter any established grade or order any work to be done on any street at the expense of the real estate to be benefited thereby, it shall order the board of public works to view the premises and determine the damages and benefits which will accrue to each parcel of real estate by such change or alteration of grade, the entire cost of the contemplated work or improvement upon the street, the benefits and damages that will accrue to the several parcels of real estate thereby, and the amount that should be assessed under the provisions of this chapter to each parcel of such real estate as benefits accruing thereto by such contemplated work or improvement.

(b) *Report filed.* Said board shall make and file in their office a report showing their determination on the questions required to be considered by them under the provisions of paragraph (a).

(c) *Notice.* Notice shall be given by the board of public works that such report is open for review at their office and will be so continued for the space of ten days after the date of such notice and that on a day named therein, which shall be not more than three days after the expiration of said ten days, said board will be in session to hear all objections that may be made to such report.

(d) *Publication and posting.* Such notice shall be published in the official newspaper of the city at least once and one copy of such notice shall be posted in each block of the part of the street proposed to be improved or the grade of which it is proposed to change. Such posted notices shall be printed in type not smaller than pica. Such publication and posting shall be made five days prior to the date of hearing objections as aforesaid.

(e) *Irregularity.* No irregularity in the form of such report, nor of said notice shall affect its validity if it fairly contains the information required to be conveyed thereby.

(f) *Hearing; final report.* At the time specified for hearing objections to said report, said board shall hear all parties interested who may appear for that purpose, reduce to writing all objections that may be made and all evidence that may be offered to sustain the

same, and may review, modify and correct said report as they deem just; and thereupon a complete and final report shall be made and filed by said board with the city clerk together with all objections and evidence taken before them to sustain the same and proof of publication of said notice and an affidavit of the posting thereof as above specified, which proof and affidavit shall be received in all cases as presumptive evidence of the facts therein stated.

(g) *Immaterial errors; oaths.* No irregularity in the form of said report or manner of conducting the proceedings by said board, or in the proof of publication or in the affidavit of posting shall affect the legality of said report, unless it shall appear that the owners of the property affected by the proceedings were clearly misled by such irregularity and have not had an opportunity to be heard. At such hearing any member of the board may administer oaths as may be necessary in conducting it.

(h) *Notice; hearing before council.* The city clerk shall publish a notice in the official paper at least once that the said report is on file in his office and that the council will, at a meeting to be held at the time stated in the notice, consider the said report and hear all objections which may be made thereto, and determine what portion of the cost of the improvement, if any, shall be paid by the city. At least one week shall intervene between the first publication of such notice and the said meeting. The council may at such meeting, or at an adjourned meeting, confirm or correct such report or refer it back to the board for further consideration.

(i) *Final determination.* Subject to the limitations hereinbefore mentioned the council may determine the amount to be paid by the real estate as benefits on account of the improvement of a street and the amount that shall be paid by the city.

(j) *Notice of determination.* When a final determination shall have been reached by the council the city clerk shall publish notice in the official paper of the city once in each week for two successive weeks that a final determination has been made as to the damages that will accrue to the real estate in case of the change of an established grade, or the benefits and damages to be assessed to the real estate in case of a proposed improvement.

(k) *Appeal by landowner.* If the owner of any parcel of land affected by such determination feels himself aggrieved thereby he may, within twenty days after the date of such determination, appeal therefrom to the circuit court of the county in which such city or some part thereof is situated by causing a written notice of appeal to be served upon the clerk of such city and by executing a bond to the city in the sum of one hundred fifty dollars, with two sureties or a bonding company to be approved by the city clerk, conditioned for the faithful prosecution of such appeal and the payment of all costs that may be adjudged against him. The clerk, in case such appeal is taken, shall make a brief statement of the proceedings had in the matter before the council, with its decision thereon, and shall transmit the same with all the papers in the matter to the clerk of the circuit court. Such appeal shall be tried and determined in the same manner as cases originally commenced in said court, and costs awarded as provided in paragraph (d) of subsection (1) of section 62.25. In case any contract shall have been made for making the improvements said appeal shall not affect said contract, and certificates or bonds may be issued in anticipation of the collection of the entire assessment for such improvement, including the assessment on any property represented in said appeal as if said appeal had not been taken; in case the appellant shall succeed the difference between the amount originally assessed against the property involved in said appeal and the amount finally adjudged to be paid as benefits on account of such property, shall be paid by the city into the special fund for such local improvement.

(l) *Remedy exclusive.* The appeal given by the last section from the report of the board of public works as confirmed by the council shall be the only remedy of the owner of any parcel of land or of any person interested therein affected by said improvement for the redress of any grievance he may have by reason of the making of such improvement or of the change of any established grade covered by said report.

(m) *Notice to railroad company.* Where a railroad company is involved, all notices provided for in this section shall be given to such railroad company in the manner provided in [paragraph] subsection (n).

(n) *Service on railroad company.* Railroad companies shall file with the secretary of state a document stating the name and post-office address of the person to whom any notice required by chapter 62 may be given; and when such document has been so filed, notice of any proceeding under chapter 62 shall be either served upon such person or mailed to him, addressed to the address so filed, within 5 days after the first publication of such notice. An affidavit of such service or mailing shall be filed with the proof of publication of such notice.

(7) SPECIAL ASSESSMENT. (a) *Exemption.* No lot or parcel of land in any city shall be exempted from the payment of its portion of any tax for the improvement of

streets or the building or repairing of sidewalks upon which such lots or parcels of land may border, excepting only property belonging to the United States or this state.

(c) *Lien.* Any special assessment for the construction of any local improvement shall be a lien on behalf of the municipality making the improvement on the property assessed from the date of the determination of such assessment by the council to the same extent and of equal force and validity as a lien for a tax assessed upon land. Such lien shall be enforced in the same manner as near as may be as the lien for general real estate taxes, except as otherwise specially provided.

(8) SERVICE PIPE. (a) *Expense.* Whenever the council, state highway commission, or county board shall declare its intention to improve any street in which water, gas, or heat mains and sewers, or any of them, shall have been previously laid or are to be laid the council shall also by resolution require water, heat, sewer and gas service pipes to be first laid in such street, at the cost of the property fronting therein, except as herein provided, from the sewer, water, heat and gas mains in such street to the curb line on either or both sides thereof, at such intervals as the council shall direct along that part of said street to be improved, except at street and alley crossings. Such work may be done by contract or by the city directly without the intervention of a contractor, under the supervision of the board of public works, or in the case of service pipes of a municipal owned utility under the supervision of the board or officers charged with the management of such utility. The board or officers under whose supervision such service pipes shall be laid shall keep an accurate account of the expenses of putting in the same in front of each lot or parcel of land, whether the work be done by contract or otherwise, and report the same to the comptroller who shall annually prepare a statement of the expenses so incurred in front of each lot or parcel of land, and report the same to the city clerk, and the amount therein charged to each lot or parcel of land shall be by such clerk entered in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate.

(b) *Public service corporation.* Whenever the council, state highway commission or county board shall declare its intention to improve any street in which water or gas mains of any privately owned public utility shall have been previously laid or are about to be laid the council shall by resolution require, subject to review as provided in section 196.58, water and gas service pipes to be first laid in such street, at the cost of such utility, unless the franchise of such utility otherwise provides as to the cost, from the main to the curb line on each side thereof, at such intervals as the council shall direct, along that part of said street so to be improved, except at street or alley crossings, and may, subject to such review, fix a reasonable time within which such work shall be done by the utility. Notice of such requirement shall thereupon be given to such utility by delivering a copy thereof to the superintendent, or agent in charge thereof, requiring such utility to do such work opposite the lots indicated according to plans and specifications, to be theretofore prepared and filed in the office of the city clerk, showing the location and size and the kind and quality of material of such water and gas service pipes; and if such utility shall refuse or neglect to do the same before the expiration of the time fixed for the improvement of said street so ordered the board of public works may procure the same to be done, in which event said board shall keep accurate account of the expense of constructing such gas or water service pipes, as the case may be, and report the same to the city clerk who shall annually enter in the tax roll as special taxes against such utilities, the total of the amounts so certified to him for such charges, and the same shall be collected in all respects like other city taxes against said utilities, and the city shall have a legal and valid claim for the amount of such special taxes against such utilities. No application for such review shall be effective unless the same be made and notice thereof filed in the office of the clerk of the city making such requirement within thirty days after service of the notice of such requirement as above provided; and on such review the public service commission shall make such order as to extension of time for the doing of such work and as to all other conditions affecting such requirement as the commission shall deem reasonable or expedient.

(c) *When laid.* No street shall be improved by order of the council, state highway commission or county board unless the water, heat and gas mains and service pipes and necessary sewers and their connections shall, as required under this subsection be first laid and constructed in that portion of such street so to be improved.

(9) STREET SPRINKLING; SNOW AND ICE REMOVAL. (a) *Council may order.* The council may cause any street or portion of a street to be flushed, or sprinkled with water, oil or other dust-laying material or the snow and ice to be cleared therefrom during such period as it may order. The board of public works, or such other officers as shall, by order of the council, have charge of such work, shall keep an account of the cost stating the cost of each block separately and on or before the first Monday of November, present the same to the council.

(b) *Expense.* The cost of any sprinkling or snow and ice clearing done shall be paid out of the general fund or be assessed against the abutting property as the council shall decide. In case the council shall order the cost of such sprinkling or snow and ice clearing or any part thereof, to be assessed against abutting property such cost of sprinkling or snow and ice clearing shall be charged and collected as a tax in the next tax roll against the lands abutting on the part of the street sprinkled or cleared in proportion to the frontage of each parcel of land abutting upon such street. The cost of such sprinkling or clearing shall in the first instance be paid out of the general fund, which fund shall be reimbursed by the assessments collected therefor.

(c) *Petition.* Whenever there shall be presented to the council of any city a petition signed by the owners of a majority of the frontage upon any street or part of street in such city praying that the same shall be flushed, or sprinkled with water or oil or cleared of snow and ice during the term in such petition set forth, not exceeding eight months, such council shall order such sprinkling or clearing to be done upon such requirements and in such manner as it shall establish, and shall assess the expense thereof to the owners of the property fronting upon such street or part of street in the same manner as other special charges and in proportion to the frontage of each owner's property thereon, excepting street crossings, which shall be paid for by such city.

