

THE FOURTH CLASS CITY ACT (EXCERPT)
Act 215 of 1895
Chapter XXV
APPROPRIATION OF PRIVATE PROPERTY.

105.1 Condemnation.

Sec. 1.

Private property may be appropriated for public use in any city for the purpose of opening, widening, altering or extending streets, alleys and avenues; for the construction of bridges, for public buildings and for other public structures, for public grounds, parks, market places and spaces; for public wharves, docks, slips, basins and landings on navigable waters, and for the improvement of water courses; for sewers, drains and ditches; for public hospitals, pest houses, quarantine grounds and public cemeteries, and for other lawful and necessary public uses.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3136 ;-- CL 1929, 2060 ;-- CL 1948, 105.1

Former Law: See CL 1897, §§ 3222 to 3246.

105.2 Condemnation; proceedings.

Sec. 2.

If it shall become necessary to appropriate private property for the public uses or purposes specified in the preceding section, the right to occupy and hold the same and the ownership therein and thereto may be acquired by the city either in the manner and with like effect as provided by the general laws of this state relating to the taking of private property for public use in cities and villages, or by instituting and prosecuting the proceedings for that purpose as hereinafter set forth.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3137 ;-- CL 1929, 2061 ;-- CL 1948, 105.2

105.3 Condemnation; resolution of council; suit.

Sec. 3.

Whenever the council shall have declared a public improvement to be necessary in the municipality and shall have declared that they deem it necessary to take private property, describing it, for such public improvement, designating it, and that the improvement is for the use or benefit of the public, they shall, by resolution, direct the city attorney to institute the necessary proceedings in behalf of the municipality, before the probate court as they may designate, to carry out the object of the resolution in regard to taking private property by the city for such public use.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3138 ;-- CL 1929, 2062 ;-- CL 1948, 105.3

105.4 Condemnation; certified copy of resolution, delivery to attorney; petition, contents; filing; evidence.

Sec. 4.

The city clerk shall make and deliver to such attorney, as soon as may be, a copy of such resolution certified under seal, and it shall be the duty of such attorney to prepare and file with such probate court in the name of the city, a petition signed by him in his official character and duly verified by him; to which petition a certified copy of the

resolution of the council shall be annexed, which certified copy shall be prima facie evidence of the action taken by the council and of the passage of the said resolution. The petition shall state, among other things, that it is made and filed as commencement of judicial proceedings by the municipality in pursuance of this act to acquire the right to take private property for the use or benefit of the public, without consent of the owners, for a public improvement, designating it, for a just compensation to be made. A description of the property to be taken shall be given, and generally the nature and extent of the use thereof that will be required in making and maintaining the improvement shall be stated, and also the names of the owners and others interested in the property, so far as can be ascertained, including those in possession of the premises. The petition shall also state that the council has declared such public improvement to be necessary and that they deem it necessary to take the private property described in that behalf for such improvement for the use or benefit of the public. The petition shall ask that a jury be summoned and impaneled to ascertain and determine whether it is necessary to make such public improvement, whether it is necessary to take such private property as it is proposed to take for the use or benefit of the public, and to ascertain and determine the just compensation to be made therefor. The petition may state any other pertinent matter or things, and may pray for any other or further relief to which the municipality may be entitled, within the objects of this chapter.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3139 ;-- CL 1929, 2063 ;-- CL 1948, 105.4

105.5 Probate court summons; contents.

Sec. 5.

Upon receiving such petition it shall be the duty of the said probate court to issue a summons against the respondents named in such petition, stating briefly the object of said petition, and commanding them, in the name of the people of the state of Michigan, to appear before said probate court at a time and place to be named in said summons, not less than 20 nor more than 40 days from the date of the same, and show cause, if any they have, why the prayer of said petition should not be granted.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3140 ;-- CL 1929, 2064 ;-- CL 1948, 105.5

105.6 Probate court summons; service; guardian ad litem; appearance order; alias, pluries summons; return, filing; evidence.

