

CHAPTER 434

PAVEMENTS, CURBS, AND GUTTERS

<p>Sec. 434.01 Definitions 434.02 Pavements and gutter curbs 434.03 Cost assessed against abutting property 434.04 Ordinance for improvement 434.05 Branch sewers and water pipes 434.06 Plans, specifications; bids 434.065 Unnecessary, in certain instances, to advertise for bids 434.07 Payments to contractor 434.08 Spreading of assessment 434.09 Omissions and errors 434.10 Warrants to pay cost 434.11 Reassessment 434.12 Objections 434.13 Appeal to the district court 434.14 Street and alley improvements in villages and in cities of the fourth class 434.15 Assessment of abutting property 434.16 Resolution for improvement 434.17 Branch sewers and water pipes 434.18 Plans, specifications, and advertisements 434.19 Payments 434.20 Interest rate on special assessments 434.21 County boards and school districts to pay assessments 434.22 Supplemental assessments 434.23 Certificates of indebtedness authorized 434.24 Reassessment 434.25 Objection to assessment 434.26 Appeal to district court 434.27 Application</p>	<p>Sec. 434.28 Public Improvements in villages and in cities of the fourth class 434.29 Publication of resolution; affidavit 434.30 Hearing; manner of doing the work 434.31 Hearing 434.32 Determination of benefits 434.33 Certified copy, delivery 434.34 Village or city orders issued 434.35 Tax levy 434.36 Construction 434.37 Boulevards, power to construct or rebuild 434.38 Service of resolution 434.39 Assessments 434.40 Issue and sale of treasury orders 434.41 Tax levy 434.42 Application 434.43 Curbs and gutters 434.44 Proceedings for construction 434.45 Performance of work 434.46 Certificate of indebtedness 434.47 Tax levy authorized 434.48 Not to affect assessments already levied 434.49 Application 434.50 Special assessments in instalments for paving 434.51 Instalments, how determined 434.52 How collected 434.53 Certificates of indebtedness 434.54 Certificates, how executed and payable 434.55 Form of certificates; application of moneys 434.56 Replacing sidewalks 434.57 Cities of the first class may sell special assessment improvement bonds below par</p>
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434.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2 to 4, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subdivision 2. **Council.** By the word "council" is meant the governing body of the village or the city by whatever title it may be denominated.

Subdivision 3. **Mayor.** By the word "mayor" is meant the chief executive officer of the village or the city by whatever title he may be denominated.

Subdivision 4. **Clerk.** By the word "clerk" is meant the officer of the village or the city who performs the functions of clerk thereof by whatever title he may be denominated.

[1919 c. 65 s. 1; 1921 c. 419 s. 1; 1927 c. 185 s. 1; 1933 c. 200] (1815)

434.02 PAVEMENTS AND GUTTER CURBS. In any village of this state, whether organized under a general or special law, now or hereafter having a population of 10,000, or less, the council shall have power to lay and maintain macadam or pavement and gutter and curbs, upon any of its streets and alleys, with any material which the council may deem suitable, the council may, upon a petition of the owners of more than one-half the property affected, proceed with the improvement.

[1917 c. 364 s. 1] (1907)

434.03 COST ASSESSED AGAINST ABUTTING PROPERTY. The costs of constructing any macadam, pavement, gutter, or curb may be assessed upon the abutting property based upon the number of feet fronting upon the street or alley proposed to be paved or upon the basis of benefits; but the council may pay the cost of constructing the macadam or pavement across intersecting streets and alleys, and one-half the costs opposite any public park or municipal property, and the entire costs of the gutters out of the general road fund, if any there be, or out of the general fund of the village.

[1917 c. 364 s. 2] (1908)

434.04 ORDINANCE FOR IMPROVEMENT. No action shall be taken for the construction of any improvement except upon the adoption of an ordinance or resolution by a majority vote of all members of the council, at a meeting at which

MINNESOTA STATUTES 1945

434.05 PAVEMENTS, CURBS, AND GUTTERS

3174

all property owners whose property is liable to be assessed therefor, have been notified to be present, by a notice of the meeting published for two weeks in the official newspaper.

[1917 c. 364 s. 3] (1909)

434.05 BRANCH SEWERS AND WATER PIPES. Before making any such improvement the council may, by resolution, require the owners of the abutting property to lay branch sewers and water pipes from the mains to the curb or lot line of each lot, and in case any property owner neglects to lay such sewer or water pipe, within 60 days after being served with a copy of the resolution, the council may cause the same to be put in and may assess the cost of the same against the property and collect the same as taxes are collected. All these water pipe connections shall be of lead or such material as the council may prescribe.

[1917 c. 364 s. 4] (1910)

434.06 PLANS, SPECIFICATIONS; BIDS. When the council shall determine by ordinance or resolution to lay any macadam, pavement, gutter, or curb it may cause plans and specifications thereof to be made and filed with the clerk and may advertise for bids for these improvements in the official newspaper and any other newspaper as the council may deem advisable, once in each week for three successive weeks, which advertisement shall specify the work to be done and shall call for these bids on the basis of cash payment for the work and shall state the time when the bids will be opened and considered by the council; no bids shall be considered unless sealed and filed with the clerk and accompanied by a cash deposit or certified check payable to the clerk for at least ten per cent of the amount of the bid.

In letting contracts for this work, it shall be the duty of the council to require the execution of a written contract and a bond in such sum as the council may require, conditioned for the faithful performance of the contract and for saving the village harmless from any and all liability in the prosecution and completing of the work; and conditioned further for the payment of all material used and labor performed thereon. The council, if a contract is awarded, may award the same to the lowest responsible bidder. If any bidder to whom a contract is awarded shall fail to enter promptly into the written contract and to furnish the bond, then the defaulting bidder shall forfeit to the municipality the amount of his cash deposit or certified check, and the council may thereupon award the contract to the next lowest responsible bidder; provided, the council shall have the right to reject all bids; and, provided, that when the estimates made for the council for the entire work projected shall be less than \$500.00, the council may directly purchase the materials therefor and cause the work to be done by day labor. The council may have the work supervised by the village engineer or other person, and in case of improper construction or unreasonable delay in the prosecution of the work by a contractor, it may order and cause the suspension of the work at any time and relet the contract therefor, or order a reconstruction of any portion of the work improperly done, and where the work to be done shall call for an expenditure of less than \$500.00, to complete the work, or the reconstruction necessary, the council may do it by the employment of day labor.

