

Public Works

CHAPTER 440

STREET IMPROVEMENTS

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440.01-440.07 [Repealed, 1949 c 119 s 110]

440.08 STREETS AND HIGHWAYS; ACQUISITION OF PROPERTY AND EASEMENTS FOR. Each city of the first class in this state, acting through its council, in addition to all other powers possessed by the city, is hereby authorized and empowered to acquire by purchase, gift, devise, or condemnation any lands or property and any rights and easements therein which may be needed or required by the city for public street and highway uses or purposes; including among others easements for public streets and highways and bridges and approaches thereto, with necessary supports and abutments therefor, within its corporate boundaries notwithstanding the fact that the property so needed or required has been acquired by the owner under the power of eminent domain or is already devoted to a public use.

[1927 c. 114 s. 1] (1538-1)

440.09 CONDEMNATION PROCEEDINGS. Proceedings in eminent domain under sections 440.08 and 440.09 shall be in pursuance of chapter 117. The city, upon giving the notice required by section 117.09, may enter upon and appropriate the lands so condemned or any distinct parcel thereof, without the giving of any bonds, but in case of such entry and appropriation the city shall be bound absolutely to pay all damages awarded, whether by commissioners acting under chapter 117, or by the court upon appeal from their award, together with all costs and expenses adjudged against it in the proceedings, and the court shall issue a writ to the sheriff of the county to put the city in possession. In case the city shall take appeal in any such proceedings it shall not be required to give or file any appeal bond.

[1927 c. 114 s. 2] (1538-2)

440.10 [Repealed, 1949 c 119 s 110]

440.11 CHANGE NAME OF STREETS. The council of each city in the state which now has or hereafter may have no more than 50,000 inhabitants is hereby authorized and empowered to change the name of and to rename any of the streets, lanes, avenues, public highways, parks, and public grounds of the city.

[1901 c. 226 s. 1]

440.12 PROCEDURE FOR CHANGING NAME. The change in name or the renaming of any street, avenue, or public way in the city shall be done by ordinance passed by an affirmative vote of two-thirds of all the members of the council. Every ordinance so passed shall be signed by the president of the council and attested by the clerk or recorder of the city, and on the next day after the passage thereof the same shall be transmitted by the clerk or recorder to the mayor of the city for his approval; if the mayor approves the same, he shall append his signature, with the date of his approval, thereto and return the same to the clerk or recorder

within five days, Sunday excepted, from the date of its transmission to him; and, if he declines to approve the same, he shall within five days, Sunday excepted, return the same to the clerk or recorder with a statement of his objections thereto to be presented to the council at its next meeting thereafter.

Upon the return of the ordinance to the council without the mayor's approval, the question shall again be put upon the passage of the same, notwithstanding the objections of the mayor thereto, and if upon such vote, which shall be taken by a call of the ayes and noes, three-fourths of all the members of the council vote in favor of the passage of the ordinance, the same shall be declared passed and have the same force and effect as if approved by the mayor. If the ordinance so transmitted to the mayor shall not be returned by him to the clerk or recorder within five days, Sunday excepted, from the presentation thereof to him, the same shall be deemed to be approved by him and he shall deliver the same to the clerk or recorder on demand.

Such ordinance, after the final passage thereof, shall be published once in the official newspaper of the city and immediately thereafter recorded in the office of the register of deeds in and for the county in which the city is located.

[1901 c. 226 ss. 2, 3]

440.13 COUNCIL MAY VACATE STREETS IN CITIES OF THE FOURTH CLASS. In any city of the fourth class organized under a home rule charter, the council thereof shall have power by a majority vote of the council to vacate any street or highway, or any part of any street or highway therein, upon the petition of all the owners of lands abutting both sides of the street or highway, or part thereof, proposed to be vacated wherein one end of the street or highway, or part thereof proposed to be vacated does not connect with any other street or highway. Except as herein provided all other provisions of the home rule charter shall apply to and govern the proceeding.