(d) *Who to do work.* Such work may be done by the city under the supervision of such board or officer as the council shall order, and the city may purchase the equipment necessary therefor; or such work may be performed by contract let to the lowest responsible bidder in the manner provided in section 62.15.

(10) ASSESSMENTS, EXEMPTIONS. (a) No property fronting on any street or avenue in any city of the first, second or third class shall be exempt from any assessment of benefits on account of the paving of said street or avenue with a permanent pavement, having a concrete foundation or the curbing or resurfacing of such street or avenue, until such property shall have paid in the aggregate in assessments for street pavements in front thereof the sum of \$3 per square yard; such assessments in each case to include all that part of the roadway lying directly in front of or abutting the property, and lying between the curb line and the center of such roadway. In cities of the first and second class exemption shall extend only to and include one-half of the cost of such pavement, curbing or resurfacing in excess of \$3 per square yard and only one-half the cost of any subsequent pavement, repavement or resurfacing of such street or avenue. Whenever any property has paid less than the amount in this section required, it shall be held liable for any difference up to the full amount herein required. In cities of the first class under special charter the exemptions herein shall not apply to alleys, but benefits may be assessed for any of the aforesaid improvements in any alley upon any property abutting upon any part or the whole of the entire length of such alley in any one block to the full extent to which such property may be benefited by the whole of such improvement in any such block.

(b) The common council of any city of the first, second or third class may, by resolution adopted by a majority vote of all its members, exempt property fronting on any street or avenue in any city from any assessment of benefits on account of the resurfacing of any street or avenue having a pavement with a permanent foundation or improvement to the curbing of such street or avenue, provided any county, state or federal funds, or other aid is received toward defraying the expenses of said improvement. [1939 c. 215, 463; 1943 c. 66; 1945 c. 33; 1947 c. 274, 375, 388]

**Cross Reference:** See 281.04, requiring applicant for change in streets to file lis pendens.

**Note:** See note to 62.18, citing McGuire v. Hudson, 208 W 233, 242 NW 555.

Sec. 61.45, having, by the amendment thereof by ch. 691, laws of 1919, adopted the same procedure in respect to sewer construction and sewer assessments for villages as for cities, the subsequent amendment to already incorporated 62.18 (9) by ch. 242, laws of 1921, was incorporated by reference into the law for villages, with the effect that the remedy of a landowner aggrieved by a sewer assessment in a village is by appeal therefrom in the manner and within the time prescribed in 62.16 (6) (k) for an appeal in the case of an assessment in a city, and not by an action to vacate the assessment. George Wil-

liams College v. Williams Bay, 242 W 311, 7 NW (2d) 891.

Where property owners were never given notice of a special assessment nor opportunity to be heard as to the amount thereof, nor given notice, as required by 62.16 (6) (j), of the final determination of the amount, they could bring an action later to set aside the special assessment and to recover payments made, since otherwise they would be denied due process and their property taken in violation of the Fourteenth amendment. Boden v. Lake, 244 W 215, 12 NW (2d) 140.

The power to levy special assessments for public improvements is purely statutory, and the statutes must be strictly complied with. Marquette Homes, Inc., v. Greenfield, 244 W 588, 13 NW (2d) 61.

**62.17 Sidewalks.** (1) **PART OF STREET; OBSTRUCTIONS.** The streets shall be divided into a carriageway and a sidewalk on each side thereof; the sidewalk shall be for the use of persons on foot, and no person shall be allowed to incumber the same with boxes or other material; but such sidewalk shall be kept clear for the uses specified herein.

(2) **GRADE.** In all cases where the grades of sidewalks shall not have been specially fixed by ordinance the sidewalks shall be laid to the established grade of the street.

(3) CONSTRUCTION AND REPAIR. (a) *Authority of council.* The council may from time to time by ordinance or resolution establish the width, determine the material and prescribe the method of construction of standard sidewalks, and the standard so fixed may be different for different streets, and may order by ordinance or resolution sidewalks to be laid in the manner provided in this subsection.

(b) *Board of public works.* The board of public works may order any sidewalk which is unsafe, defective or insufficient to be repaired or removed and replaced with a sidewalk in accordance with the standard fixed by the council.

(c) *Notice.* A copy of the ordinance, resolution or order directing such laying, removal, replacement or repair shall be served upon the owner of each lot or parcel of land in front of which such work shall have been ordered, by the board of public works, or by the street commissioner if the council shall request him to make such service, by personally delivering the same to the owner or his agent, and in case the owner or his agent cannot be found in the city by publishing in the official newspaper.

(d) *Default of owner.* Whenever any such owner shall neglect for a period of twenty days after such service to lay, remove, replace or repair any such sidewalk the city may cause such work to be done at the expense of such owner. All work for the construction of sidewalks shall be let by contract to the lowest responsible bidder unless otherwise provided by the council pursuant to subsection (1) of section 62.15.

(e) *Minor repairs.* When the cost of repairs of any sidewalk in front of any lot or parcel of land shall not exceed the sum of ten dollars, the board of public works, or street commissioner if so required by the council, may immediately repair such sidewalk, without notice or letting the work by contract, and charge the cost thereof to the owner of such lot or parcel of land, in the manner provided in this section.

(f) *Expense.* The board of public works shall keep an accurate account of the expenses of laying, removing and repairing sidewalks in front of each lot or parcel of land whether the work be done by contract or otherwise, and report the same to the comptroller who shall annually prepare a statement of the expense so incurred in front of each lot or parcel of land and report the same to the city clerk, and the amount therein charged to each lot or parcel of land shall be by such clerk entered in the tax roll as a special tax against said lot or parcel of land, and the same shall be collected in all respects like other taxes upon real estate. The council may provide that the street commissioner shall perform the duties imposed by this section on the board of public works.

(5) SNOW AND ICE. The board of public works shall keep the sidewalks of the city clear of snow and ice in all cases where the owners or occupants of abutting lots fail to do so, and the expense of so doing in front of any lot or parcel of land shall be included in the statement to the comptroller required by paragraph (f) of subsection (3) of this section, and in his statement to the city clerk and in the special tax to be levied as therein provided. The city may also impose a fine or penalty for neglecting to keep sidewalks clear of snow and ice.

(6) REPAIR AT CITY EXPENSE. Whenever the council shall by resolution or ordinance so determine, sidewalks shall be kept in repair by and at the expense of the city, or the council may direct that a certain proportion of the cost of construction, reconstruction or repair be paid by the city and the balance by abutting property owners.

(7) RULES. The council may from time to time make all needful rules and regulations by ordinance for carrying the aforesaid provisions into effect, for regulating the use of the sidewalks of the city and preventing their obstruction. [1943 c. 193; 1947 c. 199]

**62.18 Sewers.** (1) **CITIES MAY CONSTRUCT.** Cities shall have power to construct systems of sewerage, including a sewage disposal plant and all other appurtenances thereto, to make additions, alterations and repairs to such systems and plants, and when necessary abandon any existing system and build a new system, and to provide for the payment of the same by the city, by sewerage districts or by abutting property owners or by any combination of these methods. Whenever the council shall determine to lay sewers or provide sewerage in any portion of the city it shall so order by resolution which shall describe with reasonable particularity the district to be sewerred. Whenever the territory of any city of this state shall be adjacent to or border on the territory of any other state, such city shall have power to build or construct a sewage disposal plant in such adjacent state, either alone for its sole use or jointly with some city or municipality in such adjacent state for their joint use on terms to be agreed upon by such municipalities. And if either city or municipality shall build or construct a sewage disposal plant, the city in this state may contract with the other city or municipality for its joint use on terms to be agreed upon.

(2) **SURVEY, PLANS AND SPECIFICATIONS.** When so ordered by the council the board of public works shall cause to be made the necessary survey and plans and specifications of the sewerage for such district which shall conform as near as practicable to a general

system of sewerage for such city, and which shall show the location, size, direction and grade of such sewers, the location and size of openings and all other matters essential to such construction, together with the boundary lines of the district and the number of each lot or parcel of land.

(3) NOTICE OF HEARING. On the completion of such plans and specifications notice shall be given in the official paper of the city substantially in the following form:

Notice is hereby given that the plans and specifications for sewerage for the district bounded as follows: . . . ., have been prepared and are now open to inspection at the office of the city clerk. All persons owning or interested in real estate in said district are entitled to examine the same and file objections thereto. On the . . . . day of . . . ., 19. . ., this board will be in session to consider any objections that may have been filed, and to hear all persons desiring to be heard.

Dated . . . .

. . . . .,  
. . . . .,  
. . . . .,

Board of Public Works.

The day for the hearing specified shall be within ten days after date of the last publication of said notice, which shall be published at least once in each week for two successive weeks.

(4) HEARING. On the day specified for said hearing the board shall take up and consider all objections made to the plans and specifications as proposed, and take down in writing minutes of any testimony that may be offered to sustain said objections. When the board shall have concluded said hearing they shall report the proposed plans and specifications with the objections, their rulings thereon and the evidence taken, to the council. The council shall then examine the same and may approve the plans and specifications as proposed or change them in such manner as they think proper, and approve as changed or modified by them, or may reject the plans and specifications and direct the board to propose new plans and specifications, in which case proceeding shall be had as before.

(5) FILING OF PLANS. When the plans and specifications for any sewerage system or material alterations thereto are finally determined they shall be prepared in triplicate and submitted to the state board of health for approval. When the same shall have been approved one copy thereof shall be filed in the office of the city clerk and one in the office of the register of deeds of the county within which the city is located.

(6) EFFECT OF, WHEN FILED. Either of the duplicate plans filed as the final determination for a plan of sewerage for any district, after the expiration of nine months from the date of such filing, shall be conclusive proof of the regularity of the proceedings to establish the plan of sewerage shown on such plans.

(7) PLANS, HOW CHANGED. When a plan of sewerage has been finally determined upon it shall not be changed except by a vote of three-fourths of all the members of the council in favor of the same; such change shall be by ordinance, passed at a regular meeting, after the same, as proposed, shall have been published at least once in each week for two successive weeks in the official paper.

(8) NEW PLANS; FILING; EFFECT. When such change shall have been determined upon duplicate plans shall be prepared, certified and filed as before, showing the plan of sewerage as changed, and after nine months from the date of such filing the said duplicates shall be conclusive proof of the regularity and legality of the proceedings to establish such plan; if any change made renders useless any existing sewer the expense of such change shall be paid by the general fund.