[1917 c. 364 s. 5] (1911)

434.065 UNNECESSARY, IN CERTAIN INSTANCES, TO ADVERTISE FOR BIDS. When a village exercises the powers authorized in Minnesota Statutes 1941, sections 434.02 or 434.14 and assesses the cost of the improvement under authority of sections 434.03 or 434.15, the work being done under contract with and the supervision of the commissioner of highways by authority of section 160.41, it shall not be required that the village advertise for bids as required in sections 434.06 and 434.18 and no bond from the commissioner of highways shall be required in connection with such contract. The contractor's bond furnished to the state on the contract under which the work is done shall extend to the village and operate for its protection to the same effect as though the village was a party thereto.

[1945 c. 335 s. 1]

434.07 PAYMENTS TO CONTRACTOR. In case the contractor shall properly perform the work, the council may, from time to time, before the completion of the work, in its discretion, pay to the contractor 75 per cent of the amount already earned thereunder upon the estimate of the engineer or other competent person selected by the council.

[1917 c. 364 s. 6] (1912)

434.08 SPREADING OF ASSESSMENT. After a contract is let, or the work ordered done, if it will cost less than \$500, the engineer or other person selected by the council may forthwith calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece, or parcel of land within the district affected, without regard to cash valuation, in accordance with the provisions of section 434.03. The clerk may thereupon cause notice of the time and place when and where the council will meet, to pass upon the proposed assessment, to be published in the official newspaper of the village at least one week prior to the meeting of the council.

At this meeting the council shall hear and pass upon all objections thereto, if any, and may, if it deems just, alter the proposed assessment, and upon the adoption by resolution of the assessment, the same shall constitute the special assessment. The assessment, with the accruing interest thereon, shall be a lien upon the property included therein, concurrent with general taxes.

It shall then be the duty of the clerk immediately thereafter, to transmit a certified duplicate of the assessment to the auditor of the county to be extended on the proper tax lists of the county and the assessment shall be collected and paid over in the same manner as other municipal taxes. These assessments shall be payable in equal annual instalments extending over a period not exceeding ten years, and the interest thereon shall not exceed the rate of six per cent per annum.

The owner of any property so assessed may, at any time, pay the whole of the assessment, or any annual instalment thereof, with interest, as to any lot, piece, or parcel of land affected thereby.

[1917 c. 364 s. 7] (1913)

434.09 OMISSIONS AND ERRORS. In case of omission, errors, or mistakes, in making an assessment in respect of the total cost of the improvement, or otherwise, it shall be competent for the council to provide for and make supplemental assessments to correct the omission, errors, or mistake.

[1917 c. 364 s. 8] (1914)

434.10 WARRANTS TO PAY COST. In anticipation of the collections of a special assessment, the village may issue warrants on the fund, to be known as pavement warrants payable at such times and in such amounts as the collection of the special assessment will provide for, which warrants shall bear interest at a rate not to exceed six per cent per annum, payable annually, and may have coupons attached representing each year's interest. The warrant shall specify the particular fund against which it is drawn, and shall be signed by the mayor and countersigned by the clerk, and be in denominations of not less than \$50.00, nor more than \$500. These warrants may be sold by the village for not less than par. If any warrant shall become due, or any interest shall become due on a warrant, when there are no funds to pay the same, the council is hereby authorized to effect a temporary loan for the payment thereof. The municipality may call in and pay any warrants not due on any interest paying date.

[1917 c. 364 s. 9] (1915)

434.11 REASSESSMENT. In all cases where any assessment, or any part thereof, as to any lot, lots, or parcels of land assessed under any of the provisions of sections 434.02 to 434.13, for any cause whatever, is set aside, the council may cause a reassessment or new assessment to defray the expenses of the improvement to be made.

[1917 c. 364 s. 10] (1916)

434.12 OBJECTIONS. The party desiring to object to the assessment, or his duly authorized agent or attorney, shall, on or before the date of hearing upon the assessment, file with the clerk a written statement of the objections and all objections not specified therein shall be deemed waived.

[1917 c. 264 s. 11] (1917)

434.13 APPEAL TO THE DISTRICT COURT. Within ten days after the adoption of the assessment, any person aggrieved, who appeared and filed objections thereto, may appeal to the district court by serving a notice upon the mayor, which notice shall be filed with the clerk of the district court within ten days after service thereof. The clerk shall furnish appellant a certified copy of his objections filed therein, and the assessment roll or part complained of, and all papers necessary to present the appeal. The appeal shall be placed upon the calendar of the next general term commencing more than five days after the date of serving the notice and

shall be tried as other appeals in such cases. If appellant does not prevail upon the appeal, the costs incurred, if not paid, shall be included in the special assessment.

[1917 c. 364 s. 12] (1918)

434.14 STREET AND ALLEY IMPROVEMENTS IN VILLAGES AND IN CITIES OF THE FOURTH CLASS. In any city of the fourth class or village of this state, whether the city or village is acting under general or special law or home rule charter, the council shall have power to improve any street or alley, or parts thereof, by laying and maintaining pavements, gutters, and curbs thereon of any material which it may deem suitable or by grading, graveling, or subjecting the same to bituminous or other treatment, when petitioned for by the owners of not less than 35 per cent in frontage of the real property abutting on the street or alley, or parts thereof, as may be named in the petition as the location for the improvement.

[1919 c. 65 s. 1; 1921 c. 419 s. 1; 1927 c. 185 s. 1; 1933 c. 200] (1815)

434.15 ASSESSMENT OF ABUTTING PROPERTY. The cost of any such improvement may be assessed upon the abutting property based upon the number of feet fronting upon the street or alley proposed to be so improved, or the cost of any such improvement may be assessed upon all the property within any block abutting on the street or alley and located not more than one-half block from the street or alley to be so improved, whether the property abut on the improvement or not, based upon the benefits received, but the council may pay the cost of a pavement across intersecting streets and alleys and one-half the cost of a pavement opposite any public park or municipal property, and the entire cost of gutters out of the general road fund, if any there be, or out of the general fund of the municipality. The improvement of two or more connecting streets may be included in one proceeding and conducted as one improvement.