[1933 c. 95 s. 1] (1828-9½)

440.135 VACATING STREETS, CITIES THIRD CLASS. Subdivision 1. **Application.** This section applies to every city of the third class however organized.

Subd. 2. Council may vacate; conditions. In addition to any other method provided by law, the council of such city, upon the presentation and filing of a verified petition signed by or on behalf of any owner, natural or corporate, of any real estate abutting thereon, may vacate any street or segment of street or any portion of the width thereof within its geographical limits, provided only that the street, segment, or portion thereof so vacated pursuant to such petition shall not be longer than the distance intervening between any two adjacent intersecting streets.

Subd. 3. Certified copy of resolution to be filed. Such action of such council may be taken at any regular or special meeting duly called for such purpose and shall be by resolution, and a copy of the resolution duly certified by the city clerk shall be recorded in the office of the register of deeds in the county where such city is located before the action shall be effective.

Subd. 4. Not to interfere with special improvements. The vacation of any street or segment thereof under this section shall not destroy or interfere with the right of any person, corporation, or municipality owning or having control of any electric light or telephone pole or lines existing upon such street at the time of the vacation thereof or with any sewer or water pipes, mains or hydrants thereon or thereunder to enter upon such street or portion thereof vacated for the purpose of repairing the same or otherwise attending thereto.

[1945 c 224; 1965 c 45 s 59]

440.14 CONTRACTS FOR LIGHTING STREETS. In all cities of the first class, the council may award, enter into, and let contracts for lighting the city streets, parks, and other public places, or either or any of the same, for any term not exceeding two years under any one contract. It shall not be necessary, before awarding or entering into such contracts, that provision by budget appropriations or otherwise shall first have been made to meet the indebtedness incurred by these contracts, but provision for meeting the obligation or indebtedness may be made after the letting of the contracts.

[1911 c 179 s 1] (1479)

440.15 STREET COMMISSIONERS IN BOROUGHES. Subdivision 1. The

street commissioner in all boroughs shall be appointed by the mayor, concurred in by the borough council.

Subd. 2. The street commissioners shall hold office from the first Monday in May in each year until the first Monday in May of the following year.

Subd. 3. The duty of the street commissioner shall be to take charge of and attend to the care and maintenance of all public streets, alleys, and highways in the borough under the direction of the borough council, and to perform such other duties not inconsistent therewith as the borough council may provide.

Subd. 4. The street commissioner shall receive such wages or salary as the borough council may by resolution provide and the same shall not be decreased during the terms for which he is appointed.

Subd. 5. In case of a vacancy in the office of street commissioner, the mayor shall appoint another to fill the unexpired term, which appointment shall be subject to the approval of the borough council, as in the case of an original appointment.

[1921 c 30 s 1-5] (1851-1, 1851-2, 1851-3, 1851-4, 1851-5)

440.16 BONDS FOR PAVING IN CITIES OF THE THIRD CLASS OR FOURTH CLASS. In addition to the rights and powers heretofore granted by law to cities of the third or fourth class in the state, which rights and powers shall not be abridged or affected by sections 440.16 to 440.22, there is hereby granted to each city of the third or fourth class, whether it is organized and existing under special act of the legislature, or charter adopted by the freeholders thereof or otherwise, the right and power to issue bonds for the purpose of paying the costs, or any part thereof, of paving any streets within the limits of the city.

[1923 c. 174 s. 1] (1906-1)

440.17 AMOUNT, MATURITY, INTEREST, SALE. These bonds may be issued in an amount not to exceed \$200,000 and shall be of such denomination and payable at such places and such time, not exceeding 20 years from the date thereof, as may be by the council be deemed advisable. These bonds shall bear interest at a rate not to exceed six per cent per annum, have interest coupons attached, and be sold for not less than par and accrued interest in such manner as the council may designate.

