

CHAPTER 463

BUILDING LINE EASEMENTS; FIRE PROTECTION

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463.01 BUILDING LINES, EASEMENTS; EXISTING STRUCTURES. The council of any city, including any city of this state operating under a home rule charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, may establish along any street or highway within such city a building line upon the land adjoining such street or highway, or any portion thereof, and distant not more than 50 feet from the margin of such street or highway, and may, in behalf of the city, acquire an easement in the land between such line and exterior street line, such that no buildings or structures shall be erected or maintained upon this land. Such easement shall be known as a building line easement. The governing body may, at the time they designate the easement to be acquired and define the line by which it is bounded, provide in the resolution designating such easement that buildings or structures or any portions of buildings or structures existing within the boundaries of the easement at that time may remain thereon for stated periods of time or remain thereon during the life of such buildings or structures or portions thereof, but no alteration of any such buildings or structures or portions thereof upon such easement shall be permitted after the designation of such easements, and when such buildings are removed no other buildings or structures shall be erected thereon. Such permission to maintain existing structures upon such easement shall be clearly defined as to time in such resolution and shall confer the right upon the owner of such buildings or structures or portions thereof to maintain the same as defined in such resolution.

[1903 c. 194 s. 1; 1923 c. 193 s. 1] (1321-1)

463.02 GRANT, CONDEMNATION OR DEDICATION. Such easement may be acquired by the council by purchase, by grant, or by condemnation. It may also be created by dedication by indicating such building line upon any plat hereafter recorded in the office of the register of deeds of the county where the land lies; and the council shall have power to refuse to accept or approve plats of lands unless building lines are shown thereon.

[1903 c. 194 s. 2; 1919 c. 504 s. 1] (1321-2)

463.03 ALONG PARKS AND PARKWAYS. Any board of park commissioners having control of any park or parkway may in like manner acquire building line easements along the same, or any portion thereof.

[1903 c. 194 s. 3] (1321-3)

463.04 CONDEMNATION PROCEEDINGS FOR BUILDING LINE EASEMENTS. The easement above specified may be acquired by proceedings to be conducted in the following manner by the board of park commissioners, in case of parks and parkways controlled by a board of park commissioners, and by the city council in other cases.

The term "governing body" is used in sections 463.04 to 463.07 to designate the appropriate body in any given case, whether the city council, or board of park commissioners. The governing body shall first designate the easement to be acquired and define the lines by which it is bounded, and shall have power to condemn for the use of the public a building line easement as defined above, and when such condemnation shall have been completed, as in this section provided, the title to such easement shall pass to and be vested in the city for the public use. For the purpose of making the condemnation all the tracts of land required for any improvement may be included in the same proceeding.

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No such easement shall include or take in any portion of a private residence existing at the time of the passage of sections 463.01 to 463.07 excepting by purchase or grant.

After making the designation the governing body shall proceed in manner following.

[1903 c. 194 s. 4] (1921-4)

463.05 PROCEDURE IN CONDEMNATION PROCEEDINGS. Subdivision 1. **Plats; appraisers.** It shall be the duty of the city engineer or engineer of the board of park commissioners, as the case may be, to make and present to the governing body a plat showing the location, course and extent of the easement proposed to be acquired, and the lands and property necessary to be taken or damaged thereby, with the name of the owner of each parcel of such property so far as the engineer can readily ascertain the same. When such plat shall have been adopted by the governing body it shall be filed with the clerk or secretary of the governing body, and shall be held to show correctly the location, course and extent of the easement agreed upon and ordered to be acquired by the governing body. This plat shall also show the land or part thereof contiguous to the lands upon which the building line easement is to be acquired.

The governing body shall then, or afterwards appoint five freeholders of the city, no two of whom shall reside in the same ward, as appraisers to view the premises and to ascertain and award the amount of damages and compensation to be paid to the owners of property which is to be taken or injured by the acquisition of such building line easement, and to assess the amount of such damages and compensation and the cost and expense of the proceedings upon the lands and property to be benefited by such improvement, and in proportion to the benefits to be received by each parcel and without regard to a cash valuation. Three or more commissioners shall constitute a quorum and be competent to perform any duty required of such commissioners. The appraisers shall be notified as soon as practicable by the secretary of the board or the city clerk as the case may be, to attend at a time fixed by him for the purpose of qualifying and entering upon their duties. When a vacancy may occur among the appraisers by neglect or refusal of any of them to act, or otherwise, such vacancy shall be filled by the governing body.

Subd. 2. Appraisers' duties. The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the governing body.