[1919 c. 65 s. 2; 1925 c. 210] (1816)

434.16 RESOLUTION FOR IMPROVEMENT. No action shall be taken for the making of any such improvement except upon the adoption of a resolution to that effect by a majority vote of the council after a meeting at which all property owners whose property is liable to be assessed therefor, have been notified to be present by a notice of the meeting published for two weeks in the official newspaper.

[1919 c. 65 s. 3] (1817)

434.17 BRANCH SEWERS AND WATER PIPES. Before making an improvement the council may by resolution require the owners of the abutting property to lay branch sewers and water pipes from the mains to the curb or lot line of each lot, and in case any property owner neglects to lay such sewer or water pipe, within 60 days after being served with a copy of the resolution, the council may cause the same to be put in and may assess the cost of the same against the property and collect the same as taxes are collected. All these water pipe connections shall be of such material as the council may prescribe.

[1919 c. 65 s. 4] (1818)

434.18 PLANS, SPECIFICATIONS, AND ADVERTISEMENTS. When the council shall determine to make any such improvement, it may cause plans and specifications thereof to be made and filed with the clerk and may advertise for bids for the improvement in the official newspaper and any other newspaper and for such length of time as it may deem advisable. The advertisement shall specify the work to be done, shall call for bids on the basis of cash payment for the work and shall state the time when the bids will be opened and considered by the council, and that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit or certified check payable to the clerk, for such percentage of the amount of the bid as the council may specify.

In letting contracts for any such work, it shall be the duty of the council to require the execution of a written contract and a bond in such sum as it may require, conditioned for the faithful performance of the contract, and for saving the municipality harmless from any and all liability in the prosecution and completing of the work, and conditioned further for the payment for all material used and labor performed thereon. The council, if a contract is awarded, may award the same to the lowest responsible bidder. If any bidder to whom a contract is awarded shall fail to enter promptly into the written contract and to furnish bond, then the defaulting bidder shall forfeit to the municipality the amount of his cash deposit

or certified check, and the council may thereupon award the contract to the next lowest responsible bidder; provided, the council shall have the right to reject all bids; and, provided, that when it shall appear to the council that the cost of the entire work projected shall be less than \$500, it may directly purchase the materials therefor and cause the work to be done by day labor. The council may have the work supervised by the municipality's engineer or other person, and in case of improper construction or unreasonable delay in the prosecution of the work by the contractor, it may order and cause the suspension of the work at any time and relet the contract therefor, or order a reconstruction of any portion of the work improperly done, and where the work to be done shall call for an expenditure of less than \$500 to complete the work or the reconstruction necessary, the council may do it by the employment of day labor.

[1919 c. 65 s. 5] (1819)

434.19 PAYMENTS. In case the contractor shall properly perform the work, the council may, from time to time, before the completion of the work, in its discretion, pay to him 75 per cent of the amount already earned thereunder, upon the estimate of the engineer or other competent person selected by the council.

[1919 c. 65 s. 6] (1820)

434.20 INTEREST RATE ON SPECIAL ASSESSMENTS. After a contract is let, or after the work is ordered done by day labor, the clerk, with the assistance of the engineer or other person selected by the council to perform the duties of engineer, shall forthwith calculate the proper amount to be specially assessed for the improvement against every assessable lot, piece, or parcel of land within the district affected, without regard to cash valuation, in accordance with the provisions of section 434.15, and the proposed assessment so made up shall be filed with the clerk and be open to public inspection. The clerk shall thereupon, under the council's direction, cause notice of the time and place when and where the council will meet to pass upon the proposed assessment, to be published in the official newspaper at least one week prior to the meeting of the council.

At this meeting the council shall hear and pass upon all objections thereto, if any, and may, if it deems it just, amend the proposed assessment as to any lot, and upon the adoption by resolution of the assessment, the same shall constitute the special assessments against the lands named therein. This assessment, with the accruing interest thereon, shall be a lien upon the property included therein, concurrent with general taxes, and shall be payable in equal annual instalments extending over such period, not exceeding 20 years, as the council may by resolution determine, the first of the instalments to be payable on or before the first day of June following the adoption of the assessment, and any deferred payments to bear interest from the first day of June following the adoption of the assessment at such rate of interest per annum, not exceeding six per cent, as the council may by resolution determine.

It shall then be the duty of the clerk immediately thereafter to transmit a certified duplicate of the assessment to the auditor of the county, to be extended on the proper tax lists of the county, and the assessments shall be collected and paid over in the same manner as other municipal taxes; provided, that the owner of any property so assessed may, at any time, pay the whole of the assessment, or any annual instalment thereof, with interest, as to any lot, piece, or parcel of land affected thereby.

[1919 c. 65 s. 7; 1939 c. 135 s. 1] (1821)

434.21 COUNTY BOARDS AND SCHOOL DISTRICTS TO PAY ASSESSMENTS. It shall be the duty of county boards and proper school district officials to pay assessments levied under the provisions of sections 434.14 to 434.27 against property owned respectively by counties or school districts, and in the event of failure so to do, the amount of such unpaid assessments so levied may be recovered in a civil action brought by such cities or villages against the municipal corporation owning the property so assessed.

[1919 c. 65 s. 7a] (1822)

434.22 SUPPLEMENTAL ASSESSMENTS. In case of omissions, errors, or mistakes in making an assessment, in respect to the total cost of the improvement or otherwise, it shall be competent for the council to provide for and make supplemental assessments to correct such omissions, errors, or mistakes.

[1919 c. 65 s. 8] (4823)

434.23 CERTIFICATES OF INDEBTEDNESS AUTHORIZED. After any contract for the making of any such improvement shall have been entered into by any city of the fourth class or any village, it may, acting through its council, issue its certificates of indebtedness in the amount necessary to defray, in whole or in part, the expense incurred or to be incurred in making any such improvement. The word "expense" shall be construed to mean and cover every item of cost of such improvement from its inception to its completion, and all fees and expenses incurred or to be incurred in pursuance thereof. These certificates shall be payable in annual instalments, as near equal in amount as conveniently may be, over a period not exceeding 20 years from their date, shall bear interest at a rate not to exceed six per cent, payable annually or semiannually, which interest may be evidenced by appropriate coupons and shall be in such form and denominations, all as the council shall by resolution determine, and shall be signed by the mayor and countersigned by the clerk. A separate special assessment fund shall be provided for each improvement and the proceeds from the sale of any certificates issued on its account shall be placed in this fund. The council shall provide moneys for the payment of the principal and interest of these certificates as they severally mature, which moneys shall be placed in this fund and into this fund shall be paid all moneys received from the payment of any liens created under the provisions of sections 434.14 to 434.27. The council shall pay the principal and interest of any of these certificates out of any funds in the treasury when the moneys on hand in the appropriate special assessment fund are insufficient to meet the payment of the principal or interest when the same matures, but the fund from which these moneys have been taken or used for the payment of this principal or interest shall be replenished with interest at the rate of six per cent per annum from the collection of unpaid assessments on account of the improvements.