Sec. 6.

Said summons shall be served by the city marshal, any member of the police force or any constable of the city, at least 5 days before the return day thereof, upon all the respondents found within the county, by exhibiting the original and delivering a copy to each of them. If any respondent who is a resident of the county cannot be found, the summons shall be served by leaving a copy thereof at his or her usual or the last place of abode, with some person of suitable age and discretion. If any minor or person of unsound mind is interested in the premises to be taken, service may be made on the guardian of such person, if any, and if there is no guardian, the probate court may appoint some discreet and proper person to be guardian ad litem of such person in such proceedings, and such guardian shall have authority to represent such person in said proceedings. The proceedings to appoint such guardian shall be the same as in other cases provided by statute. If it shall appear on the return day of the summons that any respondent cannot be found within the county and has not been served in the manner provided, or is non-resident and has not voluntarily appeared, the court may make an order requiring such respondent or respondents to appear and show cause why the prayer of the petition should not be granted, on a day to be named in the order, and not less than 30 days from the date thereof, and may require that a certified copy of such order be personally served on such respondents wherever found, if practicable, at least 6 days before the time named in order for appearance, or the court may make such order for appearance and require as to any or all such respondents who shall not have been personally served and have not appeared, that service be made by publishing a certified copy of such order for 3 successive weeks, at least once in each week, in at least 1 newspaper published within the municipality, the last publication to be at least 6 days before the day fixed in the order for appearance. Alias and pluries summons may be issued, and the probate court may adjourn the proceedings from time to time as there shall be occasion, and as in other civil cases. Service of such order for appearance in either mode described shall be sufficient notice of the proceedings to bind the respondents and the

property represented by them. The return of the officer upon the summons and an affidavit of the due service or the publication of the order for appearance, if any, shall be filed with such probate court before a jury shall be impaneled, and be sufficient evidence of service on the respondents and of the manner of service.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3141 ;-- CL 1929, 2065 ;-- CL 1948, 105.6

105.7 Probate court; impaneling jury; composition of jury.

Sec. 7.

On the return day of the summons, or on some subsequent day to which the proceedings are adjourned, if no sufficient cause to the contrary has been shown, the probate court shall make an order that a jury be impaneled in the case. Such jury shall be composed of 12 freeholders of the municipality and shall be selected and impaneled as follows: The city marshal or any constable or any member of the police force of such city shall, on the same day, or at an adjourned day, make a list of 24 resident freeholders of said city, and the city attorney and the respondents collectively, shall each have the right to strike 6 names from the list of persons written down as aforesaid, and subject to objection for cause; the 12 persons whose names are left on the list shall compose the jury for the trial of the cause and shall be summoned to attend at not less than 3 nor more than 10 days from the date of selecting such jury, by a venire issued by him and to be served by 1 of the officers aforesaid. If the respondents neglect or refuse to strike 6 names from said list, it shall be done by the probate judge, and in case any of the persons to be summoned cannot by him be found in the county, or being summoned do not attend, or shall be excused for cause or otherwise, talesmen possessing the necessary qualifications may be summoned as jurors in the case by such officer, and the practice and proceedings under this chapter, except as herein otherwise provided, relative to impaneling, summoning and excusing jurors and talesmen and imposing penalties or fines upon them for non-attendance, shall be the same as the practice and proceedings of justice courts relative to jurors in civil cases in such courts.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3142 ;-- CL 1929, 2066 ;-- CL 1948, 105.7

105.8 Probate court; oath of jurors, form; duties; instruction; verdict.

Sec. 8.

The jurors so impaneled shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain and determine whether there is a public necessity for making the proposed improvement and for taking for the use or benefit of the public the private property which the petition describes and prays may be taken, and if you shall determine that it is necessary to make such improvement, and to take said property, that then you ascertain, determine and award the just compensation to be made therefor, and faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court, a true verdict give, according to the law and evidence, so help you God (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties, and shall go to the place of the intended improvement, in the charge of an officer, and upon or as near as practicable to the property proposed to be taken, and examine the premises. They shall be instructed as to their duties and the law of the case by the probate judge, and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by all jurors.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3143 ;-- CL 1929, 2067 ;-- CL 1948, 105.8

105.9 Probate court; verdict of jury; contents, necessity, damages.

Sec. 9.