Subd. 3. Proceedings by appraisers. The appraisers shall give notice by publication in the official newspaper of the city for two consecutive days, which first publication shall be at least ten days before the day of such meeting, which notice shall contain a general description of the lands designated by the governing body, and give notice that a plat of the same has been filed in the office of the city clerk or secretary as the case may be, and that the appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises, and appraise the damages for property to be taken, or which may be damaged by such improvement, and to view the premises to be benefited by such improvement and assess thereon in proportion to benefits the amount necessary to pay such damages and the cost and expense of the proceedings, in the manner hereinafter specified; and that they will then hear such evidence and proofs as interested persons may offer, adjourning from time to time for that purpose.

Subd. 4. Notice of meetings. The secretary or city clerk, as the case may be, shall, after the first publication of such notice and at least six days (Sunday excluded) prior to the meeting specified in the notice, serve upon each person, in whose name each tract or parcel of the land upon which such easement is to be acquired is then assessed, a copy of the notice by depositing the same in the post-office of the city with postage prepaid, directed to such person at his place of residence, if known to the secretary, or city clerk, as the case may be, but if not known, then to his place of residence as given in the last published city directory of the city, if his name appears therein.

A copy of all subsequent notices relating to the proceedings, which are required to be published, shall be mailed by the clerk or secretary in the manner above specified after the first publication thereof, to such persons as shall have appeared in the proceedings and requested in writing that such notice be mailed to them.

Any failure of the secretary or city clerk to mail any notice as required by sections 463.01 to 463.07, or failure of the owner or any person to receive any such notice, shall not invalidate any proceedings hereunder.

Subd. 5. Assessment of benefits and damages. At the time and place mentioned in the notice, the appraisers shall meet and thence proceed to view the premises, and may hear any evidence or proof offered by the parties interested, and may adjourn from time to time for the purposes aforesaid. When their view and hearing shall be concluded they shall determine the amount of damages, if any, suffered by each piece or parcel of land of which that taken is a part. They shall also determine the amounts of benefits, if any, to each piece or parcel of land of which that taken is a part, and assess the amount of such damages so awarded upon the land and property benefited by such proposed improvement, together with the expenses and cost of the proceedings, and in proportion to such benefits. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits; but the total assessment for benefits shall not be greater than the aggregate net award of damages, and the cost of the proceedings; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual benefits after deducting the damages, if any.

Subd. 6. Assessment of benefits and damages to buildings. If there be any buildings standing, in whole or in part, upon any parcel of the land to be taken, the appraisers shall, in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much as may be necessary, should be taken, and shall also appraise and determine the amount of damages to be paid such owner or owners in case he, or they, shall elect to remove such buildings.

Subd. 7. Separate assessments. If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate in fee, the injury or damage done to such person or interests respectively may be awarded to them separately by the appraisers. Provided, that neither such award of the appraisers, nor the confirmation thereof by the governing body, shall be deemed to require the payment of such damages to the person or persons named in such award in case it shall transpire that such person or persons are not entitled to receive the same.

Subd. 8. Report of appraisers. The appraisers having ascertained and appraised the damages and benefits as aforesaid, shall make and file with the secretary or city clerk, as the case may be, a written report of their action in the premises, embracing a schedule and appraisal of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them, and also a statement of the costs of the proceeding.

Subd. 9. Action by governing body. Upon such report being filed, the secretary of the board or city clerk shall give notice that such appraisal has been returned, and that the same will be considered by the governing body at a meeting thereof, to be named in the notice, which notice shall be published in the official newspaper of the city, once a week for two consecutive weeks, and the last publication shall be at least ten days before such meeting. Any person interested in any building standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified for the meeting in such notice, notify the governing body in writing of his election to remove such building, if he so elect. The governing body upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisal and assessment, giving due consideration to any objections interposed by parties interested in the manner hereinafter specified, provided that the governing body shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisal and assessment is annulled, the governing body may thereupon appoint new appraisers, who shall proceed, in like manner, as in case of the first appraisal, and upon the coming in of their report, the governing body shall proceed in a like manner and with the same powers as in the case of the first appraisal. In case any owner or owners shall elect to remove

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any building or buildings, and thereby reduce the amount of damages to be paid, the amount of reduction shall be deducted from the benefits assessed to each parcel proportionately before confirmation thereof.

Subd. 10. Awards. If not annulled or set aside, such awards shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The awards shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of the parties entitled thereto, within six months after the confirmation of the appraisal and award. But in case any appeal or appeals shall be taken from the order confirming the appraisal and assessment, as hereinafter provided, then the time for payment of the awards shall be extended until and including 60 days after the final determination of all appeals taken in the proceeding, and in case of any change in the awards or assessment upon appeal, the governing body may, by resolution duly adopted, at any time within 60 days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six percent per annum from the time of the filing of the original appraisers' report, and all subsequent awards and awards upon appeals shall be made as of the day and date of filing of such original reports.