The amount of any of these certificates at any time outstanding shall not be included in determining any such municipality's net indebtedness under the provisions of any applicable law.

[1919 c. 65 s. 9] (1824)

434.24 REASSESSMENT. In all cases where any assessment, or any part thereof, as to any lot or parcel of land assessed under any of the provisions of sections 434.14 to 434.27, for any reason is set aside, the council may cause a reassessment or a new assessment to defray the expenses of the improvement to be made.

[1919 c. 65 s. 10] (1825)

434.25 OBJECTION TO ASSESSMENT. The party desiring to object to the assessment, or his duly authorized agent or attorney, shall, on or before the date of hearing upon the assessment, file with the clerk a written statement of the objections and all objections not specified therein shall be deemed waived.

[1919 c. 65 s. 11] (1826)

434.26 APPEAL TO DISTRICT COURT. Within ten days after the adoption of the assessment, any person aggrieved, who appeared and filed objections thereto, may appeal to the district court by serving a notice upon the mayor, which notice shall be filed with the clerk of the district court within ten days after service thereof. The clerk shall furnish appellant a certified copy of his objections filed therein, and the assessment roll or part complained of, and all papers necessary to present the appeal. The appeal shall be placed upon the calendar of the next general term commencing more than five days after the date of serving the notice and tried as other appeals in such cases. If appellant does not prevail upon the appeal, the costs incurred, if not paid, shall be included in the special assessment.

[1919 c. 65 s. 12] (1827)

434.27 APPLICATION. The provisions of sections 434.14 to 434.27 shall apply to all cities of the fourth class and villages, howsoever organized, and construed to confer additional powers to all these municipalities notwithstanding any prohibition or limitation to the contrary in the home rule charter or law under which the municipality is organized or acting.

[1919 c. 65 s. 12a; 1921 c. 419 ss. 2, 3] (1828)

434.28 PUBLIC IMPROVEMENTS IN VILLAGES AND IN CITIES OF THE FOURTH CLASS. When the council of any village or council of any city of the fourth class deems it necessary and expedient to extend, open, grade, pave, or otherwise improve any street in the village or city, or cause any other similar local improvement to be made within the corporate limits of the city or village, it may,

MINNESOTA STATUTES 1945

3179

PAVEMENTS, CURBS AND GUTTERS 434.31

acting on its own motion, and shall, if a majority of the owners of the property abutting on the proposed improvement shall petition therefor, adopt a resolution to that effect, which resolution shall specify the proposed location of the improvement and its general proposed character, and specify a time and place, not less than two, nor more than four, weeks after the date of the first publication or posting of the resolution, when and where the parties interested therein shall be heard in reference to the improvement. If the council of any city of the fourth class or any village shall, on its own motion by resolution order any of these improvements, the resolution shall be passed and adopted by an affirmative vote of at least two-thirds of all the members of the council, which vote shall be taken by yeas and nays and entered upon the minutes and records of the city or village. None of the provisions of sections 434.28 to 434.36 shall apply to the construction, making, building, extending, reconstructing, remaking, rebuilding, or repairing of any sidewalk in any city or village to which those sections may apply.

[1903 c. 332 s. 1]

434.29 PUBLICATION OF RESOLUTION; AFFIDAVIT. This resolution shall be published at least once in the official newspaper of the city or village or, in the event that there is no newspaper designated as such, in some newspaper regularly published in the village or city in the English language and of a general circulation therein. If there be no newspaper published in the village or city, then the publication and notice of the resolution may be made by posting a copy of the resolution in at least three public places in the city or village. Affidavits shall be made by the person posting the resolution of the manner, time, and place of posting the same, or by the foreman, editor, or publisher of the newspaper of the time and manner of publishing the same and these affidavits shall be attached to the resolution and filed with it in the office of the clerk. When action has been duly held in accordance with the provisions of this section the publication or posting of this resolution shall be deemed a sufficient personal service of the resolution upon the persons whose property may be affected by the proposed improvement and sufficient notice to them thereof.

[1903 c. 332 s. 2]

434.30 HEARING; MANNER OF DOING THE WORK. At the time and place named in the resolution, or at any subsequent time to which the hearing on the matter may be adjourned, the parties interested may be heard in reference to the making of the proposed improvement, its nature, character, and extent, and thereupon the council may by resolution either decide not to undertake the improvement or may order the improvement, in whole or in part, to be made by the street commissioner, commissioner of public works, or corresponding officer, or may cause the same to be done under a contract to be let to the lowest responsible bidder, the entire expense thereof to be paid, in either event, in the first instance out of the general revenue fund, permanent improvement fund, or permanent improvement revolving fund of the village or city, as the council may then or thereafter determine. In case the council by resolution, as in this section provided, determine to order any improvement set forth in section 434.28, the resolution shall be passed and adopted by an affirmative vote of at least two-thirds of all the members of the council, by yeas and nays, to be duly entered on record in the minutes and records of the council.

[1903 c. 332 s. 3]

434.31 HEARING. If the work of making the improvement in question is carried on by the street commissioner, the commissioner of public works, or corresponding officer, then at any time within 30 days after the village or city shall have completed the improvement, or if to be done by contract, then at any time after the contract has been entered into, the council shall by resolution fix a time and place, not less than 30 days thereafter, when and where they will ascertain the amount of the special benefits received by any property within the village or city by reason of the construction of the improvement in question, and hear the testimony in that connection of all persons interested or whose property is affected, who may appear in person or by attorney, and present witnesses for examination. Notice of the hearing shall be given by service of the resolution on all the persons interested therein, whose property is so affected, in the same manner as provided in section 434.29 for notice and service of the resolution referred to in section 434.28,

and proof thereof shall be made by affidavits to be filed with the resolution in the same manner as is provided for in section 434.29.