(9) ASSESSMENT. Before any contract for work under this section, to be paid for in whole or in part by the property to be benefited thereby shall have been entered into, the board of public works shall make an assessment against such property in the manner provided in this section.

(a) *Benefits.* Such proportionate part of the cost not exceeding the benefits thereto as is to be assessed shall be assessed against each lot, part of lot or lots or parcel of land fronting or abutting on each side of said sewer, except that corner lots not subdivided in ownership, and subdivisions of such lots, constituting the actual corner of corner lots, subdivided in ownership and irregular lots, shall be entitled to a deduction in making such assessments of such amount as the board of public works shall determine to be reasonable and just under the circumstances of each case; such deduction to be made in the assessment of the longest street or alley of such corner lots or corner subdivisions thereof or in case of equal street or alley lines thereof in the assessment for the second sewer to which they are liable. Whenever any lot is subdivided which as originally platted fronts or abuts on any sewer and the subdivisions thereof are owned by different persons, no subdivisions of such lots not fronting or abutting on such sewer and not owned by



the same person who owns the subdivision fronting or abutting on such sewer shall be assessed for the cost of such sewer. Whenever any sewer is to be constructed in any alley, where the property on one side is platted with the ends of the lots abutting upon the sewer, and on the other side with the side of the lots abutting upon the sewer, there shall be assessed upon the lots so platted abutting lengthwise upon the sewer, such an amount as the assessing board shall determine the property is justly benefited under the circumstances in each case.

(ab) *Linear foot.* Assessments pursuant to this section may be made on a linear foot basis under the police power, and any such assessment heretofore made, or in process, shall be valid under this provision.

(b) *On district.* 1. The cost of sewers in streets and alley crossings, the excess of the cost of sewers above the assessment made pursuant to paragraph (a), and the cost of manholes, lampholes, flush tanks, and of temporary work in connection with the construction of the sewers in the district shall be assessed justly and equitably upon the lots and parcels of land intended to be benefited thereby in proportion to the benefits which will accrue to each lot or parcel of real estate.

2. The cost of constructing intercepting sewers, force mains and pumping station may be assessed in whole or in part against the lots and parcels of land in the sewerage district in the manner provided in this paragraph, or be charged in whole or in part against the city at large.

3. Such portion of the costs, which shall have been previously paid by the city, of any intercepting sewer or other sewer improvement without the district, which forms part of the general sewerage system of the city, and which is of special benefit to the lots and parcel of land within the district, may be assessed in whole or in part against said lots and parcels of land in the manner provided in this paragraph, which when collected shall be used to reimburse the city.

(c) *Schedule; notice; hearing.* The board of public works shall file in their office a schedule of the assessments so made and also a statement of the amount to be paid by the city at large, and thereupon such proceedings shall be had before the board and the council in respect to such assessments as is required with respect to assessment of benefits for street improvement by subsection (6) of section 62.16, and the provisions of said subsection except those relating to the posting of notices are made applicable to the assessment made pursuant to the provisions of this section, including the provisions relating to the remedy by appeal from the final determination by the council.

(10) *SUBDIVISION OF LOT; APPORTIONMENT.* Whenever any lot or parcel of land shall be subdivided by sale or otherwise after the assessment of benefits accruing to it by a system of sewerage shall have been made and before such system shall have been fully carried out and extended to such lots assessed and the assessment on such work paid, any party interested may give notice to the board of such subdivision, and in such case or when said board shall in any other way become cognizant of the fact of such subdivision they may make an equitable apportionment of the said benefit tax against any lot between the different parcels of it; if by neglect of the owners of the lot so divided no such apportionment shall be made then the entire lot shall be liable for the whole tax.

(11) *CONSTRUCTION OF SEWERS; CONTRACT.* After a final determination shall have been reached by the council with respect to the special assessments it shall order the contract for the construction of the sewers in the district to be let in the manner provided by section 62.15.

(12) *ADDITION AND ALTERATIONS.* The council may by resolution cause a sewer to be constructed along any street or portion thereof as an addition to or alteration of any sewer district. The cost of such sewer shall be assessed against the property abutting on the street or portion of street along which such sewer is laid in the same manner in which benefits on account of street improvement are assessed, and the provisions of subsection (6) of section 62.16 shall be applicable thereto.

(13) *SEWERS, WHERE LAID.* Any contractor or other person acting under the direction of the board of public works may lay sewers in and through any alleys and streets, and through any breakwater into any lake and also in any highways of the county, whether within the limits of said city or not; such contractor shall repair such streets, alleys, breakwaters and highways and restore the same to their former condition upon the completion of such sewers.

(14) *SEWER SERVICE LATERALS.* (a) *Board shall order.* The board of public works shall require sewer service laterals to be constructed from the street line, or from near the street line of every lot in said city which in their judgment requires it, to the sewer main and they may require such number of sewer service laterals to be constructed as they deem expedient.

(b) *Specifications; supervision.* The said board shall prescribe the location, arrangement, form, materials and construction of every sewer service lateral and determine the manner and plan of the connection of the same; the work of construction shall be in all cases subject to the superintendence and control of said board and be executed in compliance with their orders.

(c) *Construction; cost.* The said board shall advertise for proposals for the construction of sewer service laterals and let the same by contract, or the council may direct such work to be done directly without the intervention of a contract, and at the completion of the work there shall be assessed upon the lot or parcel of land benefited thereby, the cost of such lateral, or the average current cost of laying such laterals, and when the work is done by contract, payment to the contractor may be made in cash or in certificates or bonds payable out of the proceeds of the special assessment or instalments thereof or from the proceeds of the sale of such bonds in the same manner as in the case of other local improvements. The cost of sewer laterals shall not be included in the estimate of the cost of the general plan of sewerage in any district.

(15) **HOUSE SEWERS.** (a) *Construction; cost.* The council shall, by ordinance, provide for the construction by the lot owner, or by a contractor, or by the city without the intervention of a contractor of house sewers leading from the lot to be sewerred to the sewer service lateral when the lot is so used or improved as to make connection with the public sewer desirable. When such work is done by the city or by a contractor the cost of each such house sewer shall be assessed by the board of public works against the lot or parcel of land benefited thereby, and payment to the contractor may be made in cash or in certificates or bonds payable out of the proceeds of the special assessment or instalments thereof or from the proceeds of the sale of such bonds in the same manner as in the case of other local improvements.

(b) *Premises may be entered.* Any person constructing a house sewer from any lot may enter upon such lot and construct thereon such sewer, and shall have free ingress and egress upon the same with men for that purpose, and may deposit all the necessary building materials and generally do and perform all things necessary to a complete execution of the work.

(c) *Permit to connect.* No private house sewer shall be connected with any public sewer without a permit therefor having first been issued in such manner as the council shall have provided.

(16) **SPECIAL SEWER DISTRICT TAX.** (a) Any city may levy a special tax of not more than one mill and a half on the dollar of the assessed value of the taxable property in any sewer district for the extension or improvement of the sewer system of such district.

(b) Said tax is declared to be a special tax for local improvement, as defined in section 76.23 and when any company defined in section 76.02 owns operating real property (other than poles, towers, wires, equipment, mains, lines, tracks and other service structures located within the limits of public highways or constructed and maintained on private rights of way, and conduits, cables, devices, equipment and other facilities located upon or in such operating real property) within such sewer district, the assessor in such district shall determine the value of said operating real property of all such companies as lie within the district, which value shall be determined on the same basis as is the value of other real property subject to such special tax. Such valuation shall be placed upon the tax roll for the purposes of such special tax only. The tax so assessed to such companies shall be collected as other special sewer district taxes of the district are collected.

(17) **SPECIAL SEWER TAX.** (a) Any city may levy, for a term not exceeding 5 years, a special tax not exceeding one-half of one per cent per annum upon all the property taxable in such city for either of the following purposes: 1. For the planning, construction and completion of a general system of sanitary sewers and storm drains or either of them; 2. For the planning, construction and completion of any change or reconstruction of an established system of sanitary sewers and storm drains or either of them; or 3. For such portion of the expense of such planning, construction and completion as the council may not find it lawful or expedient to charge to the particular property benefited thereby in the manner provided by this section.

(b) Before any such tax shall be levied or any contracts or obligations entered into in contemplation thereof the council shall cause to be made and prepared a plan and specifications for the improvement proposed to be made, together with an estimate by the city engineer of the probable cost of such improvement.

(c) The council shall give at least 2 weeks' notice of a hearing on said matter by publication of a notice thereof once in each week in the official paper that said plans and specifications and estimates are on file, which notice shall state where said plans are filed, and that they are subject to inspection and that the council will hold a hearing

and take action on said matter at the time and place set by the council and specified in the notice.

(d) No city shall contract to pay more in any one year pursuant to this section than the amount of the special fund available in such year; but the proceeds of any such tax may be anticipated by the issuance of special sewerage bonds in the manner and under the limitations prescribed by section 62.21, and such tax when collected may be devoted to a special sewerage bond sinking fund.

(18) STORM WATER SEWER DISTRICTS. (a) *Council may make.* The council may, by ordinance divide the city into surface or storm water sewer or drainage districts.

(b) *Plans and specifications.* Whenever the council shall deem it expedient or necessary for the public health or for other reasons to cause to be constructed surface or storm water sewers or drains in any portion of the city and at the expense of the property benefited they shall make an order that the board of public works prepare and report plans and specifications for the improvement proposed to be made and the entire costs of the contemplated improvement; to view the premises affected by the proposed improvement and determine the damages and benefits which will accrue to each parcel of real estate thereby, and the amount that should be assessed to each parcel of real estate as benefits or damages accruing thereto by such contemplated work or improvement.

(c) *Procedure.* Thereupon such assessment shall be proceeded with in the manner provided by subsection (6) of section 62.16.

(d) *City's share of expense.* The city may levy for a term of not exceeding 5 years, a special tax not exceeding one-half of one per cent of the last equalized assessment of said city, per annum, upon all the property taxable in such city for the payment of the city's portion of said improvement as determined by the council, and may issue general city improvement bonds for the payment of the city's share of said improvement in the manner provided by section 62.21 and payable out of the proceeds of said special tax; or may order the same paid out of the general fund of the city or out of the ward fund of such ward or wards as the council may determine. [1931 c. 186; 1933 c. 161; 1945 c. 221; 1947 c. 234, 355]

**Note:** A property owner who was given opportunity to be heard in the matter of assessment of benefits for extension of a sewer, cannot complain because inapplicable preliminary steps specified in 62.16 (6) relating to assessment of benefits for street improvements were not followed. *McGuire v. Hudson*, 208 W 233, 242 NW 555.