[1923 c. 174 s. 2] (1906-2)

440.18 BONDS, SALE, PROCEEDS, FORM. The proceeds of the sale of any such bonds shall be placed in the treasury of the city; and used only for the purposes above expressed. The bonds shall bear the seal of the city, be signed by the mayor, attested by the city clerk, except that the signatures upon the coupons thereof may be lithographed.

[1923 c. 174 s. 3] (1906-3)

440.19 TAX LEVY. The full faith and credit of the city issuing such bonds shall be pledged at all times for the payment of the same and the interest thereon and the city shall each year levy a sufficient tax to pay the annual interest thereon, and the principal of such bonds as shall mature during each ensuing year, or provide a sinking fund sufficient to insure the redemption of such bonds at maturity.

[1923 c. 174 s. 4] (1906-4)

440.20 LIMITATION OF INDEBTEDNESS. The obligations incurred by any city in the issuing of any bonds pursuant to the provisions of sections 440.16 to 440.22 shall be considered as a part of its indebtedness under the provisions of its governing act or charter, or of any law of this state fixing the limit of indebtedness of such city, provided that nothing contained in sections 440.16 to 440.22 shall be construed as authorizing any indebtedness in excess of the constitutional provisions limiting home rule charter cities.

[1923 c. 174 s. 5] (1906-5)

440.21 SUBMISSION TO VOTERS. Bonds issued under sections 440.16 to 440.22 shall be so issued only when authorized by the voters of any such city at a general or special election called for that purpose in the manner provided in section 440.22.

[1923 c. 174 s. 6] (1906-6)

440.22 CONDUCT OF ELECTION. All elections provided for in sections 440.16 to 440.22 shall be called and conducted in the manner prescribed for municipal elections in these cities and the notices of election shall contain a statement of the amounts and purposes for which the bonds are proposed to be issued with the date of maturity and the rate of interest. All elections provided for in sections 440.16 to 440.22 may be called by resolution of the council, passed by a majority of all the members thereof, which resolution shall distinctly state the purpose of the election

and the question to be submitted to the vote of the people. The ballot to be voted at all elections under sections 440.16 to 440.22 may read as follows: "In favor of the proposition of issuing bonds for street paving to the extent of Dollars" "Yes" "No." The voters voting in favor of such proposition shall mark a cross (X) opposite the word "Yes" and those against the proposition shall mark a cross (X) opposite the word "No" on the ballot in a space provided for that purpose. If the required number of votes cast at an election shall be in favor of issuing the kind and amount of bonds designated in the ballot the city voting in favor thereof, through its proper officers without further act is authorized to issue the bonds to the amount voted and to sell the same. The votes cast at the election shall be counted, returned, and canvassed the same as at other municipal elections.

[1923 c. 174 s. 7] (1906-7)

440.23 CITIES OF THIRD CLASS MAY IMPROVE ROADS. Any city of the third class of the state is hereby authorized to widen, maintain, and repair any road, street, avenue, boulevard, parkway, or other public highway which lies within the corporate limits of the city and adjacent to a corporate boundary line of the city which may be authorized by ordinance of the city passed by a majority vote of all members of the council, even though the road, street, avenue, boulevard, parkway, or other public highway so widened be partly within and partly without and beyond the corporate limits of the city.

[1939 c. 75 s. 1] (1713 $\frac{3}{4}$)

440.24 MAY ACQUIRE PROPERTY. Any city mentioned in section 440.23 may acquire by gift, devise, purchase, condemnation, or other means any property necessary or convenient or desirable for the purpose of widening, building, maintaining, and repairing any road, street, avenue, boulevard, parkway, or other public highway authorized to be widened in section 440.23.