[1903 c. 382 s. 4]

434.32 DETERMINATION OF BENEFITS. At the time and place named in the resolution, or at any subsequent time to which the hearing may be postponed, the council shall meet and hear any and all testimony offered by or on behalf of all the interested parties and, for that purpose, the presiding officer is hereby authorized to administer oaths to witnesses, and thereupon the council shall by resolution determine the amount of special benefits conferred by the improvement upon each lot, part of lot, or parcel of ground so benefited thereby, assessing each lot, part of lot, piece, or parcel of ground for the cost of the improvement, without regard to cash valuation, ratably, and in proportion to the special benefit so conferred upon it, but not otherwise nor in excess thereof, and a full and complete record thereof shall be made and kept by the clerk in a separate book kept for that purpose, which record shall contain a description of the property benefited and charged with construction of the improvement, the amount of the special benefits determined in each case, and when so determined. Should the aggregate amount of benefits so determined be less than the total cost of the improvement, the deficiency shall be paid out of any revenues of the village or city that the council may determine from whatever source derived.

This resolution shall likewise be published or posted and proof thereof be made in the same manner as that provided in section 434.29 for the posting or publication of the resolution referred to in section 434.28, and the proof thereof; and the amount of benefits to each lot, part of lot, or parcel of ground so determined shall be and become a charge against the same from the date or the posting or publication of this resolution.

[1903 c. 382 s. 5]

434.33 CERTIFIED COPY, DELIVERY. A certified copy of this resolution and of the record thereof shall be delivered forthwith by the village or city recorder, or corresponding officer, to the village or city treasurer and shall be his warrant for the collection of these assessments. The village or city treasurer shall forthwith cause a brief notice to be published or posted after the manner provided in section 434.29, in which notice he shall refer to the last mentioned resolution, give the time and place of its posting or publication, and state that the assessments so made for these improvements are due and payable to him, and give the date upon which the warrant therefore came into his hands for collection. If an assessment is not paid within 30 days after the publication or posting of this notice, a penalty of ten per cent shall be added thereto. Proof of the posting or publication of this notice shall also be made by affidavit, as provided in section 434.29.

[1903 c. 382 s. 6]

434.34 VILLAGE OR CITY ORDERS ISSUED. If the assessment for either or any of the purposes set forth in section 434.28 be not fully paid to the village or city treasurer within this 30-day period, or if there is not in the treasury of the village or city, at the end of this 30-day period, money to pay that portion of the cost of the improvement which may be in excess of the aggregate of the assessments so levied on account thereof, whether the same have or have not been collected in full, the council shall issue, or cause to be issued, the orders of the city or village upon the treasurer thereof, for the payment of which the full faith and credit of the village or city is hereby pledged, for the aggregate amount of the unpaid balance of the cost of this improvement, payable in three annual instalments, each of which instalments shall be represented by a separate order, bearing interest at a rate to be determined by the council, not exceeding six per cent per annum, and payable as follows: One payable not later than one year next following the issue thereof; one payable not later than two years next following the issue thereof; and one payable not later than three years next following the issue thereof. All orders shall be made payable to bearer and the same may be issued, negotiated, and sold by the village or city for not less than their par or face value. The interest on all orders shall be payable at intervals of not to exceed one year, and to each order shall be attached interest coupons evidencing the instalments of interest. A record of all these orders shall be made and kept by the clerk, which record shall show the date the order was issued, its amount, date when due, to whom sold,

amount sold for, and for what purpose the same was issued, when the same was paid, and the amount paid, as shown by the treasurer's books.

[1903 c. 382 s. 7]

434.35 TAX LEVY. After the issuance of these orders, the council, or corresponding body, shall annually at the time of levying general taxes for village or city purposes and until all of these orders shall have been paid, levy a tax sufficient to meet the orders which will fall due in the year next following such levy, or appropriate from the other revenues of the city or village an amount sufficient for this purpose, and annually on or before the first day of October, until the whole of these assessments have been collected, cause a statement of the amount of one-third of the assessment remaining unpaid as against each tract of land assessed, with the penalty and six per cent annual interest on the whole of the assessment unpaid from the date of the issuance of these orders to the date of the maturity of the order next falling due added thereto, to be transmitted with the village or city taxes for that year to the county auditor, and he shall extend the same against the several tracts assessed with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection and payment thereof and the same shall be enforced with and in like manner as city, county, and state taxes are collected and payment thereof enforced.

[1903 c. 382 s. 8]

434.36 CONSTRUCTION. Sections 434.28 to 434.36 shall not be construed as in any manner superseding, repealing, amending, or qualifying the provisions of any home rule charter heretofore adopted by any city or village under existing laws, and shall not apply to any such city or village.

[1903 c. 382 s. 10]

434.37 BOULEVARDS, POWER TO CONSTRUCT OR REBUILD. When the council of any village incorporated under the general laws of this state or the council of any city of the fourth class incorporated under the general laws of this state deems it necessary and expedient to construct or rebuild any boulevard in the village or city, it may, acting on its own motion, and if a majority of the owners of the property fronting on the street or streets where it is proposed to construct a boulevard shall petition the council therefor, it shall adopt a resolution to that effect, which resolution shall specify the places where such boulevard shall be constructed, the width, the size, and manner of construction thereof, and the time within which the same shall be completed, which shall not be less than 40 days after the service of the resolution. This resolution shall contain the names of the owners of all lots, parts of lots, and parcels of ground fronting the street or streets where the boulevards are to be constructed.

[1905 c. 330 s. 1] (1874)

434.38 SERVICE OF RESOLUTION. This resolution shall be served upon the persons named therein at least 40 days prior to the time therein named for the completion of the boulevard in the following manner:

(1) By causing a copy thereof to be handed to, and left with, each person therein named who is a resident of and within the village or city, and are actually therein.

(2) If any person so named in the resolution is not a resident of the village or city, or cannot be found therein, then the resolution shall be published in one issue of a newspaper regularly published in the village or city, in the English language, and having a general circulation therein, or in the designated official newspaper of the village or city.