Sec. 62.18 (9) (b) 1, Stats. 1941, is construed as providing for the levying of special assessments for sewers in proportion to, and not in excess of, benefits received, thereby rendering the statute constitutional. Being constitutional for the levying of special assessments for sewers, a landowner claiming to be aggrieved by such an assessment can raise questions as to the procedure in his case only on an appeal taken under the statute. *George Williams College v. Williams Bay*, 242 W 311, 7 NW (2d) 891.

Where resolutions and other proceedings of a town board of a town in a metropolitan sewerage district, relating to the construction of a sanitary sewer, showed on their face that no notice was ever given to the plaintiffs that a special tax was to be imposed against their property or that they might be heard as to the amount thereof, and showed that there was no compliance with applicable statutory provisions, the special assessment was void for want of jurisdiction to impose it. *Boden v. Lake*, 244 W 215, 12 NW (2d) 140.

The power to levy special assessments for public improvements is purely statutory, and the statutes must be strictly complied with. *Marquette Homes, Inc., v. Greenfield*, 244 W 583, 13 NW (2d) 61.

62.18 (9) (a), Stats. 1945, is constitutional. *Fort Howard Paper Co. v. Fox River Heights S. Dist.* 250 W 145, 26 NW (2d) 661.

**62.185 Sewer district bonds.** Whenever a city is divided into sewer districts, bonds may be issued against any such district for the purpose of paying the district's portion of any sewer. Said bonds shall be issued in the manner authorized and provided by chapter 67 of the statutes. Such bonds shall not be a general city obligation but shall be payable both as to principal and interest, solely out of the special sewer district tax provided by subsection (16) of section 62.18. Any bonds heretofore authorized to be issued in accordance with this section shall be legal, valid and binding, to the same extent as if such district, at the time of authorizing such bonds, had the power to issue the same. [1931 c. 266]

**62.19 Water and heat pipes.** (1) **ASSESSMENT.** When the council shall have ordered the laying of any water or heat main, forming a part of a plant owned by the city or a part of a plant owned by a private utility where such utility has a written contract in effect with such city for the laying of mains on order of the council, the board of public works shall, before laying the same, make an assessment upon the property benefited as provided in this section.

(2) **WATER MAINS.** The board shall assess against the several lots, parts of lots or parcels of land which front upon the proposed line of any water main, or which may be contiguous to and used in connection with any such lot or parcel of land, such sum as the board shall determine such lot or parcel of land will be specially benefited thereby, not exceeding one-half of the cost of furnishing and laying a water main of not more than six inches.

(3) **HEAT MAINS.** The board shall assess against each lot, or part of lot or parcel of land fronting on a proposed heat main such sum as said board shall determine that each such lot or parcel of land is specially benefited thereby.

(4) **LIMITATION ON ASSESSMENT.** No lot or parcel of land shall be assessed for more than one water main and one heating main laid in the same street or alley.

(5) **SERVICE LATERALS.** The board of public works shall require service laterals to be constructed from the street line or from near the street line of every lot in said city which in their judgment requires it, to the water or heat main in said street, and they may require such number of service laterals to be constructed as they deem expedient. The said board shall prescribe the location, arrangement, form, materials and construction of every such lateral, and determine the manner and plan of the connection of the same; the work of construction shall be in all cases subject to the superintendence and control of said board and be executed in compliance with their orders. The said board shall advertise for proposals for the construction of such service lateral and let the same by contract, or the council may direct the work to be done directly without the intervention of a contract, and at the completion of the work there shall be assessed upon the lots or parcels of land benefited thereby, the cost of such lateral, or the average current cost of laying such laterals.

(6) **APPORTIONMENT IF LOT SUBDIVIDED.** Whenever any lot or parcel of land shall be subdivided by sale or contract or by use or occupation in severalty, after the assessment of special benefits as herein provided, said board of public works may, after ascertaining such facts, at any time before the special assessment shall have been inserted in the tax roll, make an equitable apportionment of the benefit tax against such lot or parcel of land among the different subdivisions thereof.

(7) **SCHEDULE; PROCEDURE.** The board of public works shall file in their office a schedule of the assessments so made, and thereupon such proceedings shall be had before the board of public works and the council as is required with respect to assessments of benefits for street improvements by subsection (6) of section 62.16, and the provisions of said subsection, except those relating to the posting of notices, shall apply to the assessments made pursuant to this section, including the provisions relating to the remedy by appeal from the final determination of the council.

(8) **EXTENSIONS.** The expense of laying water and heat mains which are extensions to plants theretofore purchased or constructed, or are extensions to mains of a private utility under written contract with a city to lay or extend mains on order of the council, shall be defrayed by the city at large, or by the abutting property as the council shall determine. Such work may be done by contract, or the council may provide that the work may be done by the city without intervention of a contractor. [1939 c. 155]

**Note:** City cannot compel public utility, lawfully occupying street under authority granted by city, to relocate its property without just compensation, in absence of contract so requiring. Milwaukee E. R. & L. Co. v. Milwaukee, 209 W 656, 245 NW 356. This section does not give municipality authority to assess abutting owners for repair or replacement of water lateral. 25 Atty. Gen. 281.

**62.195 Special assessments.** In addition to other methods provided by law, the common council of any city of the second, third or fourth class, or the village board of any village, may by ordinance provide that the cost of installing, constructing or laying storm sewers wholly or partially in any street, alley or highway, or in any lot or parcel of land, sanitary sewers, water mains, paving or any other public improvement to be installed along or in any street, alley or highway, or across or in any lot or parcel of land in such city or village, shall be charged in whole or in part to the property benefited thereby, and to make an assessment against such property in such manner as such council or village board may determine. [1931 c. 287; 1933 c. 213]

**62.20 Payment for public work.** [Not printed; 1947 c. 143 s. 8; see 1945 Stats.]

**62.21 Special assessments.** [Not printed; 1947 c. 143 s. 8; see 1945 Stats.]

**62.211 Limitation on use of sections 62.20 and 62.21.** The procedure specified in sections 62.20 and 62.21 [Stats. 1945] and all the rights provided therein, shall continue to be applicable to all contractor's certificates or special improvement bonds and instalments thereof and the special assessments underlying the same, authorized to be issued prior to July 1, 1943, until all such special assessments have been collected or have been outlawed by operation of the statutes of limitation. No contractor's certificates or special improvement bonds shall be authorized under said sections after June 30, 1943. [1943 c. 278]

[62.215 Stats. 1939 repealed by 1941 c. 272]

**62.22 Property acquired; streets vacated.** (1) **PURPOSES.** The governing body of any city may by gift, purchase or condemnation acquire property, real or personal, within or without the city, for parks, recreation, waterworks, sewage or waste disposal, airports

or approaches thereto, cemeteries, vehicle parking areas, and for any other public purpose; may improve and beautify the same; may construct, own, lease and maintain buildings on such property for public purposes; and may sell and convey such property. The power of condemnation for any such purpose shall be as provided by chapter 32.

(3) **RIPARIAN RIGHTS.** The city may by gift, purchase or condemnation take, injure or destroy any riparian rights or privileges appurtenant to land abutting upon Lake Michigan whenever it shall become necessary for the proper construction and use of any highway, street, boulevard, park or other public improvement without taking the lands or any portion thereof to which said riparian rights are appurtenant.

(4) **PROCEDURE.** (a) *Petition to open streets.* As to streets it shall be competent for any ten resident freeholders in any ward to petition the council for the opening, widening, extension or change of any street in such ward, and if the land proposed to be taken for that purpose shall lie in two or more wards, then ten resident freeholders of each of the wards shall be required to join in the petition. Such petition shall be addressed to the council and shall designate in general terms the location, extent of the proposed laying out, widening, extension or change, but need not contain a particular description of the land proposed to be taken. For the purposes of such petition a person in possession of land under a contract of purchase and sale or a bond for a deed shall be deemed a freeholder.

(b) *Petition as to alleys.* As to alleys, a petition for the opening, widening, extension or change of an alley may be made to the council by the owner or owners of one-third or more of the land in the block in which the alley or proposed alley is situated, whether such owner or owners shall be residents of the city or not. Land held under a land contract or bond for a deed shall, for the purpose of such petition, be deemed to be owned by the person so holding it; infants and others under guardianship may petition by their guardians.

(c) *Action on.* When the petition shall be presented to the council it shall be referred to the board of public works, and said board shall make a report to the council stating whether or not such petition is sufficiently signed, and if so, giving a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed alley or street, widening, extension or change. Upon the coming in of such report the council may, if the petition be reported sufficiently signed, by a vote of a majority of its members adopt a resolution declaring that it is necessary to condemn the land designated in such petition and report, referring to them, for the purpose named in the petition, and direct the city attorney to commence and prosecute condemnation proceedings. Such petition shall, before any resolution upon it shall be adopted, be referred to the board of public works, who shall thereupon make a report to the council stating whether or not it is sufficiently signed, and if so, giving a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed alley as the same will be when laid out, widened, extended or changed. Upon the coming in of such report, if it shall appear thereby that the petition is signed by the owner or owners of one-third or more of the land in the block, the council may adopt a resolution by a vote of a majority of its members, the same as in the case of a petition for the opening, widening, extension or change of a street, and like proceedings shall be had thereon. If it shall afterwards appear that the petition was not sufficiently signed, that fact shall not, in the absence of fraud, vitiate the petition or the subsequent proceedings thereon.

(d) *Proceedings without petition.* The council may, without a petition, by resolution declare it necessary to condemn land, describing it, for any authorized purpose, and direct the city attorney to prosecute condemnation proceedings therefor. If the purpose is the opening, widening, extension, or change of a street or alley, the resolution must be adopted by a vote of four-fifths of all the members. Before adopting the resolution it shall be referred to the board of public works, who shall make a particular description of each lot, parcel or subdivision of land proposed to be taken, and a plat of the proposed street or alley, drain or water pipe, or land to be used for other authorized purposes, and report the same to the council.