The jury shall determine in their verdict the necessity for the proposed improvement and for taking such private property for the use or benefit of the public for the proposed improvement, and in case they find such necessity exists, they shall separately award to the owners of such property and others interested therein such compensation therefor as they shall deem just. If any such private property shall be subject to a mortgage, lease, agreement or other lien, estate or interest, they shall apportion and award to the parties in interest such portion of the compensation as they shall deem just.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3144 ;-- CL 1929, 2068 ;-- CL 1948, 105.9

105.10 Probate court; jury to retire with petition, map, blank verdict; form of verdict.

Sec. 10.

To assist the jury in arriving at their verdict, the probate court may allow the jury, when they retire, to take with them the petition filed in the case and a map showing the location of the proposed improvement and of each and all parcels of property to be taken, and may also submit to them a blank verdict, which may be as follows:

PART I.

We find that it is necessary to take the private property described in the petition in this cause, for the use and benefit of the public for the proposed public improvement.

PART II.

The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

Description of each of the several parcels of private property to be taken.	Owners, occupants and others interested in each parcel.	To Compensation. whom payable.

The different descriptions of the property and the names of the occupants, owners and others interested therein may be inserted in said blank verdict, under the direction of the probate court, before it is submitted to the jury, or it may be done by the jury.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3145 ;-- CL 1929, 2069 ;-- CL 1948, 105.10

105.11 Probate court; amendments allowed.

Sec. 11.

Amendments either in form or substance may be allowed in any paper, petition, process, record or proceeding, or in the description of property proposed to be taken, or the name of any person, whether contained in a resolution passed by the council or otherwise, whenever the amendments will not interfere with the substantial rights of the parties. Any such amendment may be made after as well as before judgment confirming the verdict of the jury.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3146 ;-- CL 1929, 2070 ;-- CL 1948,

105.12 Probate court; docket entries, copy; confirmation judgement on application, time; new proceedings; appeal.

Sec. 12.

Upon filing the report and award made by any jury with said probate court he shall enter it upon the docket of his proceedings, and a copy thereof may be taken by the city attorney for the use of the council; and at any time thereafter, and within 40 days after the impaneling of the jury making the report, the probate court, upon the application of the city council, shall enter judgment of confirmation of the determination and awards therein made. Unless such application and confirmation shall be made within said 40 days, all proceedings upon that report and award shall be at an end, and a new jury and new proceedings may be had, as in the case of a disagreement of the jury. All parties interested in such report shall take notice of the confirmation thereof. Any such judgment of confirmation shall be final and conclusive as to all parties not appealing therefrom within the time hereinafter provided.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3147 ;-- CL 1929, 2071 ;-- CL 1948, 105.12

105.13 Probate court; disagreement of jury; impaneling new jury.

Sec. 13.

If such jury should be unable to agree upon a verdict, or for any cause should fail to render a verdict, said probate court shall, on the application of the city attorney, designate some day and hour when another jury may be impaneled, and such other jury shall be obtained, drawn, summoned, returned, bound to attend and serve, have the same qualifications, be sworn, and when sworn have the same powers and duties as the first jury. The same proceedings after they are sworn shall be had by them, and by and before said probate court as provided for above after the first jury is sworn.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3148 ;-- CL 1929, 2072 ;-- CL 1948, 105.13

105.14 Juror; disability; procedure.

Sec. 14.

If any juror, after being sworn, and before the hearing shall have been commenced, shall die, or from sickness or any other cause be unable to discharge his duties as a juror, said probate court may cause to be drawn another person to serve in his place, who shall be sworn, and shall have the like qualifications, powers and duties as those already sworn.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3149 ;-- CL 1929, 2073 ;-- CL 1948, 105.14

105.15 Circuit court; appeal, procedure; bond.

Sec. 15.