(3) If there be no such newspaper published in the village or city, then such service and publication may be made by posting a copy of the resolution in at least three public places in the village or city, at least 40 days prior to the time named therein for the completion of the walk or sewer.

Affidavits shall be made by the person serving or posting the resolution of the manner, time, and place of serving or posting the same, and by the foreman, editor, or publisher of the newspaper of the time and manner of publishing the same, and such affidavits shall be attached to the resolution and, with it, filed with the clerk. Any and all such services, when made in accordance with the provisions of sections 434.37 to 434.42 shall, for the purposes thereof, be deemed personal services of the resolution upon the persons named therein.

[1905 c. 330 s. 2] (1875)

434.39 ASSESSMENTS. If the work shall not be fully done, and the boulevard shall not be fully constructed or rebuilt in the manner and within the time prescribed in the resolution, then the council may order the same to be done by the street commissioner, or the commissioner of public works, or cause the same to be done by contract let to the lowest responsible bidder, the entire expense thereof to be paid out of the general revenue fund of the village or city. At any time within 30 days after the village or city shall have completed the construction of the boulevard, the council shall adopt a resolution fixing a time and place when and where it shall hear testimony of all persons interested or affected and ascertain the amount of benefits to property fronting the boulevard by reason of the construction thereof, and this resolution shall be served on all the persons named in the resolution adopted under section 434.37, and in the manner therein provided. At the time and place named in the resolution the council shall hear any and all testimony offered by or on behalf of all parties interested or affected by the construction of the boulevard and for that purpose the presiding officer of the council is hereby authorized to administer oaths to witnesses. Thereupon by resolution the council shall determine the amount of benefits caused by the construction to each lot, part of lot, or parcel of ground fronting the street or streets where the boulevard shall have been constructed or rebuilt; and a full and complete record thereof shall be made and kept by the clerk in a separate book kept for that purpose, which record shall contain a description of the property benefited and charged with the construction of the boulevard, the amount of benefit determined in each case, and when so determined the amount of each annual instalment thereof; when transmitted to the auditor of the county for assessment; the amount paid hereon and when paid. This record is to be used in making each annual levy and assessment. The amount of the benefits to each lot, part of lot, or parcel of ground so determined shall be and become a charge against the same and assessed thereon, as in the case of county, city, or state taxes, in three annual instalments.

[1905 c. 330 s. 3] (1876)

434.40 ISSUE AND SALE OF TREASURY ORDERS. If the assessments for either or any of these purposes be not fully paid to the street commissioner, village or city treasurer, or other officer authorized by law to collect the same, within 20 days after the boulevard has been fully constructed or rebuilt, the council may issue or cause to be issued the orders of the village or city on the treasurer thereof for the aggregate amount of the unpaid balance of each of the assessments, payable in three annual instalments, each of which instalments shall be represented by a separate order, bearing interest at a rate to be determined by the council, not exceeding six per cent per annum, from their date until maturity and payable as follows: One payable on or before the first day of June of the year next following the issuing thereof; one payable on the first day of June of the second year next following; and one payable on the first day of June on the third year next following. These orders shall be made payable to bearer and the same may be issued, negotiated, and sold by the village or city for not less than their par or face value. All these orders shall be in substantially the following form:

"\$..... Dated at, Minnesota, 19....."

The treasurer of the (village or city) of will pay to the bearer hereof the sum of dollars and cents on or before the first day of June, A. D. 19....., with interest thereon at the rate of per cent per annum from date hereof until maturity. This order represents one-third of the amount expended in the construction of a boulevard in this (village or city) in the year 19....."

A record of all these orders shall be made and kept by the clerk, which record shall show the date same was issued, amount of order, date when due, to whom sold, amount sold for, and for what purpose the same was issued, when the same was paid, and the amount paid as shown by the treasurer's books. Books shall be provided for these purposes.

[1905 c. 330 s. 4] (1877)

434.41 TAX LEVY. After the completion of the boulevard by the council, it shall annually on or before the first day of October until the whole of the assessments have been levied cause a statement of the amount of one of the three annual instalments, with six per cent annual interest thereon computed from the time

of completion of the work to the first day of June following the making of the levy added thereto, to be transmitted with the village or city taxes for that year to the auditor of the county, and the auditor shall insert the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection and payment thereof and the same shall be enforced with and in like manner as city, county, and state taxes are collected and payment thereof enforced. After the completion of the boulevard any owner of land adjoining the same, or interested therein, shall have the privilege of paying all or any portion of the cost of construction thereof to the village or city at any time within 20 days thereafter and before the levy has been made, and the amount so paid shall be deducted from the amount of the assessment.

[1905 c. 330 s. 5] (1878)

434.42 APPLICATION. Sections 434.37 to 434.41 shall not apply to any city or village of this state having a population of less than 10,000 operating under a special law or special charter.

[1905 c. 330 s. 6] (1879)

434.43 CURBS AND GUTTERS. When the council of any city of the fourth class incorporated under the general laws of this state deems it necessary and expedient to construct or rebuild any curb or gutter, or both, in the city, it may, acting on its own motion, and if a majority of the owners of the property fronting on the street or streets where it is proposed to construct or rebuild such curb or gutter, or both, shall petition the council therefor, it shall adopt a resolution to that effect, which resolution shall specify the places where the curb or gutter, or both, shall be constructed or rebuilt, the kind and quality of materials to be used therein, the width, the size, and the manner of construction thereof, and the time within which the same shall be completed, which shall not be less than 40 days after the service of the resolution, as provided in section 434.44. This resolution shall contain the names of the owners of all lots, parcels of lots, and parcels of ground fronting the street where the curb or gutter, or both, is to be constructed or rebuilt.

[1917 c. 123 s. 1] (1779)

434.44 PROCEEDINGS FOR CONSTRUCTION. The resolution shall be served upon the persons named therein at least 40 days prior to the time therein named for the completion of the curb or gutter, or both, in the following manner:

(1) By causing a copy thereof to be handed to and left with each person therein named who is a resident of and within the city, and actually therein;

(2) If any person so named in the resolution is not a resident of the city, or cannot be found therein, then the resolution shall be published in one issue of a newspaper regularly published in the city in the English language and having a general circulation therein or in the designated official newspaper of the city;

(3) If there be no such newspaper published in the city, then such service and publication may be made by posting a copy of the resolution in at least three public places in the city, at least 40 days prior to the time named therein for the completion of the curb or gutter, or both.