(e) *Abandoned portion vacated.* When a street or alley shall be changed by proceedings under section 62.22 so much of the original street or alley as shall be left out of it as changed shall be deemed vacated without any other proceeding, and the fact of such vacation shall be taken into account in assessing benefits and damages by reason of the condemnation proceedings.

(5) **BENEFITS AND DAMAGES.** (a) When any assessment of benefits and damages is made in condemnation proceedings the city clerk shall transmit the same to the comptroller, who shall thereupon report to the city clerk a list of special taxes to be entered in the tax roll on account thereof, which list shall have set opposite each description

against which benefits not offset by damages or an excess of benefits over damages shall have been assessed the amount of such benefits or excess, which amount shall be levied upon the land described as a special tax and be collected the same as other taxes.

(b) At the time of making out the tax roll, next after the filing of any assessment in proceedings for the condemnation of lands outside the city limits, the town clerk shall enter in said roll a list of special taxes on account of such assessment, which list shall have set opposite each description against which benefits not offset by damages or an excess of benefits over damages shall have been assessed the amount of such benefits or excess, which amount shall be levied on the land described as a special tax and shall be collected the same as other taxes. Such amounts when collected shall be paid over to the city treasurer to be applied in payment of any damages or excess of damages over benefits awarded by such assessment; and in case the amount of such special taxes shall be insufficient to pay all damages or excess of damages over benefits so awarded, then the difference shall be paid out of the proper fund of said city. Any such damages or excess of damages over benefits may be paid out of such fund prior to the collection of such special taxes, to be reimbursed therefrom when collected.

(c) The cost of each condemnation shall be paid out of the general city fund, except the cost of condemnation for streets and alleys and public grounds less than five acres in extent, which shall be paid out of the general fund, and the cost of condemnation for other purposes as to which there are special funds shall be paid out of such fund, and all special taxes levied and collected on account of any condemnation shall be credited to the fund out of which the cost of the condemnation is paid.

(6) CONDEMNATION, ASSESSMENTS, STREET VACATION. The provisions of sections 61.37 and 61.38 shall apply to cities; provided, that in cities of the second, third and fourth class, the whole or any part of any road, street, slip, pier, lane or alley may be discontinued by the common council upon the written petition of the owners of all the frontage of the lots and lands abutting upon the portion thereof sought to be discontinued, and of the owners of more than one-third of the frontage of the lots and lands abutting on that portion of the remainder thereof, which lies within 2,650 feet from the ends of the portion proposed to be discontinued, or which lies within so much of said 2,650 feet as shall be within the corporate limits of said city. The beginning and ending of an alley shall be deemed to be within the block in which it is located. [1933 c. 430 s. 1, 3; 1937 c. 55; 1939 c. 107; 1943 c. 305; 1945 c. 33, 421; 1947 c. 172]

**Note:** See note to 40.50, citing State ex rel. Board of Education v. Racine, 205 W 389, 236 NW 553.

The adoption of a resolution by a city council declaring the necessity for condemnation of designated lands is a condition precedent to institution of court proceedings. In re Condemnation of Lands in Beaver Dam, 205 W 299, 237 NW 119.

Section 62.23, relating to city planning, does not furnish an alternative plan for laying out an ordinary street. An assessment of benefits resulting from opening a portion of such a street by a city proceeding under the provisions of 62.23 and especially (14) thereof cannot be sustained. Bennett v. Milwaukee, 206 W 443, 240 NW 139.

A city may condemn and acquire lands for the benefit of a public library which is a private corporation, such acquisition being for

a public purpose, and it being immaterial that the city has no control over the library and no voice in the election of the officers of the library. The maintenance and operation of a library by a nonprofit corporation for the use of the general public is a public purpose, and the use of lands on which public library buildings are to be constructed and operated is a use for the benefit of the public and therefore a public use. Rehfuß v. La Crosse, 240 W 619, 4 (2d) NW 125.

Although a city under its administrative powers may have the right to deprive the owner of the use of crypts in a mausoleum in a public cemetery operated by the city, if the city exercises such right in an unlawful manner, and authorizes the wrongful act and adopts the result, the city may be held liable for the damage done. Speth v. Madison, 248 W 492, 22 NW (2d) 501.

62.225 [Renumbered section 372.03 by 1933 c. 436 s. 4]

62.23 City planning. (1) COMMISSION. (a) The council of any city may by ordinance create a "City Plan Commission," to consist of the mayor, who shall be its presiding officer, the city engineer, the president of the park board, an alderman, and three citizens. In case the city has no engineer or no park board, an additional citizen member shall be appointed so that the board has at all times seven members. Citizen members shall be persons of recognized experience and qualifications. They shall receive no compensation for service on the commission.

(b) The alderman member of the commission shall be elected by a two-thirds vote of the council, upon the creation of the commission, and during each April thereafter.

(c) The three citizen members shall be appointed by the mayor, upon the creation of the commission, to hold office for a period ending one, two and three years, respectively, from the succeeding first day of May, and thereafter annually during April one such member shall be appointed for a term of three years.

(d) The additional citizen member, if any, shall be first appointed to hold office for a period ending one year from the succeeding first day of May, and thereafter annually during the month of April. Whenever a park board is created, or a city engineer appointed,

the president of such board or such engineer shall succeed to a place on the said board when the term of an additional citizen member shall expire.

(e) The city plan commission shall have power and authority to employ experts and a staff, and to pay for their services and such other expenses as may be necessary and proper, not exceeding, in all, the appropriation that may be made for such commission by the legislative body, or placed at its disposal through gift, and subject to any ordinance or resolution enacted by the governing body.

(f) Any city may by ordinance increase the number of members of the city plan commission so as to provide that the building commissioner or building inspector shall serve as a member thereof.

(2) FUNCTIONS. It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality, including any areas outside of its boundaries which, in the commission's judgment bear relation to the development of the municipality provided, however, that in any county where a regional planning department has been established, areas outside the boundaries of a municipality may not be included in the master plan without the consent of the county board of supervisors. The master plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the commission's recommendations for such physical development, and may include, among other things without limitation because of enumeration, the general location, character and extent of streets, highways, freeways, street grades, roadways, walks, bridges, viaducts, parking areas, tunnels, public places and areas, parks, parkways, playgrounds, sites for public buildings and structures, airports, pierhead and bulkhead lines, waterways, routes for railroads, street railways and busses, and the general location and extent of sewers, water conduits and other public utilities whether privately or publicly owned, the acceptance, widening, narrowing, extension, relocation, removal, vacation, abandonment or change of use of any of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, routes or terminals, the general location, character and extent of community centers and neighborhood units, the general character, extent and layout of the replanning of blighted districts and slum areas, and a comprehensive zoning plan. The commission may from time to time amend, extend or add to the master plan or carry any part or subject matter into greater detail. The commission may adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

(3) THE MASTER PLAN. (a) The master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

(b) The commission may adopt the master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may from time to time by resolution adopt a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan. The adoption of the plan or any part, amendment or addition, shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the city plan commission. The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the commission to form the whole or any part of the plan, and the action taken shall be recorded on the adopted plan or part thereof by the identifying signature of the secretary of the commission, and a copy of the plan or part thereof shall be certified to the common council. The purpose and effect of the adoption and certifying of the master plan or part thereof shall be solely to aid the city plan commission and the council in the performance of their duties.

(4) MISCELLANEOUS POWERS OF THE COMMISSION. The commission may make reports and recommendations relating to the plan and development of the city to public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens. It may recommend to the mayor or council, programs for public improvements and the financing thereof. All public officials shall, upon request, furnish to the commission, within a reasonable time, such available information as it may require for its work. The commission, its members and employes, in the performance of its functions, may enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning.

(5) MATTERS REFERRED TO CITY PLAN COMMISSION. The council, or other public body or officer of the city having final authority thereon, shall refer to the city plan commission, for its consideration and report before final action is taken by the council, public body or officer, the following matters: The location and architectural design of any public build-

ing; the location of any statue or other memorial; the location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any street, alley or other public way, park, playground, airport, area for parking vehicles, or other memorial or public grounds; the location, extension, abandonment or authorization for any public utility whether publicly or privately owned; all plats of lands in the city or within the territory over which the city is given platting jurisdiction by chapter 236; the location, character and extent or acquisition, leasing or sale of lands for public or semipublic housing, slum clearance, relief of congestion, or vacation camps for children; and the amendment or repeal of any ordinance adopted pursuant to this section. Unless such report is made within 30 days, or such longer period as may be stipulated by the common council, the council or other public body or officer, may take final action without it.

(6) OFFICIAL MAP. (a) The council of every city may by ordinance or resolution establish an official map of the city showing the streets, highways, parkways, parks and playgrounds theretofore laid out, adopted and established by law, and such map is to be deemed to be final and conclusive with respect to the location and width of streets, highways and parkways, and the location and extent of parks and playgrounds shown thereon. Such official map is declared to be established to conserve and promote the public health, safety, convenience or general welfare. Said ordinance or resolution shall make it the duty of the city clerk at once to file with the register of deeds of the county or counties in which such city is situated a certificate showing that the city has established such official map.

(b) Such city council is authorized and empowered, whenever and as often as it may deem it for the public interest, to change or add to the official map of the city so as to establish the exterior lines of planned new streets, highways, parkways, parks or playgrounds, or to widen, narrow, extend or close existing streets, highways, parkways, parks or playgrounds. No such change shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 20 days' notice of such a public hearing shall be published in an official publication of said city or in a newspaper of general circulation therein. Before making such addition or change, the council shall refer the matter to the city plan commission for report thereon, but if the city plan commission shall not make its report within 60 days of such reference, it shall forfeit the right to further suspend action. Such additions and changes when adopted shall become a part of the official map of the municipality, and shall be deemed to be final and conclusive with respect to the location and width of the streets, highways and parkways and the location and extent of parks and playgrounds shown thereon. The placing of any street, highway, parkway, park or playground line or lines upon the official map shall not in and of itself constitute or be deemed to constitute the opening or establishment of any street, parkway, park or playground, or the taking or acceptance of any land for such purposes.

(c) The locating, widening or closing, or the approval of the locating, widening or closing of streets, highways, parkways, parks or playgrounds by the city under provisions of law other than contained in this section shall be deemed to be a change or addition to the official map, and shall be subject to all the provisions of this section.