[1939 c. 75 s. 2] (1713 $\frac{3}{4}$ a)

440.25 MAY CONDEMN PROPERTY. When the council of any such city shall by ordinance, declare that it is necessary or convenient or desirable to acquire any real property for any such public use, it shall describe this property as nearly as may be convenient in the ordinance, and state the use to which it is proposed to devote this property, and direct the city attorney to take the appropriate proceedings in the proper course for the condemnation of the same, and direct the city engineer to make and present to the council such plat and survey of this real estate as will show the property to be taken, and the owner of each parcel thereof according to the records in the office of the register of deeds of the county, and to accompany this plat and survey with such report as will fully explain the situation of the property, and this report may contain any other pertinent statement which the engineer deems best.

The council of the city may cause this plat and survey to be modified or amended as it may deem proper and when satisfied with the plat and survey may adopt the same and direct a copy of the plat and the ordinance to be filed in the office of the register of deeds of the county in which the land is situate.

This copy of the plat and ordinance when so filed shall operate as notice of the pendency of an action by the city against each piece or parcel of land therein described for the condemnation thereof.

The city attorney shall thereupon apply to the district court in and for such county for the appointment of three commissioners to appraise the property so to be taken and the damage for such taking.

He shall give a notice of the application in which he shall specify the time and place of application and in a general way describe the property proposed to be taken, and shall name the owners of the property so far as known to him, but failure to name all or any of the owners correctly shall in no wise affect the proceedings.

This notice shall be served by one publication of the same in the official newspaper of the city at least 20 days before the date fixed for the application, and a copy of this notice shall be served upon any person or corporation in possession of any parcel therein described, and upon each person or corporation who appears by the records in the office of the register of deeds of the county in which the city is situated, to be interested in any of the parcels, and who can be found in the county, in the same manner as a summons is served in a civil action.

[1939 c. 75 s. 3] (1713 $\frac{3}{4}$ b)

440.26 CONDEMNATION, APPRAISAL, DAMAGES. At the time and place named in the notice, or at a duly adjourned time and place, upon proof of the publication of the notice, the court shall appoint three commissioners, all of whom shall be freeholders and electors of the county in which the city is situate, who shall have cognizance of all cases named in the application and shall have power to appraise the value of all property therein described and the damages for the taking of the same.

The city attorney shall forthwith by written notice notify these commissioners personally of their appointment and request them to attend at his office on or before a day fixed by him, not less than two days after the service of the notice, to qualify and enter upon their duties and, if any commissioner shall refuse or neglect to attend, the mayor of the city shall in writing appoint one or more commissioners in the stead of the absentees and file such appointment with the clerk of the court which appointed the original commissioners.

The commissioners shall thereupon, before entering upon the duties of their office, severally take and subscribe an oath to the effect that they are freeholders and electors of the county in question and in no wise interested in any property to be affected by these proceedings, and that they will faithfully perform their duty as such commissioners without partiality and to the best of their knowledge and ability, which oath shall be filed in the office of the clerk of the court.

The commissioners shall thereupon give at least 20 days' notice, by one publication in the official newspaper of the city, of the time and place where they will attend to make an assessment of damages in the proceedings.

This meeting may be adjourned from time to time without further publication of notice.

It shall be the duty of the city attorney to serve a copy of the notice at least four days before the date named therein upon all persons or corporations over whom the court shall acquire jurisdiction, and who shall serve notice upon the city attorney of their appearance in the proceedings.

This notice shall be served in the manner provided by statute for the service of notices and other papers in civil actions, and may be made upon the party or his attorney.

At the time and place named in this notice, or at an adjourned time and place, the commissioners, or a majority of them, after viewing the property involved and hearing the evidence offered, shall make an impartial appraisal and award of compensation and damage to be paid for each tract or parcel of land to be taken or damaged, but if the remainder of any parcel or piece of property of which a part only is to be taken or damaged shall be benefited by the proposed improvement, then the commissioners, in considering and awarding such compensation and damages, shall consider, determine, and offset the proportionate benefits which will accrue to the remainder of the parcel not so taken and belonging to the same owner as does the part taken, and award only the excess, if any, of the compensation or damages over or above the benefits.