Affidavits shall be made by the person serving or posting the resolution of the manner, time, and place of serving or posting the same, and by the foreman, editor, or publisher of such newspaper of the time and manner of publishing the same, and such affidavits shall be attached to the resolution and with it filed with the city recorder. Any and all such service when made in accordance with the provisions of sections 434.43 to 434.49, shall for the purposes thereof, be deemed personal service of the resolution upon the persons named therein.

[1917 c. 123 s. 2] (1780)

434.45 PERFORMANCE OF WORK. If the work shall not be fully done and the curb or gutter, or both, shall not be fully constructed or rebuilt in the manner and at the time prescribed in the resolution, then the council may order the same to be done by the street commissioner or commissioner of public works, or cause the same to be done by contract let to the lowest responsible bidder, the entire expense thereof to be paid out of the general revenue fund of the city.

At any time within 30 days after the city shall have completed the construction of the curb or gutter or both, the council shall adopt a resolution fixing the time and place when and where it shall hear testimony of all persons interested or affected and ascertain the amount of benefits to property fronting on the curb or

gutter, or both, or by reason of the construction thereof, and this resolution shall be served on all the persons named in the resolution adopted under section 434.43, and in the manner therein provided.

At the time and place named in the resolution the council shall hear any and all testimony offered by or on behalf of all parties interested or affected by the construction of the curb or gutter, or both, and for that purpose the presiding officer of the council is hereby authorized to administer oaths to witnesses. Thereupon by resolution the council shall determine the amount of benefits caused by the construction, to each lot, part of lot, or parcel of ground fronting the street where the curb or gutter, or both, shall have been constructed or rebuilt; and a full and complete record thereof shall be made and kept by the clerk in a separate book kept for that purpose, which record shall contain a description of the property benefited and charged with the construction of the curb or gutter, or both, the amount of benefit determined in each case, and when so determined the amount of each annual instalment thereof; when transmitted to the auditor of the county for assessment; the amount paid thereon and when paid. This record is to be used in making each annual levy and assessment, as provided in sections 434.43 to 434.49.

The amount of the benefits to each lot, part of lot, or parcel of ground so determined shall be and become a charge against the same and shall be assessed thereon, as in the case of county, city, or state taxes, in three annual instalments.

[1917 c. 123 s. 3] (1781)

434.46 CERTIFICATE OF INDEBTEDNESS. If an assessment for either or any of these purposes be not fully paid to the city treasurer or other officer authorized by law to collect the same within 20 days after the assessment shall have been made, the council may issue or cause to be issued the certificates of indebtedness of the city or for the aggregate amount of unpaid balance of each assessment payable in three annual instalments, each of which instalments shall be represented by a separate certificate bearing interest payable annually at a rate to be determined by the city, not exceeding six per cent and payable as follows:

One payable on or before the first day of June of the year next following the issuance thereof; one payable the first day of June of the second year next following; and one payable the first day of June of the third year next following. These certificates shall be made payable to the bearer and the same may be issued, negotiated, and sold by the city for not less than their par or face value. The proceeds of the sale shall be paid into the city treasury, as the case may be. All of these certificates shall be substantially in the following form:

"\$..... Dated at, Minnesota, 19.....

The treasurer of the (city) of will pay to the bearer hereof the sum of dollars and cents on or before the 1st day of June, A. D. 19....., with interest from date hereof, at the rate of per cent per annum, interest payable on the first day of June, 19....., and the first day of June, 19..... This certificate represents one-third of the amount expended in the construction of a (curb or gutter, or both) in the (city) in the year 19....."

A record of these certificates shall be made and kept by the clerk, which record shall show the date the same was issued, amount thereof, date when due, to whom sold, amount sold for, for what purpose the same was issued, when the same was paid, and the amount paid as shown by the treasurer's books. Books shall be provided for these purposes.

[1917 c. 123 s. 4] (1782)

434.47 TAX LEVY AUTHORIZED. After the completion of the curb or gutter, or both, by the council it shall annually on or before the first day of October until the whole of these assessments have been levied, cause to be transmitted with the city taxes of that year to the auditor of the county a statement of the amount of the annual instalment next thereafter payable, together with interest at the rate of six per cent per annum on the amount of the total assessment from the time of the completion of the work to the first day of June next following its completion, or in case any instalment shall have been paid to the treasurer or transmitted to the county auditor and extended then with interest at the rate for one year on the total of the instalments not previously so transmitted and remaining unpaid, and the auditor shall extend the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection

and payment thereof and the same shall be enforced with and in like manner as city, county, and state taxes are collected and payment thereof enforced and with like penalties and interest in case the same are not paid before the same become delinquent.

After the completion of the curb or gutter, or both, any owner of land adjoining the same or interested therein shall have the privilege of paying all or any portion of the cost of construction thereof to the treasurer of the city at any time within 20 days after the assessment of benefits and before the levy has been made and the amount so paid shall be deducted from the amount of the assessment.

[1917 c. 123 s. 5] (1783)

434.48 NOT TO AFFECT ASSESSMENTS ALREADY LEVIED. Sections 434.43 to 434.49 shall not affect any assessments heretofore made by any city or any assessment hereafter to be made by any city upon any contract made prior to the time when those sections became effective.

[1917 c. 123 s. 6] (1784)

434.49 APPLICATION. The provisions of sections 434.43 to 434.48 shall not modify or repeal the provisions of the charter of any city of the fourth class having a home rule charter, but any such city may avail itself of the benefits thereof.

[1917 c. 123 s. 7] (1785)

434.50 SPECIAL ASSESSMENTS IN INSTALMENTS FOR PAVING. Any city of the third or the fourth class having a home rule charter may, in addition to the powers conferred upon it by charter, provide for the payment of special assessments for the paving of any public street, alley, lane, levee, or highway, in not to exceed 15 annual instalments in the manner as follows.