Any party aggrieved by the judgment of confirmation hereinbefore mentioned, may, within 10 days after the entry thereof, appeal therefrom to the circuit court of the county, by filing with the probate court a claim of appeal, in writing, under oath, in which he shall set forth a description of the land in which he claims an interest and a statement that he considers himself aggrieved by the proceedings and judgment of which he complains, and his objections, if any, to the amount of damages awarded, and at the same time filing with the probate court a bond to the city, in a penal sum of not less than 300 dollars, with sureties to be approved by said probate court, conditioned that he will prosecute his appeal to effect, and pay costs that may be awarded against him in the circuit court, and paying to the probate court the sum of 3 dollars for making his return to the appeal.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3150 ;-- CL 1929, 2074 ;-- CL 1948, 105.15

105.16 Circuit court; probate court to return appeal.

Sec. 16.

Within 10 days after taking such appeal said probate court shall make and certify a return to said appeal, setting forth a transcript from his docket of all the proceedings and the judgment of confirmation entered therein, and shall attach thereto the report of the jury, and all notices and papers filed with him, together with the bond and claim of appeal, and file the same with the clerk of such circuit court.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3151 ;-- CL 1929, 2075 ;-- CL 1948, 105.16

105.17 Circuit court; jurisdiction; proceedings.

Sec. 17.

Upon filing the return to the probate court, as mentioned in the preceding section, the circuit court shall have jurisdiction of the case. The parties may proceed to trial by jury without reference to any term of court upon the question as to the amount of damages to be awarded; but the finding of the jury before the probate court as to the necessity of taking the land shall be held to be conclusive. The appeal of 1 or more persons interested in any judgment of confirmation shall not in any way affect said judgment as to other persons interested therein who do not appeal.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3152 ;-- CL 1929, 2076 ;-- CL 1948, 105.17

105.18 Circuit court jury; impaneling.

Sec. 18.

The circuit judge shall make an order that a jury be impaneled in the case. Such jury shall be composed of 12 freeholders of the municipality or vicinity, and shall be selected and impaneled as follows: The city marshal or any member of the police force of such city shall, on the same day or at an adjourned day, make a list of 24 resident freeholders of said city or vicinity, and the city attorney and the respondents collectively shall each have the right to strike 6 names from the list of persons written down as aforesaid, and subject to objection for cause; the 12 persons whose names are left on the list shall compose the jury for the trial of the cause and shall be summoned to attend at not less than 3 nor more than 10 days from the date of selecting such jury, by a venire issued by him to be served by 1 of the officers aforesaid. If the respondents neglect or refuse to strike 6 names from the list, it shall be done by the circuit judge, and in case any of the persons to be summoned cannot by him be found in the county, or being summoned do not attend, or shall be excused for cause or otherwise, talesmen possessing the necessary qualifications may be summoned as jurors in the case by such officer, and the practice and proceedings under this chapter, except as herein

otherwise provided relative to impaneling, summoning and excusing jurors and talesmen, and imposing penalties or fines upon them for non-attendance, shall be the same as practice and proceedings of circuit courts relative to jurors in cases in such courts.

History: Add. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3153 ;-- CL 1929, 2077 ;-- CL 1948, 105.18

105.19 Circuit court; oath of jurors, form; duties; instruction.

Sec. 19.

The jurors so impaneled shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain, determine and award the just compensation to be made for the taking for the use or benefit of the public the private property which the petition describes, and that you will faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court, a true verdict give, according to the law and the evidence, so help you God (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties, and shall go to the place of the intended improvement, in the charge of an officer, and upon or as near as practicable to the property taken, and examine the premises. They shall be instructed as to their duties and the law of the case by the circuit judge, and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and shall be signed by all jurors.

History: Add. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3154 ;-- CL 1929, 2078 ;-- CL 1948, 105.19

105.20 Circuit court; verdict of jury; contents, necessity, damages.

Sec. 20.