Such report shall be in writing, signed by the commissioners, or a majority of them, and filed with the clerk of the court as soon as completed.

Upon the filing of such report, the commissioners shall give notice thereof by one publication in the official newspaper of the city.

Such published report shall contain a description of the several parcels of land taken or damaged for such public use and the respective awards therefor.

[1939 c. 75 s. 4] (1713½c)

440.27 SERVICE OF NOTICES. A copy of this notice shall, within ten days thereafter, be served upon the city attorney and upon all parties who have appeared in the proceedings, and the notice shall be served in the manner provided by statute for the service of notices and other papers in civil actions and may be made upon the party or his attorney.

Any person or corporation interested in any property described in the report or the city in question may appeal from any award therein at any time within 30 days after the publication of the notice by filing with the clerk of the district court, which appointed the commissioners, notice of appeal signed by the party or his attorney taking the same, and describing the party, the property in which he is interested, and the award to which he objects.

An appeal made from any award shall in no wise affect an award not appealed from.

The clerk shall enter the appeal as an action in the court; there shall be no pleadings therein and the appeal shall be tried as other causes originally commenced in the court are tried and judgment rendered therein.

From this determination an appeal may be taken to the supreme court of the state.

[1939 c. 75 s. 5] (1713½d)

440.28 COMPENSATION FOR COMMISSIONERS. After the commissioners shall file their report and publish the notice thereof, the court shall allow the commissioners such reasonable compensation for their services as it shall deem best, which shall be paid by the city seeking to condemn the property.

[1939 c. 75 s. 6] (1713½e)

440.29 AWARD FINAL. When an award of damages shall be made and filed, as aforesaid, and not appealed from, in any proceedings for the taking of property, under sections 440.23 to 440.32, or when the court shall render final judgment in any appeal from any such award, the rights of all parties shall be finally fixed and determined thereby and the same shall constitute a lawful and sufficient condemnation and appropriation to the public use of the land for which damages are so awarded and every right, title, and interest therein and thereto, and every other lien thereon shall be thereby directed and such city shall become vested with the title to, and become the owner of, the property taken or condemned absolutely for all the purposes for which the city may ever use the same; and such city shall be bound to, and shall within one year of the time of such final determination pay the amount of such award with interest thereon at the rate of five percent per annum from the date of the final award or judgment of the court, as the case may be, and if not so paid judgment therefor may be had against the city.

In case there shall be any doubt as to who is entitled to such compensation or damages, or any part thereof, as may be awarded, the amount so awarded and in doubt or dispute shall be by the council of the city appropriated and set apart in the city treasury for whoever shall establish his right thereto by some judicial proceedings.

Before payment of any such award the owner of the property or the claimant of the award shall furnish satisfactory evidence of his right of such award.

[1939 c. 75 s. 7] (1713½f)

440.30 CITY MAY ABANDON PROCEEDINGS. The city may by ordinance passed by a three-fourths vote of all the members of its council at any time within 20 days after any commissioners appointed by the court under sections 440.23 to 440.32 shall file their report with the clerk of the court or, in case of an appeal, within 20 days after final determination thereof, abandon the proceedings and thereupon pay the cost thereof.

[1939 c. 75 s. 8] (1713½g)

440.31 STATEMENT OF DAMAGES. Upon the completion of any proceedings under sections 440.23 to 440.32 for the acquisition of any property by any such city, the mayor of the city shall cause an accurate description of the property so taken to be prepared, together with a statement of the amount of damages, if any, awarded or paid, or to be paid to each owner thereof and sign and acknowledge the same as mayor and cause the same to be recorded in the office of the register of deeds of the county in which the property is situated, and it is hereby made the duty of the register of deeds, upon being paid his statutory fees, to record this statement in some appropriate book in his office.

This record, or a duly certified copy thereof, shall be prima facie evidence that the city in question is the owner of the property described therein by good and perfect title.