Subd. 11. Deposit of damages. Upon the conclusion of the proceedings and the payment of the awards, the several tracts of land shall be deemed to be taken and appropriated for the purpose of sections 463.01 to 463.07, and the easement above specified shall vest absolutely in the city in which the lands are situate. In case the governing body shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the governing body shall, and in any and every case, the governing body may in its discretion deposit the amount of damages with the district court of the county in which such lands are situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

Subd. 12. Removal of buildings. In case any owner or owners of buildings, as aforesaid, shall have elected to remove his or their buildings, he or they shall remove them within 30 days from the confirmation of the report, or within such further time as the governing body may allow for the purpose, and shall be entitled to the payment of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected) to remove the same within the time above specified, such buildings, or so much thereof as may be necessary, upon paying or depositing the damages awarded for such taking in manner aforesaid, may be taken and appropriated, sold or disposed of as the governing body shall direct.

Subd. 13. Objections; appeal to district court. Any person whose property is proposed to be taken or interfered with or assessed under any provision of sections 463.01 to 463.07 and who deems that there is any irregularity in the proceedings of the governing body, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of, or interference with his property or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the governing body, file with the secretary of the board or the city clerk, as the case may be, in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection to the award or assessment, and containing a description of the property in which he is interested, or which is affected by such proceedings and his interest therein, and if, notwithstanding such objections the governing body shall confirm the award, or assessment, such person so objecting shall have the right to appeal from such order of confirmation of the governing body to the district court of the county where such land is situated, within

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ten days after such order. Such appeal shall be made by serving a written notice of appeal upon the secretary of the board, or the city clerk, as the case may be, which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid, and by also delivering to the city clerk or secretary, as the case may be, a bond in the sum of \$50 executed by the appellant or by some one on his behalf with two sureties, who shall each justify in the penal sum of \$50, conditioned to pay all costs that may be awarded against the appellant. Thereupon the secretary or city clerk, at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings, and of the award of the appraisers as confirmed by the governing body and of the order of the governing body confirming the same, and of the objections filed by the appellant, as aforesaid, and of the notice of appeal, all certified by the secretary or city clerk to be true copies, within ten days after the taking of such appeal. But if more than one appeal be taken from any award, it shall not be necessary that the secretary or city clerk, in appeals subsequent to the first shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether the appraisers had jurisdiction to take action in the premises.

Subd. 14. Proceedings by court. The case may be brought on for hearing on eight days notice, at any general or special term of the court, and the judgment of the court shall be to affirm or annul the proceedings, only so far as the proceedings affect the property of the appellant proposed to be taken or damaged or assessed, and described in the written objection. From such determination no appeal or writ of error shall lie. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, upon such confirmation, appoint three disinterested freeholders, residents of the city, appraisers, to reappraise the damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by the court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits; such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages or benefits and in all other material respects as are in sections 463.01 to 463.07 made for the government of appraisers appointed by the governing body. They shall, after the hearing and view of the premises, make a report to the court of their award of damages and assessment of benefits in respect to the property of such appellant. The appellant shall within five days of the notice of filing the award file his written election to remove the building if he so elect. Such election shall not affect his right to a review. The award shall be final unless set aside by the court for good cause shown. The motion to set aside shall be made within 15 days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers, as it shall deem best; the court shall allow to the appraisers a reasonable compensation for their services, and make such award of costs on such appeal, including the compensation of such appraisers as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in the proceedings.

[1908 c 194 s 5; 1919 c 504 s 2-7] (1321-5)

463.06 PLATS OF IMPROVEMENTS; COPY OF ASSESSMENTS FOR COUNTY AUDITOR; BUILDING LINE ASSESSMENTS; COLLECTION; PAYMENT TO CITY TREASURER. As soon as such condemnation proceedings have been completed, it shall be the duty of such governing body to cause plats of such improvement to be made, which shall be copies of the original plat on file, with a list of the parcels of land taken and the amount paid on account of each parcel, and to file one of such plats and list duly certified by the president of the governing body and the clerk or secretary, as the case may be, in each of the following offices:

The office of the city engineer, the office of the register of deeds of the county, and the office of the city clerk or secretary of the park board, as the case may be; and the same shall be prima facie evidence of the full and complete condemnation and appropriation of such easement for the public use. As soon as the assessments are confirmed, the secretary of the board of park commissioners or the city clerk, or the clerk of the district court, as the case may be, shall transmit a copy thereof duly certified, to the county auditor of the county in which the lands lie. The county auditor shall include the same in the next general tax list for the collection of state, county and city taxes, against the several tracts or parcels of land, and the assessments shall be collected with and as a part of, and shall be subject to the same penalties, costs and interest, as the general taxes. Such assessments shall be set down in the tax books in an appropriate column to be headed, "Building Line Assessments," and when collected a separate account thereof shall be kept by the county auditor, and the same shall be transmitted to the treasurer of the city, and placed to the credit of the proper fund.