(d) For the purpose of preserving the integrity of such official map, no permit shall hereafter be issued for any building in the bed of any street, highway, or parkway, shown or laid out on such map except as provided in this section. If the land within such mapped street, highway or parkway is not yielding a fair return, the board of appeals in any municipality which has established such a board having power to make variances or exceptions in zoning regulations, shall have power in a specific case, by the vote of a majority of its members, to grant a permit for a building in such street, highway or parkway, which will as little as practicable increase the cost of opening such street, highway or parkway, or tend to cause a change of such official map; and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety or general welfare of the community. Such board shall refuse a permit where the applicant will not be substantially damaged by placing his building outside the mapped street, highway or parkway.

(e) In any city in which there is no such board of appeals, the city council shall have the same powers and shall be subject to the same restrictions. For this purpose such council is authorized to act as a discretionary administrative or quasi judicial body. When so acting it shall not sit as a legislative body but in a separate meeting and with separate minutes kept.

(f) Before taking any action authorized in this subsection, the board of appeals or city council shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in the official publication of such city or in a newspaper of general circulation therein. Any such decision shall be subject to review by certiorari issued



by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations.

(g) In any city which has established an official map as herein authorized no public sewer or other municipal street utility or improvement shall be constructed in any street, highway or parkway until such street, highway or parkway is duly placed on the official map. No permit for the erection of any building shall be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the official map. Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issue of permits to the board of appeals in any city which has established a board having power to make variances or exceptions in zoning regulations, and the same provisions are applied to such appeals and to such boards as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of such board upon zoning regulations. In any city in which there is no such board of appeals the city council shall have the same powers and be subject to the same restrictions, and the same method of court review shall be available. For such purpose such council is authorized to act as a discretionary administrative or quasi judicial body. When so acting it shall not sit as a legislative body, but in a separate meeting and with separate minutes kept.

(h) In those counties where the county maintains and operates parks, parkways, playgrounds, bathing beaches and other recreational facilities within the limits of any city, such city shall not include said facilities in the master plan without the approval of the county board of supervisors.

(7) ZONING. (a) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes provided that there shall be no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation, heretofore or hereafter enacted or adopted pursuant thereto, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. It shall not be deemed limitation of any power elsewhere granted.

(b) *Districts.* For any and all of said purposes the council may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings and for the use of land throughout each district, but the regulations in one district may differ from those in other districts.

(c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

(d) *Method of procedure.* The city plan commission, or board of public land commissioners, or if the city has neither, a city plan committee of the council, shall, upon request of the council, recommend the district plan and regulations for the city. Tentative recommendations shall first be formulated and a public hearing or hearings held thereon by the plan commission, or plan committee functioning in lieu thereof. After submission of the final recommendation, the council may from time to time, after first submitting the proposal to the city plan commission or board of public land commissioners for report, change the districts and regulations, as recommended or as adopted, upon giving at least 10 days' notice, by publication in the official paper at least 3 times during the preceding 30 days, of the proposed changes and of hearings thereon, and opportunity to any person interested to be heard. In case, however, of a protest against such change, duly signed and acknowledged by the owners of 20 per cent or more either

of the areas of the land included in such proposed change, or by the owners of 20 per cent or more of the area of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20 per cent or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of three-fourths of the members of the council.

(e) *Board of appeals.* 1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to approximate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for 1 year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members chairman. The board may employ a secretary and other employes. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor may appoint, for a term of 3 years, an alternate member of such board, in addition to the 5 members above provided for, who shall act, with full power, only when a member of the board refuses to vote because of interest. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternate.

3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

7. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.

8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.

9. The concurring vote of 4 members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. The grounds of every such determination shall be stated.

10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board of appeals.

11. Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of appeals in order to review such decision of the board of appeals, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of appeals, and on due cause shown, grant a restraining order.

12. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from, and shall be verified.

13. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and to report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.

15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

(f) *Enforcement and remedies.* 1. The council may provide by ordinance for the enforcement of this section and of any ordinance or regulation made thereunder. A violation of this section or of such ordinance or regulation is declared to be a misdemeanor, and such council may provide for the punishment thereof by fine or imprisonment, or both. It is also empowered to provide civil penalties for such violation.

2. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

(g) *Conflict with other laws.* Wherever the regulations made under authority of this section require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this section shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this section, the provisions of such statute or local ordinance or regulation shall govern.

(h) *Nonconforming uses.* The lawful use of a building or premises existing at the time of the adoption or amendment of a zoning ordinance may be continued although such use does not conform with the provisions of the ordinance. Such nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building shall not during its life exceed 50 per cent of the assessed value of the building unless permanently changed to a conforming use. If such nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to the ordinance.

(8) OTHER MEASURES OF ENFORCEMENT AND REMEDIES; PENALTY. Any building erected, constructed or reconstructed in violation of this section or regulations adopted pursuant thereto shall be deemed an unlawful structure, and the building inspector or city attorney or other official designated by the council may bring action to enjoin such erection, construction or reconstruction, or cause such structure to be vacated or removed. It shall be unlawful to erect, construct or reconstruct any building or structure in violation of this section or regulations adopted pursuant thereto. Any person, firm or corporation violating such provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$500. Each and every day during which said illegal erection, construction or reconstruction continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed or reconstructed, or any land is or is proposed to be used in violation of this section or regulations adopted pursuant thereto, the building inspector or the city attorney or any adjacent or neighboring property owner who would be specially damaged by such violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or enjoin or abate or remove such unlawful erection, construction or reconstruction.

(9) BUILDING INSPECTION. (a) The city council may provide for the enforcement of this section and all other laws and ordinances relating to buildings by means of the withholding of building permits, and for such purposes may establish and fill the position of building inspector. From and after the establishment of such position and the filling of the same, it shall be unlawful to erect, construct or reconstruct any building or other structure without obtaining a building permit from such building inspector; and such building inspector shall not issue any permit unless the requirements of this section are complied with.

(b) The council may by ordinance designate general fire limits and regulate for safety and fire prevention the construction, alteration, enlargement and repair of buildings and structures within such limits, and may designate special fire limits within the general limits, and prescribe additional regulations therein. Any such proposed ordinance or amendment thereto shall be referred to the city plan commission, if such commission exists, for consideration and report, before final action is taken thereon by the council. However, no such ordinance or amendment thereto shall be adopted or become effective until after a public hearing in relation thereto, which may be held by the city plan commission or council, at which parties in interest and citizens shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in the official paper.

(9a) MAY EXERCISE POWERS OF BOARD OF PUBLIC LAND COMMISSIONERS. In cities of the first class, said city plan commission may exercise all of the powers conferred on board of public land commissioners under section 27.11.

(10) WIDENING STREETS. (a) When the council by resolution shall declare it necessary for the public use to widen any street or a part thereof, it may proceed as prescribed in chapter 32 of the statutes, except as herein modified. If the jury shall determine that the taking of the lands is necessary, the council may affirm or reject the verdict by resolution, accurately describing the land. Resolution affirming the verdict shall not be a taking, but shall be an establishment of new future boundary lines.

(b) After such establishment no one shall erect any new structure within the new lines, nor rebuild or alter the front or add to the height of any existing structure without receding the structure to conform to the new lines. No damages shall be received for any construction in violation hereof.

(c) The council may at any time after the establishment of new lines provide compensation for any of the lands to be taken, whereupon such lands shall be deemed taken, and the required further proceedings shall be commenced.

(d) If a structure on lands thus taken is not removed after three months' written notice served in manner directed by the council, the city may cause it to be removed, and may dispose of it and apply the proceeds to the expense of removal. Excess proceeds shall be paid to the owner, and excess expense shall be a lien on the rest of the owner's land abutting on such street, and if not paid shall be assessed against such land and collected as are other real estate taxes. If the owner does not own the adjoining piece of

land abutting on the new line, he shall be personally liable to the city for the expense of removal.

(e) Until the city has taken all of the lands within the new lines, it may lease any taken, to the person owning same at the time of taking, at an annual rental of not more than five per cent of the amount paid therefor by the city or of the market value, if donated. Improvements may be maintained on such leased lands until all lands within the new lines are taken, whereupon they shall be removed as provided in paragraph (d). No damages shall be had for improvements made under such lease.

(11) BUILDING LINES. (a) The council may by ordinance, in districts consisting of one side of a block or more, establish the distance from the street that structures may be erected. The city engineer shall thereupon make a survey and plat, and report the same, with description of any structure then situated contrary to such ordinance, to the council.

(b) The council may by ordinance make such regulation or prohibition of construction on any parts of lots or parcels of land or on any specified part of any particular realty, as shall be for the public health, safety or welfare.

(c) Whenever to carry out any ordinance under this subsection it is necessary to take property for public use, the procedure of chapter 32 of the statutes shall be followed.

(12) VACATION CAMP COURSES. A course of academic and vocational study, including physical training, shall be provided by the city board of education, for vacation camps established under subsection (3).

(13) FUNDS. Funds to carry out the purposes of this section may be raised by taxation or by bonds issued as provided in sections 67.05, 67.06, 67.07, 67.08 and 67.10.

(14) ASSESSMENTS. The expense of acquiring, establishing, laying out, widening, enlarging, extending, paving, repaving and improving streets, arterial highways, parkways, boulevards, memorial grounds, squares, parks and playgrounds, and erecting bridges under any plan adopted by the common council pursuant to this section or section 27.11, including the cost of all lands and improvements thereon which it is necessary to acquire to carry out such plan, whether acquired by direct purchase or lease, or through condemnation, and also including the cost of constructing any bridge, viaduct or other improvement which is a part of the plan adopted by the common council, may be assessed, in whole or in part, to the real estate benefited thereby, in the same manner in which under existing law in such city benefits and damages are assessable for improvements of streets. The provisions of sections 62.20, 62.21, 66.54, 75.53, 75.56, 75.57, 75.58, 75.59, 75.61, 75.65 and 75.66 shall apply to all special assessments made pursuant to this subsection in the same manner as if the assessment were made for improvements of streets, but all special improvement bonds covering such assessments shall be payable in five annual instalments. Whenever plans are adopted which are supplementary to each other the common council may by ordinance combine such plans into a single plan within the meaning of this section.

(15) EXCESS CONDEMNATION. Whenever any of the purposes of the preceding subsection are planned to be carried out by excess condemnation, benefits may be assessed in the manner provided in said section; provided, however, that subsection (15) be a separate and distinct subsection, to the end that if questioned and held invalid that the foregoing subsection may not be affected because of said ruling.