[1939 c. 75 s. 9] (1713½h)

440.32 APPLICATION. Sections 440.23 to 440.31 shall be applicable to any city of the third class existing under a charter framed under and pursuant to the Constitution of the State of Minnesota, Article 4, Section 36.

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Any city acquiring any property under sections 440.23 to 440.31 is empowered to afford police protection to any and every such property.

[1939 c. 75 s. 10] (1713*½*i)

440.33 CITIES OF THE SECOND CLASS; STORM WATER SEWERS, PAVING, AND CURBING; BOND ISSUE. The council of each city of the second class in this state is hereby authorized and empowered, by a vote of two-thirds of its members by ordinance or resolution duly passed, to issue and sell bonds of the city with coupons attached to the amount of \$200,000, or so much thereof as the council may deem necessary, for the purpose of constructing, reconstructing, repairing, enlarging, and improving storm water sewers, paving, and curbing in the city; these bonds to be made in such denomination and payable at such place and at such times, not exceeding 30 years from the date hereof, as may be deemed best by the council, notwithstanding any provisions contained in the charter of the city or any law of this state prescribing or fixing any limit upon the total amount of indebtedness of the city falling due in any one fiscal year, and to bear interest at a rate not to exceed six percent per annum, payable semiannually, with interest coupons attached, payable at such place or places as shall be designated therein. The council is further authorized to negotiate and sell these bonds from time to time to the highest bidder or bidders therefor and upon the best terms that can be obtained. No such bonds shall be sold for a less amount than par value thereof and accrued interest thereon; and, provided that all of these bonds shall be made for principal sum of not less than \$100 nor more than \$1,000 each.

[1927 c. 168 s. 1] (1664-39)

440.34 ISSUE AND SALE OF BONDS; TAX LEVY. The bonds authorized by sections 440.33 to 440.36, or any part thereof, may be so issued and sold notwithstanding any provision contained in the charter of the city or any law of this state requiring approval of the voters of the city or any limitations contained in the charter or laws prescribing or fixing any limit upon the bonded indebtedness of the city.

The full faith and credit of the city shall at all times be pledged for the payment of any bonds issued under those sections and for the payment of the current interest thereon and the council of the city shall each year include in the tax levy a sufficient amount for the payment of the interest as it accrues and for the accumulation of a sinking fund for the redemption of such bonds at their maturity.

[1927 c. 168 s. 2] (1664-40)

440.35 FORM OF BONDS. All bonds issued under authority of sections 440.33 to 440.36 shall be sealed with the seal of the city issuing the same and signed by the mayor and attested by the city recorder or clerk of the city, but the coupons attached thereto may be signed with the lithographed signature of the recorder or clerk.

[1927 c. 168 s. 3] (1664-41)

440.36 USE OF PROCEEDS OF BONDS. The council is authorized and fully empowered, in addition to all other powers possessed by it, to use the bonds or the proceeds of the sale thereof for the purposes specified in sections 440.33 to 440.36, but neither the same, nor any part thereof, shall be used for any other purpose.

[1927 c. 168 s. 4] (1664-42)

440.37 ROADS OR STREETS BEYOND CORPORATE LIMITS OF CITY OF THE FIRST CLASS. Any city of the first class in this state is hereby authorized and empowered to extend, lay out, open, build, maintain, and repair any road, street, avenue, boulevard, parkway, or other public highway or public park adjacent to any such highway, which may be authorized by ordinance of the city passed by a three-fourths vote of all the members of the council, whether the road, street, avenue, boulevard, parkway, or other public highway be wholly within or partly within and partly without, or wholly without, outside of, or beyond the corporate limits of the city.

[1909 c. 485 s. 1; 1921 c. 21 s. 2] (1535)

440.38 ACQUISITION OF PROPERTY. Any city mentioned in section 440.37 may acquire by gift, devise, purchase, condemnation, or other means any property necessary or convenient or desirable for the purpose of extending, laying out, opening, building, maintaining, and repairing any road, street, avenue, boulevard, parkway, or other public highway or public park adjacent to any such highway authorized in section 440.37.