[1903 c. 194 s. 6; 1919 c. 504 s. 8] (1321-6)

463.07 VACATION OF EASEMENT. The governing body shall have power at any time to vacate such building line easement or any portion thereof.

[1903 c. 194 s. 7] (1321-7)

463.08 [Repealed, 1949 c 119 s 110]

463.09 FIRE PROTECTION. The council or other governing body of each city in this state which now has or hereafter may have 20,000, and not more than 50,000, inhabitants, is hereby authorized and empowered to enact, adopt, repeal, and amend, and to provide penalties for the violation of, any and all regulations, rules, resolutions, and ordinances, not inconsistent with the laws of this state, relating to building within such city, and the planning, construction, repair, maintenance, fire protection, and all other matters relating to buildings within such city.

For the purposes of sections 463.09 to 463.13 the population of each city of this state shall be ascertained and determined according to the last census taken under and pursuant to the laws and authority of the State of Minnesota.

[1917 c. 190 s. 1] (1644)

463.10 INSPECTION. The council or other governing body of the city shall have power by ordinance to provide for inspection and regulation of any construction work within the city, whether buildings, plumbing, heating, ventilating, wiring, or any other construction whatsoever.

[1917 c. 190 s. 2] (1645)

463.11 APPOINTMENT OF INSPECTORS. The council or other governing body is authorized and empowered to appoint a building inspector and such assistants and employees as may be deemed necessary and define their powers and duties and fix their salaries and terms of service.

Such inspector and his authorized assistants under his direction, shall have power and be fully authorized to enter any dwelling house or other building at all hours between seven o'clock in the morning and six o'clock in the evening and examine all chimneys, stoves, furnaces, pipes, and other parts of such buildings, and see that the ordinances of such city respecting the same are enforced.

No such entry shall be made in any building occupied as a dwelling house without written notice of such entry for the purpose of inspection, served upon an occupant or person in charge of such dwelling house, by such inspector or under his direction at least 24 hours prior to such entry, unless such occupant or person in charge shall consent to such entry.

[1917 c. 190 s. 3] (1646)

463.12 SCOPE OF INSPECTION. Under such conditions as the council or other governing body may prescribe such inspector shall inspect or cause to be inspected all buildings and structures of any character whatsoever within the city and see that they conform to the laws of the state and the ordinances of the city, and shall enforce all laws of the state and all ordinances of the city applying to buildings within the city, whether relating to their planning, repair, fire protection, or any other matter.

[1917 c. 190 s. 4] (1647)

463.13 INSPECTOR'S POWERS. For a more specific enumeration and definition of some of the powers hereinbefore granted and a fuller exposition thereof and as an additional grant thereto, the council or other governing body shall have the following power and authority:

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(1) To regulate the construction, alteration, removal and repair of all structures and the permanent equipment thereof, and to provide for the safety of the occupants of all structures and all property in the vicinity thereof against danger from fire or panic or from methods of construction or installation detrimental to life, health or property, and to prohibit the use of buildings or parts of buildings when dangerous to life from collapse, fire or panic;

(2) To prescribe limits within which all roofs shall be covered by non-combustible material;

(3) To compel the installation in all structures of devices, appliances and arrangements for the preservation of life, health and property;

(4) To license, regulate, prohibit and suppress the erection and maintenance of signs, signboards, billboards and fences;

(5) To establish and enforce building lines and to regulate the height of buildings;

(6) To regulate the measurement and inspection of all building materials;

(7) To prescribe the depth of cellars, the material and method of construction of foundations and foundation walls, the material and manner of construction and location of drains and sewer pipes, the thickness, material and construction of party walls, partitions and outside walls, the size and material of floor beams, girders, piers, columns, roofs, chimneys, flues and heating apparatus, and apportion and adjust such regulations to the height and size of buildings;

(8) To regulate the construction and location of privies and vaults;

(9) To prohibit the construction of buildings not conforming to the prescribed standard, either in the whole city or within such building limits as it may prescribe, and to establish, alter or enlarge such building limits from time to time; and

(10) To give such inspector and his assistants authority to enter upon, examine, and inspect all buildings in process of construction in the city or within such building limits, and to direct the suspension of any such building operation as does not conform to such regulations.

Neither the council or other governing body nor any inspector of the city shall have control or regulation of any building erected by the United States or the State of Minnesota.

[1917 c. 190 s. 5] (1648)