The jury shall in their verdict separately award to the owners of such property, and others interested therein, such compensation therefor as they shall deem just. If any such private property shall be subject to a mortgage, lease, agreement or other lien, estate or interest, they shall apportion and award to the parties in interest such portion of the compensation as they shall deem just.

History: Add. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3155 ;-- CL 1929, 2079 ;-- CL 1948, 105.20

105.21 Circuit court; jury may retire with petition, map, blank verdict; form of verdict.

Sec. 21.

To assist the jury in arriving at their verdict, the circuit judge may allow the jury, when they retire, to take with them the petition filed in the case, and a map showing the location of the proposed improvement and of each and all the parcels of property to be taken and may also submit to them a blank verdict which may be as follows:

The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

Description of each of the several parcels of private property to be taken.	Owners, occupants and others interested in each parcel.	Compensation.	To whom payable.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The different descriptions of the property and the names of the occupants, owners and others interested therein may be inserted in said blank verdict, under the direction of the circuit judge, before it is submitted to the jury, or it may be

done by the jury.

History: Add. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3156 ;-- CL 1929, 2080 ;-- CL 1948, 105.21

105.22 Circuit court; confirmation of proceedings; cost.

Sec. 22.

Upon any dismissal of the appeal, or rendition of judgment after trial in the circuit court, said court shall confirm the proceedings and rights of the city to take and appropriate the lands of the appellant for the purpose mentioned in the resolution of the council. And unless the appellant shall recover judgment for at least 50 dollars more than the amount awarded to him before the probate court, he shall pay costs to the city; otherwise the court shall award such costs to him or to the city as shall be just.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3157 ;-- CL 1929, 2081 ;-- CL 1948, 105.22

105.23 Circuit court; judgment of confirmation; records of city clerk; contents, evidence.

Sec. 23.

It shall be the duty of the city clerk to procure copies of any judgment of confirmation of the circuit court or of the probate court after the same has become final, as well as of the report and findings of the jury, and the same shall be recorded in a book of records to be kept by him, and the docket of such probate court, or the judgment of said court, as well as the book of records of such proceedings kept by said clerk, or certified copies thereof, shall be presumptive evidence of the matters therein contained, and of the regularity of all the proceedings to appropriate the property sought to be acquired and to confirm the same.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3158 ;-- CL 1929, 2082 ;-- CL 1948, 105.23

105.24 Verdict confirmed; sums awarded; procedure for collection; assessment; evidence; city purchaser at sale.

Sec. 24.

When the verdict of the jury shall have been finally confirmed by the probate court and the time in which to take an appeal has expired, or, if an appeal is taken and the judgment has been confirmed, thereupon the proper and necessary proceedings, in due course, shall be taken for the collection of the sum or sums awarded by the jury. If the council believe that a portion of the city in the vicinity of the proposed improvement will be benefited by such improvement, they may by an entry in their minutes determine that the whole or any just proportion of the compensation awarded by the jury shall be assessed upon the owners or occupants of real estate deemed to be thus benefited, and thereupon they shall, by resolution, fix and determine the district or portion of the city benefited, and specify the amount to be assessed upon the owners or occupants of the taxable real estate therein. The amount of the benefit thus ascertained shall be assessed upon the owners or occupants of such taxable real estate, in proportion, as nearly as may be, to the advantage which such lot, parcel or subdivision is deemed to acquire by the improvement. The assessment shall be made and the amount levied and collected in the same manner and by the same officers and proceedings, as near as may be, as is provided in this act for assessing, levying and collecting the expense of a public improvement when a street is graded. The assessment roll containing said assessments, when ratified and confirmed by the council, shall be final and conclusive and prima facie evidence of the regularity and legality of all proceedings prior thereto, and the assessment therein contained shall be a lien on the premises on which the same is made until payment thereof. Whatever amount or

portion of such awarded compensation shall not be raised in the manner herein provided shall be assessed, levied and collected upon the taxable real estate of the municipality, the same as other general taxes are assessed and collected therein. At any sale which takes place of the assessed premises or any portion thereof delinquent for non-payment of the amount assessed and levied thereon, the city may become a purchaser.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3159 ;-- CL 1929, 2083 ;-- CL 1948, 105.24

105.25 Verdict confirmed; sums awarded; payment within year; raising of funds; treasurer, duties; right of entry; writ of assistance.