[1911 c. 134 s. 1] (1352)

434.51 INSTALMENTS, HOW DETERMINED. The council of any such city, or the board of public works of any such city, whichever body is by charter authorized to make a special assessment for the costs and expense of paving any public street, alley, lane, levee, or highway, may if it is expedient so to do by resolution determine the number of annual instalments, not to exceed 15, in which the assessments may be paid, and direct the clerk to, after giving the required notice and after the expiration of 20 days from the date of giving of the notice divide the then unpaid part of these assessments into the number of equal instalments theretofore determined, and to compute and add to each instalment the full amount of interest which would be due upon the unpaid part of these assessments at the date of maturity of each instalment, respectively; the first instalment thereof to mature on the first day of November succeeding the year in which the improvement is made for which the assessment is levied and each succeeding instalment to mature at intervals, respectively, of one year thereafter; the interest to be added to the first instalment shall be computed from the date of the expiration of the 20-day period.

Forthwith upon the adoption of this resolution the clerk shall give notice by one publication in the official newspaper of the city that the whole or any part of the assessment may be paid within 20 days after the date of the publication, and that after the expiration of that period of 20 days, all parts of the assessment then unpaid will be divided into instalments, with interest thereupon all as above set forth; the interest to be at the rate of six per cent per annum.

[1911 c. 134 s. 2] (1353)

434.52 HOW COLLECTED. The clerk shall, on or before the tenth day of December in each and every year, file in the office of the auditor of the proper county a statement containing a description of each and every tract of land upon which the next, then maturing instalment of the assessment has not been paid and the amount of principal and interest which will next become due upon each of these tracts or lots of land; and the auditor shall insert the same with the other taxes in the duplicate statement of taxes annually transmitted by him to the county treasurer for collection and payment thereof and the same shall be enforced with and in like manner as city, county, and state taxes are collected and enforced.

[1911 c. 134 s. 3] (1354)

434.53 CERTIFICATES OF INDEBTEDNESS. For the purpose of providing funds in advance of the collection of the moneys to be derived from an assessment the council may from time to time issue certificates of indebtedness of the city to be paid out of the moneys collected from an assessment; provided the amount of

MINNESOTA STATUTES 1945

434.54 PAVEMENTS, CURBS, AND GUTTERS

3186

any certificates at any time heretofore or hereafter outstanding shall not be included in determining any municipality's net indebtedness under the provisions of any applicable law.

[1911 c. 134 s. 4; 1921 c. 88] (1355)

434.54 CERTIFICATES, HOW EXECUTED AND PAYABLE. These certificates shall bear date of the day when actually issued and delivered, shall be under the corporate seal of the city, signed by the mayor, and countersigned by the clerk, in such sums as the council may from time to time determine, not exceeding the aggregate amount of the unpaid assessment, and be payable at the office of the treasurer of the city at such time or times as the council shall determine and out of funds to be derived from the assessment in the certificate specified, with interest payable annually at a rate not to exceed six per cent per annum, and payable to bearer.

[1911 c. 134 s. 5] (1356)

434.55 FORM OF CERTIFICATES; APPLICATION OF MONEYS. These certificates shall be substantially in the following form: "Public Improvement Certificate of the City of _____, Instalment No. _____ Amount _____ Serial No. _____

To whom it may concern:

This is to certify that the sum of _____ dollars has been assessed against the lots and parcels of land mentioned in the assessment roll for the following improvement: the paving _____ in the city of _____, which assessment is a valid and subsisting lien and charge against the lots, pieces, and parcels of land therein mentioned and described, and that this sum has been divided into instalments; that this certificate represents the sum of _____ dollars, being part of instalment No. _____, which is due and payable to the city of _____, out of the property pledged by law for its payment, and issued pursuant to the provisions of Laws 1911, Chapter 134; and the city of _____ hereby guarantees to the holder of this certificate that it will cause to be collected the instalment and will pay, upon surrender of this certificate to its treasurer at the office of the city treasurer, on _____, the sum of _____ dollars, with interest thereof from date hereof to the time mentioned herein for payment at the rate of _____ per cent per annum.

In testimony whereof the city of _____ has caused this certificate to be signed by its mayor, and attested by its clerk and its corporate seal affixed hereto this _____ day of _____, A. D. _____

Countersigned: _____ Mayor.

City Clerk.
City seal."

The instalments of interest accruing upon any of these certificates shall be evidenced by coupons or orders thereto attached, signed by the mayor and clerk, these certificates shall not be sold, negotiated, or disposed of by a city issuing the same at less than the par value thereof.

All moneys collected from an assessment shall be set apart for and applied to the payment of the certificates issued upon the assessment and not, in whole or in part, applied to any other or different use or purpose.

No error or informality in any action taken by a city in the ordering or making of an assessment or in the execution, delivery, or issue of any such certificates shall in any manner affect the validity of an assessment.

[1911 c. 134 s. 6] (1357)

434.56 REPLACING SIDEWALKS. When a sidewalk in any city of the first class decays or becomes otherwise unsafe, the council thereof, by a four-fifths vote of its members and without any petition from property owners therefor, may cause the same to be removed and replaced by a new walk of the same or different material, and assess the cost thereof upon abutting property as in the case of a walk first laid.

[R. L. s. 759] (1532)

434.57 CITIES OF THE FIRST CLASS MAY SELL SPECIAL ASSESSMENT IMPROVEMENT BONDS BELOW PAR. Each city of the first class in this state, in addition to all other powers and authorities possessed by it, is hereby authorized

MINNESOTA STATUTES 1945

3187

PAVEMENTS, CURBS, AND GUTTERS 434.57

and shall have power and authority, acting by and through its council, to sell to the highest responsible bidder therefor for cash, for the par value thereof or for less than the par value thereof, any special certificates of indebtedness or any special street or parkway improvement bonds which the city is or shall be authorized by its charter or by any law of this state to issue and sell for the purpose of realizing funds for the acquisition of lands for and improvement of public streets, parks, or parkways in the city or for the purpose of improving existing public streets, parks, or parkways in the city, notwithstanding any provision of its charter or any provision of any law of this state providing for the sale of any such certificates of indebtedness or special street or parkway bonds at not less than their par value. These special certificates of indebtedness and special bonds may be made to bear interest not to exceed five per cent per annum, payable annually or semi-annually, the rate of interest to be fixed and determined by the council of the city issuing the same, and these certificates of indebtedness and special bonds shall be sold only at public sale or by sealed proposals upon giving at least two weeks' published notice of the sale.

[1921 c. 226 s. 1] (1625)