(16) BENEFITS FROM PUBLIC BUILDINGS. Any benefits of public buildings and groups thereof may be assessed in the manner provided in subsection (14) of section 62.23; provided, however, that subsection (16) be a separate and distinct subsection, to the end that if questioned and held invalid that the foregoing subsection may not be affected because of said ruling.

(17) ACQUIRING LAND. (a) Cities may acquire by gift, lease, purchase or condemnation any lands (a) within its corporate limits for establishing, laying out, widening, enlarging, extending and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; (b) any lands adjoining or near to such city for use, sublease or sale for any of the following purposes:

1. To relieve congested sections by providing housing facilities suitable to the needs of such city;

2. To provide garden suburbs at reasonable cost to the residents of such city;

3. To establish city owned vacation camps for school children and minors up to twenty years of age, such camps to be equipped to give academic and vocational opportunities, including physical training.

(b) After the establishment, layout and completion of such improvements, such city may convey or lease any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real

estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air and usefulness of such public works, and to promote the public health and welfare.

(c) The acquisition and conveyance of lands for such purpose is a public purpose and is for public health and welfare.

(18) LAKES AND RIVERS. The city may improve lakes and rivers within the city and establish the shore lines thereof so far as existing shores are marsh, and where a navigable stream traverses or runs along the border of a city, such city may make improvements therein throughout the county in which such city shall be located in aid of navigation, and for the protection and welfare of public health and wild life.

(19) PARKING FACILITIES BY SPECIAL ASSESSMENT. Upon the petition of 10 or more property owners in the vicinity of an area proposed to be developed for a public parking lot the governing body of any city of the second class may proceed under section 66.60 to establish public parking facilities and assess against benefited properties the cost or any portion of the cost of acquiring and conditioning the necessary properties for public parking use; provided that if the owners of properties against whom 50 per cent or more of the total special assessments are proposed to be levied file a verified petition protesting the improvement before the adoption of the resolution provided for in section 66.60 (8) (b), the governing body shall not have authority to proceed further with the proposed improvement. The procedure authorized herein shall be in addition to all other methods provided by law. [1937 c. 402; 1941 c. 203; 43.08 (2); 1941 c. 328; 1943 c. 40, 239; 1943 c. 553 s. 9; 1945 c. 67; 1947 c. 547]

**Note:** The zoning power of a city must be reasonably exercised, but within the delegated field the acts of a city will not be disturbed by the courts unless there is a clear abuse of discretion. *La Crosse v. Elbertson*, 205 W 207, 237 NW 99.

Restrictions imposed by zoning ordinances or the laws of the state are not "incumbrances" which entitle a purchaser to declare a contract at an end. [*Genske v. Jensen*, 188 W 17, 205 NW 548, and *Rusch v. Wald*, 202 W 462, 232 NW 875, distinguished.] *Miller v. Milwaukee Odd Fellows Temple, Inc.*, 206 W 547, 240 NW 193.

A landowner may compel the issue of a building permit where the ordinance under which such permit was refused is unconstitutional; the remedy by appeal to the city board of appeals is inadequate. *State ex rel. Tingley v. Gurda*, 209 W 63, 243 NW 317.

Rezoning of premises after execution of land contract held not to authorize purchasers' cancellation of land contract on ground of misrepresentations or violation of agreements. *Kend v. Herbert F. Co.*, 210 W 239, 246 NW 311.

Parties seeking to avoid the effect of a zoning ordinance because it is unreasonable must show that it is unreasonable in respect to their property, and cannot predicate and sustain their contention on the fact that the ordinance may be unreasonable or discriminatory as to the property of others. *Rowland v. Racine*, 223 W 488, 271 NW 36.

Where the owner of three adjoining lots had built apartments on the end lots, allocating parts of the middle lot for sideyard purposes to comply with a zoning ordinance, and mortgaged the end lots to an association and the middle lot to K., who later became the owner thereof, the association was entitled to enjoin him from bringing any action which would affect the rights of the association to the use of the middle lot for sideyard purposes, since he took subject to the burden of the zoning ordinance, and had failed to appeal from a decision of the board denying his application for a permit to build on all of the middle lot. *Welfare B. & L. Ass'n v. Krieger*, 226 W 105, 275 NW 891.

The policy of zoning is a matter within legislative discretion, and it is only when the bounds of the field of legislative discretion are clearly exceeded that the courts will deny validity to a zoning ordinance. Discretion was abused. *Geisenfeld v. Shorewood*, 232 W 410, 287 NW 683.

Where it is fairly debatable whether the determination of a municipal legislative body zoning property within a particular restricted district was an arbitrary or unreasonable exercise of power, the courts

will not substitute their judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. *State ex rel. Normal Hall, Inc. v. Gurda*, 234 W 290, 291 NW 350.

Under (5) (c), Stats. 1939, the council has power to amend an original zoning ordinance, at least unless the amendment frustrates or destroys the purpose and effect of the original zoning ordinance as a whole. An amending ordinance, which created a two-acre public utility district so as to permit the erection of a railroad passenger depot therein in a first class single residence district of the original zoning ordinance, did not frustrate or destroy the purpose and effect of the original ordinance as a whole. *Higbee v. Chicago, B. & Q. R. Co.* 235 W 91, 292 NW 320.

A change of the original use of the building as a fraternity house to use as a two-family residence, either such use being a permissible nonconforming Class B use under the ordinance, was not a change to a "more restricted use," within a provision of the ordinance that a change of a nonconforming use to a more restricted use prevents a change thereafter to a less restricted use, and a resumption of the original use as a fraternity house would not be a change to a "less restricted use." *State ex rel. Morehouse v. Hunt*, 235 W 358, 291 NW 745.

In certiorari to review the action of a board of zoning appeals, authorized by (8) (b), Stats. 1939, the provision in (8) (i), to the effect that the court may take further evidence and may consider the same in reaching its determination, may warrant the court's overruling the board's findings of fact if the additional evidence received shows them to be erroneous, but incompetent additional evidence can be given no effect. *State ex rel. Morehouse v. Hunt*, 235 W 358, 291 NW 745.

Although owners of property who built private dwellings in a district restricted to single-family residences under the original zoning ordinance of a city may suffer an annoyance from the council's amendment of the ordinance by rezoning so as to permit the building of apartment houses in a certain area within such district, they have no legally protectible rights against such rezoning merely because of their reliance on the original zoning ordinance, since property is always held subject to the police power, and rights granted by legislative action under the police power, as in the case of a zoning ordinance, can be taken away when in the valid exercise of its discretion the legislative body sees fit. *Eggebeen v. Sonnenburg*, 239 W 213, 1 (2d) NW 84.

Provisions in statutes and ordinances authorizing slight variations in the application

of zoning laws are generally upheld as against contentions that such provisions are unlawful delegation of legislative power. *Thalhofer v. Patri*, 240 W 404, 3 (2d) NW 761.

Where an unzoned parcel of land, owned by a railroad company adjacent to its right of way and leased to a wholesale fruit company, was surrounded to such an extent by properties used for industrial, commercial and railroad purposes as to render such parcel largely valueless for residential purposes, and was separated by the railroad right of way from property classified by the city zoning ordinance as "C" residential, and was not within a mile of any "A" residential, the attempted application to such parcel of an ordinance provision classifying property, not specifically included within a district or zone, as "A" residential, was so arbitrary, unreasonable and unjustly discriminatory as to violate the equal protection and due process clauses of the constitutions, and hence, there being no other zoning classification applicable to such parcel, the ordinance furnished no ground for a refusal to issue a permit to build on such parcel an addition to the warehouse of the fruit company. *State ex rel. Scandrett v. Nelson*, 240 W 438, 3 (2d) NW 765.

The petition for a writ of certiorari to review a decision of the zoning board of appeals having been presented within the 30-day period fixed by 62.23 (7) (e) 10, the petition was properly before the court. The quashing of the writ first issued did not dismiss the action, the motion to quash being in effect a demurrer for insufficiency of facts stated. Such being the case, the court, on quashing the first writ and although after the 30-day period, could properly permit the petition to be amended to incorporate the names of the members of the board, where the court was of opinion that this was necessary to the bringing up of the board's record. *State ex rel. Robst v. Board of Appeals*, 241 W 188, 5 NW (2d) 783.

Under 62.23 (7) (e) 10 and 11, an aggrieved property owner's petition, naming the city building inspector and the zoning board of appeals, was sufficient, and a writ of cer-

tiorari issued thereon to review a decision of the board addressed in the name of the state and directed to the inspector by name and to the board merely as such, was not misdirected. Although the original writ of certiorari to review a decision of the zoning board of appeals was superseded by an order of the court, the petition remained and, being sufficient in itself to support the original writ, it was also sufficient to support the second writ, the petition having been timely presented to the court. In the absence of express statutory provision, service of a writ of certiorari, addressed to the zoning board of appeals, on the chairman of the board, was sufficient to cause return of the board's record in the matter to be reviewed. *State ex rel. Robst v. Board of Appeals*, 241 W 188, 5 NW (2d) 783.

If the apartment house was being occupied by 3 families at the time of adoption of the zoning ordinance, the mere fact that it may have been occupied thereafter by more than 3 families would not defeat the right to continue to use it for occupancy by 3 families. *State ex rel. Robst v. Board of Appeals*, 241 W 188, 5 NW (2d) 783.

A lot owner objecting to a decision of the zoning board of appeals, directing the city building inspector to issue building permits allowing a variance from ordinance requirements, should have followed the method of obtaining a review of such decision specified by 62.23 (7) (e) 10 and 11, and could not, instead, obtain a review by bringing an action to enjoin the holders of the building permits from proceeding thereunder. *Ferch v. Schroedel*, 241 W 457, 6 NW (2d) 176.

Where a city ordered demolition of a building under a fire ordinance as a nuisance without giving the insurer thereof an opportunity to be heard, the insurer was entitled to a hearing in the courts. *New Hampshire Fire Ins. Co. v. Murray*, 105 F. (2d) 212.

In considering the validity of the application of a zoning ordinance to particular facts and circumstances, each case must be decided on its own facts. *Chrome Plating Co. v. Milwaukee*, 246 W 526, 17 NW (2d) 705.