Sec. 25.

Within 1 year after the confirmation of the verdict of the jury, or after the judgment of confirmation shall on appeal be confirmed, the council shall set apart and cause to be provided in the treasury, unless already provided, the amount required to make compensation to the owners and persons interested, for the private property taken, as awarded by the jury, and shall, in the resolution setting apart and providing said sum, if not already provided, direct the city to pay the persons respectively entitled to the money so set apart and provided, to each his or her portion, as ascertained and awarded by said verdict. And it shall be the duty of the treasurer to securely hold such money in the treasury for the purpose of paying for the property taken, and pay the same to the persons entitled thereto, according to the verdict of the jury, on demand, and not pay out the money for any other purpose whatever. The council may provide the necessary amount by borrowing from any other money or fund in the treasury and repay the same from money raised to pay the compensation awarded by the jury when collected or otherwise, as they may provide. Whenever the necessary sum is actually in the treasury for such purpose, the treasurer shall make and sign duplicate certificates, verified by his oath, showing that the amount of compensation awarded by the jury is actually in the treasury for payment of the private property taken in the case, giving the title of the case; he shall cause 1 of the certificates to be filed in the office of the probate court before whom such proceedings were had, or his successor, or in case an appeal has been had, then in the office of the clerk of the court in which the proceedings were had, and the other to be filed with the city clerk, which certificate shall be prima facie evidence of the matters therein stated. Whenever the amount of such compensation is in the treasury and thus secured to be paid, the council may enter upon and take possession of and use such private property for the purposes for which it was taken, and may remove all buildings, fences and other obstructions therefrom. In case of resistance or refusal on the part of any one to the council or their agents and servants entering upon and taking possession of such private property for the use and purpose for which it was taken, at any time after the amount of the compensation aforesaid is actually in the treasury, ready to be paid to those entitled thereto, the council, by the city attorney, may apply to the court, and shall be entitled, on making a sufficient showing, to a writ of assistance to put them in possession of the property.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3160 ;-- CL 1929, 2084 ;-- CL 1948, 105.25

105.26 Court proceedings; officers, jurors, witnesses; fees, compensation.

Sec. 26.

Officers, jurors and witnesses in any proceedings under this chapter shall be entitled to receive the same fees and compensation as are provided by law for similar services in an ordinary action at law in the probate courts of this state, and in cases of appeals, the same fees and compensation as are provided by law for similar services in circuit courts.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3161 ;-- CL 1929, 2085 ;-- CL 1948, 105.26

105.27 Repealed. 2018, Act 199, Eff. Sept. 18, 2018.

Compiler's Notes: The repealed section pertained to prima facie evidence of property ownership.

105.28 Property; sale of buildings; moneys, disposition.

Sec. 28.

In case there is on the private property taken a building or other structure, the same shall be sold by or under direction of the council; the amount produced by this sale shall belong and be paid to the fund for paying the compensation awarded for the property taken, and the council shall cause such amount to be credited and applied in reduction pro rata of the assessment and apportionment made to pay for the property taken.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3163 ;-- CL 1929, 2087 ;-- CL 1948, 105.28

105.29 Property; negotiation; purchase.

Sec. 29.

Nothing in this chapter contained shall prevent any city from obtaining private property for any of the public uses herein specified by negotiation and purchase.

History: 1895, Act 215, Eff. Aug. 30, 1895 ;-- Am. 1899, Act 136, Imd. Eff. June 21, 1899 ;-- CL 1915, 3164 ;-- CL 1929, 2088 ;-- CL 1948, 105.29