[1909 c. 485 s. 2; 1921 c. 21 s. 3] (1536)

440.39 CONDEMNATION PROCEEDINGS. When the council of the city shall by ordinance declare that it is necessary or convenient or desirable to acquire any real property for any such public use, it shall describe the property as nearly as may be convenient in the ordinance and state the use to which it is proposed to devote the property, and direct the city attorney to take the appropriate proceedings in the proper course for the condemnation of the same, and direct the city engineer to make and present to the council, such plat and survey of the real estate as will show the property to be taken, and the owner of each parcel thereof according to the records in the office of the register of deeds of the county, and to accompany this plat and survey with such report as will fully explain the situation of the property, and this report may contain any other pertinent statement which the engineer deems best. The council of the city may cause the plat and survey to be modified or amended as it may deem proper, and when satisfied with the plat and survey may adopt the same and direct a copy of the plat and the ordinance to be filed in the office of the register of deeds of the county in which the land is situate. This copy of the plat and ordinance when so filed shall operate as notice of the pendency of an action by the city against each piece or parcel of land therein described for the condemnation thereof. The city attorney shall thereupon apply to the district court in and for the county for the appointment of three commissioners to appraise the property so to be taken and the damage for the taking. He shall give a notice of this application in which he shall specify the time and place of application, and in a general way describe the property proposed to be taken, and shall name the owners of the property so far as known to him, but failure to name all or any of the owners correctly shall in no wise affect the proceedings. This notice shall be served by one publication of the same in the official newspaper of the city at least 20 days before the date fixed for the application, and a copy of this notice shall, at least 20 days before the date fixed for the application, be served upon any person or corporation in possession of any parcel therein described, and upon each person or corporation who appears by the records in the office of the register of deeds of the county in which the city is situated, to be interested in any of the parcels, and who can be found in the county, in the same manner as a summons is served in a civil action. At the time and place named in the notice, or at a duly adjourned time and place, upon proof of the publication of the notice, the court shall appoint three commissioners, all of whom shall be freeholders and electors of the county in which the city is situate, who shall have cognizance of all cases named in the application, and shall have power to appraise the value of all property therein described, and the damages for the taking of the same. The city attorney shall forthwith, by written notice, notify the commissioners personally of their appointment, and request them to attend at his office on or before a day fixed by him not less than two days after the service of the notice, to qualify and enter upon their duties and, if any commissioner shall refuse or neglect to attend, the mayor of the city shall in writing appoint commissioners in the stead of the absentees and file the appointment with the clerk of the court which appointed the original commissioners. The commissioners shall thereupon, before entering upon the duties of their office, severally take and subscribe an oath to the effect that they are freeholders and electors of the county in question and in no wise interested in any property to be affected by the proceedings, and that they will faithfully perform their duty as commissioners without partiality and to the best of their knowledge and ability, which oath shall be filed in the office of the clerk of the court. The commissioners shall thereupon give at least 20 days notice by one publication in the official newspaper of the city of the time and place where they will attend to make an assessment of damages in the proceedings. This meeting may be adjourned from time to time without further publication of notice. It shall be the duty of the city attorney to serve a copy of this notice at least four days before the date named therein upon all persons or