**62.24 Police justice court.** (1) **PRESIDING JUSTICE.** (a) The common council of any city may by ordinance provide for the election of a justice of the peace to be "police justice of the peace" in addition to justices of the peace otherwise provided for by law. Such police justice of the peace shall be elected at large as provided by the council. He shall qualify pursuant to section 62.09 (4).

(b) The council may fix a salary for such justice which shall be in lieu of fees and costs.

(c) In case of his absence, sickness or disability, he may, by written order filed in his court, designate a justice of the peace to perform his duties during such time.

(2) **JURISDICTION.** (a) The police justice of the peace shall have the jurisdiction, both as to subject matter and as to territory, of any other justice of the peace and the exclusive jurisdiction of offenses against ordinances of the city.

(b) The police justice of the peace may punish a violation of a city ordinance by fine or imprisonment, or both, and may sentence any person convicted of a violation of a city ordinance, or of a misdemeanor, to pay a fine and the costs of prosecution or be imprisoned in the county jail, and may order the prisoner, if able, to be kept at hard labor. Prisoners confined in the county jail or in some other penal or correctional institution for violation of a city ordinance shall be kept at the expense of the city and such city shall be liable therefor.

(c) Civil actions, except actions under city ordinances, may be removed to another justice of the peace the same as such actions may be removed from one justice of the peace to another justice of the peace.

(d) No other justice of the peace shall have criminal jurisdiction of offenses committed in the city, nor power to issue warrant for, examine, commit or hold to bail any person charged with an offense therein.

(e) In criminal actions where affidavit of prejudice shall be filed as provided by section 361.35, the police justice of the peace shall call in a justice of the peace to try the case. The officer so sitting shall have the powers and duties of the police justice of the peace, and shall receive such compensation as the council shall determine, to be paid by the city.

(3) PROCEDURE. (a) The court of the police justice of the peace shall be called the "Police Justice Court." It shall be open daily except Sundays and legal holidays.

(b) The procedure shall be the same as is applicable to other justices of the peace, except as otherwise provided.

(c) The police justice of the peace shall keep a criminal docket wherein shall be entered the substance of every complaint, date of the issuance of warrant, and date and substance of return thereon, plea of the accused, name of the witnesses, names and verdict of the jury, if any, and the judgment.

(d) Juries shall be selected in criminal cases in the same manner as in other justice courts except that either side may challenge 2 talesmen peremptorily.

(e) The taxable costs shall be the same as in other justice courts, and shall be paid to the justice or officer earning the same unless he is receiving a salary in lieu thereof, when they shall be paid into the city treasury.

(4) COUNCIL MAY ABOLISH. (a) The council may by ordinance abolish the police justice court at the end of any term for which the police justice of the peace shall have been elected.

(b) In cities having no police justice court the council may fix the fees or compensation of officers and magistrates for services in actions for violation of city ordinances.

(5) EXCEPTION. This section shall not apply to cities having a court or judge with substantially the same jurisdiction as that conferred by subsection (2), except that any city of the second class, within which a municipal court is located, having a jurisdiction of at least \$25,000 in civil cases, may, by ordinance, establish a police justice court, as provided in this section, and thereupon the jurisdiction of such municipal court shall not be deemed to include offenses against ordinances of such city and the police justice court thus created shall be vested with the jurisdiction specified in subsection (2).

(6) EXISTING POLICE JUSTICES. In any city which has a police justice pursuant to section 62.24 of the 1943 or prior statutes, the provisions of that section shall remain effective until such time that a police justice of the peace is designated under the provisions of this section but not later than May 1, 1947. [1931 c. 135, 402; 1933 c. 271; 1935 c. 31; 1945 c. 103]

**Note:** City of third class is required under 62.24, Stats. 1933, to have police justice. If none has ever been elected there is no vacancy in office and election should be had. If office has been abolished justice of peace in city has jurisdiction in criminal cases. Court commissioner also has jurisdiction and criminal cases may be commenced before him. 22 Atty. Gen. 1030.

See note to 62.09, citing 27 Atty. Gen. 478. Territorial jurisdiction of police court under 62.24, Stats. 1943, is limited to city. Proceeding thereunder may not be removed from justice of peace to police justice upon affidavit of prejudice. Warrant issued by police justice may be served anywhere in the state. 33 Atty. Gen. 236.

62.25 Claims and actions. (1) CLAIMS. (a) No action shall be maintained against a city upon a claim of any kind until the claimant shall first present his claim to the council and it is disallowed in whole or in part. Failure of the council to pass upon the claim within sixty days after presentation is a disallowance.

(b) After disallowing a claim in whole or in part the council shall not thereafter allow the same.

(c) The clerk shall cause to be served on the claimant notice of any disallowance if the claimant in writing furnished the address of his usual place of abode. The notice shall be served by a police officer, without fees, in the manner of service of summons in justice court. If the claimant be a nonresident and he furnished the address of his usual place of abode, the notice shall be sent to such address by registered mail and receipt therefor, signed by the claimant, or the returned registered letter, shall be proof of service.

(d) The claimant may accept payment of a portion of his claim without waiving right to recover the balance. No interest shall be recovered on any portion of a claim allowed after a city order is drawn and made available to the claimant. If in an action the claimant recovers a greater sum than was allowed, he shall recover costs, otherwise the city shall recover costs.

(e) Disallowance by the council shall bar any action founded on the claim unless brought within 6 months after service of notice of disallowance, or after disallowance if the address was not furnished as aforesaid.

(2) ACTIONS. (a) Damages, if any, in an action against a city officer in his official capacity, except the action directly involve the title to his office, shall not be awarded against such officer, but may be awarded against the city.

(b) In an action to restrain payment by a city for work performed or material furnished, the plaintiff shall give a bond conditioned for payment to the claimant, if the action is finally determined in the claimant's favor, of damages caused by the delay, including expense incurred in the action, and interest. The bond shall be with two sureties



to be approved by the court, and in an amount fixed by the court and sufficient to cover all probable damages.

(c) Actions to recover penalty or forfeiture or to punish violation of an ordinance shall be in the name of the city. In case of conviction the court shall in addition to sentence of imprisonment, if any, enter judgment against the defendant for the costs of prosecution, and for the fine, penalty or forfeiture, if any, and that he be imprisoned in the county or city jail or house of correction not exceeding six months, unless the judgment is sooner paid. The defendant may appeal in the manner of appeals from justice court in actions in which the state is plaintiff, except that if appeal from the trial court directly to the supreme court may be had, the defendant may appeal only to that court.

(d) No person shall be ineligible to sit as judge, justice or juror in an action to which the city is a party, by reason of being an inhabitant of the city. [1943 c. 286]

**Note:** County cannot maintain action against city for balance due for construction of bridge where no claim or demand, verified as required by statute, had been filed. Failure of a superintendent of city schools which are governed by sections 40.60 to 40.60 to comply with 62.12 (8) or 62.25 is a bar to his action. Seifert v. School District, 235 W 489, 292 NW 286. Saunk County v. Baraboo, 211 W 428, 248 NW 418.

**62.26 General provisions.** (1) **LAWS IN FORCE.** The general laws for the government of cities, villages and towns, the assessment and collection of taxes, the preservation of public and private property, highways, roads and bridges, the punishment of offenders, the collection of penalties and the manner of conducting elections shall be in force in all cities organized under the provisions of chapter 62 except as otherwise herein provided.

(2) **EQUITY IN LAND.** The acquisition or retention by a city of an equity of redemption in lands shall not create any liability on the part of the city to pay any bonds issued or mortgage or trust deed upon such lands executed prior to the acquisition by the city of such equity.

(3) **FORMS.** The use of any forms prescribed by the statutes of this state, as far as the same are applicable, shall be as legal and of the same force and effect as the use of the forms prescribed by chapter 62.

(4) **REWARDS.** When any heinous offense or crime has been committed against life or property within any city the mayor, with the consent of a majority of the aldermen, may offer a reward for the apprehension of the criminal or perpetrator of such offense.

(6) **CITIES IN MORE THAN ONE COUNTY.** In cities lying in more than one county the following shall apply:

(a) Justices of the peace and police justices shall qualify and have jurisdiction in each county the same as though the city lay wholly therein, and may hold court in one county while exercising jurisdiction in the other. If a defendant resides in either of said counties, venue upon appeal or certiorari in civil cases shall be in such county, otherwise in that one of said counties where the cause of action arose, if it arose in either, otherwise in either county. In criminal cases venue upon appeal or certiorari shall be in the county where the offense was committed. In case of removal of a cause, the papers shall be transmitted to the nearest justice of the peace of the city competent to try the same, and if there be none such or he be absent or sick, then to the nearest justice of the peace of the county where a defendant was served and in criminal cases of the county where the offense was committed.

(b) Accused persons may be put in custody of an officer or committed to the jail of the city or of the county where the offense was committed. Persons committed for offenses against city ordinances or upon execution in tort actions shall be committed to the jail of the county in which the action was tried.

(c) Juries may be impaneled of persons qualified as jurors in either county.

(d) Officers of the city, who by law have the powers of constables in the county in which the city is located, shall have such powers in either county.

(7) **CHANGE OF CITY NAME.** The name of any city of the fourth class shall be changed if a majority of the electors shall address a written petition therefor to the council designating the new name, and the council shall by a two-thirds vote of all the members adopt an ordinance changing to such new name. The change shall be in effect upon publication of the ordinance in the official paper, and the filing of a copy thereof in the office of the secretary of state. [1937 c. 432; 1941 c. 197; 1947 c. 388]

**62.27** [Repealed by 1937 c. 432]

**62.28** [Repealed by 1945 c. 75]

**62.29 Benefit funds for officers and employes of first class cities.** (1) In all cities of the first class in this state, whether organized under general or special charter, annuity and benefit funds shall be created, established, maintained and administered (by such city)

for all officers and employes of such cities, who at the time this section shall come into effect are not contributors, participants or beneficiaries in any pension fund now in operation in such city by authority of law; provided that before this section shall be in effect in any city to which it applies, it must first have been approved by a majority vote of the members elect of the common council of such city.

(2) Upon approval by a majority vote of the members of the common council of such city the common council shall create a retirement board, the members of which shall serve without compensation, which board shall have full power and authority to administer such annuity and benefit fund, and to make such rules and regulations under which all participants shall contribute to and receive benefits from such fund. The common council may provide for contribution by the city to such annuity and benefit fund. [1937 c. 134]