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corporations over whom the court shall acquire jurisdiction, and who shall serve notice upon the city attorney of their appearance in the proceedings. This notice shall be served in the manner provided by statute for the service of notices and other papers in civil actions, and may be made upon the party or his attorney. At the time and place named in the notice, or at an adjourned time and place, the commissioners, or a majority of them, after viewing the property involved and hearing the evidence offered, shall make an impartial appraisal and award of compensation and damage to be paid for each tract or parcel of land to be taken or damaged, but if the remainder of any parcel or piece of property of which a part only is to be taken or damaged shall be benefited by the proposed improvement, then the commissioners in considering and awarding compensation and damages, shall consider, determine, and offset the proportionate benefits which will accrue to the remainder of the parcel not so taken and belonging to the same owner as does the part taken, and shall award only the excess, if any, of the compensation or damages over or above the benefits. This report shall be in writing, signed by the commissioners, or a majority of them, and filed with the clerk of the court as soon as completed. Upon the filing of the report, the commissioners shall give notice thereof by one publication in the official newspaper of the city. This published report shall contain a description of the several parcels of land taken or damaged for such public use and the respective awards therefor. A copy thereof shall, within ten days thereafter, be served upon the city attorney and upon all parties who have appeared in the proceedings in the manner provided by statute for the service of notices and other papers in civil actions and may be made upon the party or his attorney. Any person or corporation interested in any property described in the report or the city in question may appeal from any award therein at any time within 30 days after the publication of the notice by filing with the clerk of the district court which appointed the commissioners notice of appeal signed by the party or his attorney taking the same, and describing the party, the property in which he is interested, and the award to which he objects. An appeal made from any award shall in no wise affect an award not appealed from. The clerk shall enter the appeal as an action in the court; there shall be no pleadings therein and the appeal shall be tried as other causes originally commenced in the court are tried and judgment rendered therein. From such determination an appeal may be taken to the supreme court of the state. After the commissioners shall file their report and publish the notice thereof, the court shall allow the commissioners such reasonable compensation for their services as it shall deem best, which shall be paid by the city seeking to condemn the property. When an award of damages shall be made and filed, and not appealed from, in any proceedings for the taking of property under sections 440.37 to 440.40 or when the court shall render final judgment in any appeal from any such award the rights of all parties shall be finally fixed and determined thereby and the same shall constitute a lawful and sufficient condemnation and appropriation to the public use of the land for which damages are so awarded and every right, title, and interest therein and thereto, and every other lien thereon shall be thereby directed and the city shall become vested with the title to, and become the owner of, the property taken or condemned absolutely for all the purposes for which the city may ever use the same; and the city shall be bound to, and shall, within one year of the time of the final determination, pay the amount of the award with interest thereon at the rate of five per cent per annum from the date of the final award or judgment of the court, as the case may be, and if not so paid judgment therefor may be had against the city. In case there shall be any doubt as to who is entitled to such compensation or damages, or any part thereof as may be awarded, the amount so awarded, and in doubt or dispute shall be by the council of the city, appropriated and set apart in the city treasury for whoever shall establish his right thereto by some judicial proceedings. Before payment of any such award the owner of the property or the claimant of the award, shall furnish satisfactory evidence of his right to the award. The city may by ordinance passed by a three-fourths vote of all the members of its council at any time within 20 days after any commissioners appointed by the court under sections 440.37 to 440.40 shall file their report with the clerk of the court, or in case of an appeal within 20 days after final determination thereof, abandon the proceedings and shall thereupon pay the costs thereof. Upon the completion of any proceedings under sections 440.37 to 440.40 for the

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acquisition of any property by the city, the mayor of the city shall cause an accurate description of the property so taken to be prepared, together with a statement of the amount of damages, if any, awarded or paid, or to be paid, to each owner thereof and sign and acknowledge the same as mayor and cause the same to be recorded in the office of the register of deeds of the county in which the property is situated, and it is hereby made the duty of the register of deeds, upon being paid his statutory fees, to record this statement in some appropriate book in his office. This record, or a duly certified copy thereof, shall be prima facie evidence that the city in question is the owner of the property described therein by good and perfect title.

[1909 c. 485 s. 3] (1537)

440.40 POLICE PROTECTION. Any city acquiring any property under sections 440.37 to 440.39 is empowered to afford police protection to any and every such property.

[1909 c. 485 s. 4] (1538)