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LAND FOR STREETS AND PARKS 430.011

CHAPTER 430

LAND FOR STREETS AND PARKS (ELWELL LAW)

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430.01 DESIGNATION OF LAND FOR SYSTEM OF STREETS, PARKS AND PARKWAYS. The council and the board of park commissioners of any city of the first class may, by concurrent resolution adopted by a majority vote of each body, designate lands to be acquired for a system of streets, parks, and parkways, and determine that this land shall be acquired by proceedings under this chapter, to be conducted either by the city council or the board of park commissioners, as this resolution shall specify. The council of any such city, acting separately, may by resolution so adopted, designate lands to be acquired, improved and operated for motor vehicle parking lots. The council of any such city, acting separately, may by resolution so adopted designate lands to be acquired, improved and operated for pedestrian malls or may by ordinance adopted as provided in section 430.011 designate streets in central business districts to be improved primarily for pedestrian uses. If proceedings are taken by the board of park commissioners, the duties herein specified to be performed by the city clerk, the city engineer and the city attorney, respectively, shall be performed by the secretary, the engineer and the attorney elected and employed by the board of park commissioners, and the powers hereinafter specified to be exercised by the city council may for the purposes of this chapter be exercised by the board of park commissioners. The term "system of streets, parks, and parkways", as used herein, shall embrace any body of contiguous land of whatever shape or area, designed ultimately to be used in part for streets and in part for parks or parkways, and the concurrent resolution shall designate what part is for streets, what part for parks and what part for parkways. When the city council desires to take or improve, or take and improve, land for street purposes alone, or to take land for motor vehicle parking lots, or to take land for pedestrian malls or improve streets for pedestrian uses, it may proceed under this chapter for that purpose without the concurrence of the board of park commissioners, and when the board of park commissioners desires to take or improve, or to take and improve, land for parks and parkways alone, or either, it may proceed under this chapter without the concurrence of the city council.

[1911 c 185 s 1; 1917 c 103 s 2; 1945 c 470 s 2; 1963 c 504 s 1] (1552)

430.011 ORDINANCES LIMITING USE OF STREETS; PEDESTRIAN MALLS AND DISTRICTS. Subdivision 1. **Legislative findings.** The legislature of the state of Minnesota finds that (a) increases in population and automobile usage have created conditions of traffic congestion in central business districts of cities of the first class; (b) such conditions constitute a hazard to the safety of pedestrians and impede the movement of police and fire equipment, ambulances and like emergency vehicles; (c) streets in such districts improved to their maximum width for sidewalk and roadway purposes cannot be further widened without taking valuable buildings and improvements, substantially impairing the primary function of such streets of such cities as pedestrian facilities and im-

pairing their sources of tax revenue; and (d) limitation on the use of such streets by private vehicles may be found by the council of any such city to be in the interest of the city and state, to be of benefit to adjoining properties and to be essential to the effective use of such streets for street purposes.

Subd. 2. **Statement of policy.** It is the public policy of the state of Minnesota to permit the city council of any city of the first class to protect the public welfare and the interests of the public in the safe and effective movement of persons and to preserve and enhance the function and appearance of the central business districts of such cities by adopting pedestrian mall ordinances as herein provided.

Subd. 3. **Pedestrian mall ordinances authorized.** A pedestrian mall ordinance may be adopted if the city council finds that a street or part thereof (a) is not a part of any state highway, (b) is located primarily in a central business district, (c) is improved to its maximum width for roadway and sidewalk purposes, and (d) is congested during all or some substantial part of normal business hours; that (e) reasonably convenient alternate routes exist for private vehicles to other parts of the city and state, that (f) continued unlimited use of the street or part thereof by private vehicles may constitute a hazard to the safety of pedestrians, that (g) abutting properties can reasonably and adequately receive and deliver merchandise and materials from other streets and alleys or by reason of provision made for limited use of the streets by carriers of such merchandise and materials, and that (h) it would be to the best interests of the city and the public and of benefit to adjacent properties to use such street primarily for pedestrian purposes and pedestrian use is the highest and best use of such street or part thereof.

Subd. 4. **Ordinance provisions.** The ordinance shall (a) set forth such findings, (b) designate such street or part thereof as a pedestrian mall, (c) limit the use of the surface of such street or part thereof at all times or during such hours or days as the council shall determine to pedestrians and to such classes of emergency, public works, maintenance, service and utility transportation vehicles as are defined in the ordinance and prohibit the use of such street or part thereof by other vehicles, and (d) include such further provisions as are herein required.

Subd. 5. **Intersecting streets.** No limitation of use shall apply to vehicles on an intersecting street crossing such street or part thereof designated as a pedestrian mall, unless such intersecting street is similarly designated, and the ordinance shall so provide.

Subd. 6. **Use of pedestrian mall by public carriers.** If the council shall further find that such street or part thereof is served by a transit utility engaged in mass transportation of persons within the city by bus or street railway, and that continued use of such street or part thereof by such transit utility will be a benefit to the city and the public and to adjacent property, it shall permit such transit utility to use such street or part thereof for such purposes to the same extent and subject to the same obligations and restrictions as are applicable to such transit utility in the use of other streets of the city. Upon like findings, it may permit use of such street or part thereof by utilities engaged in carrying persons by taxicabs.

Subd. 7. **Special access permits.** If any property abutting upon such street or part thereof does not, at the time such ordinance is adopted, have access to some other street or alley for delivery of or receiving merchandise and materials, the council shall provide in the ordinance for the issuance of a permit or permits to the owners or occupants of such property for the use of such street or part thereof for deliveries, or otherwise in the ordinance provide for deliveries, during such hours and days, which need not be ordinary business hours or days, as the council shall find to be reasonably adequate for such purpose and not to interfere with the use of the street or part thereof by pedestrians and other authorized vehicles.

Subd. 8. **How adopted with improvement proceedings.** If such ordinance is to be adopted in connection with an improvement of the street under this chapter, it shall so state and shall be introduced as a proposed ordinance and given its first reading concurrently with the introduction and adoption of the resolution of the council instituting the improvement proceedings. In such cases, it shall not be given its final reading nor be finally adopted until the council shall take action on the proposed improvement pursuant to subdivision 12 of section 430.02.

Subd. 9. **How adopted in other cases.** If such ordinance is not being adopted in connection with an improvement of the street under this chapter, it shall so state and shall be considered and adopted as in the case of other ordinances, subject to the right of appeal provided in section 430.031, but the council shall not meet to give such ordinance its final reading or to finally adopt such ordinance unless a copy of the proposed ordinance and a notice stating the time and place at which the council will meet to consider its adoption shall have been published in the official newspaper of the city at least once, and shall have been mailed to the owners of the several lots or parcels of land abutting on the proposed pedestrian mall, at least three weeks prior to the date of such meeting.

Subd. 10. **Description of assessable properties.** If such ordinance is to be adopted in connection with an improvement of the street under this chapter, it shall describe the property to be assessed for such improvement, and no property shall be subject to assessment for such improvement which is not described in the ordinance.

Subd. 11. **Annual costs; districts.** If such ordinance is to be adopted in connection with an improvement of the street under the provisions of this chapter, and if the council shall determine that (a) the improvement will involve annual costs in addition to the initial cost of constructing and making the improvement, and that (b) such annual costs will provide benefits primarily to adjacent property, rather than to the city as a whole, the ordinance may provide that the improvement and facilities thereof shall be operated and maintained pursuant to the provisions of section 430.101 and the costs thereof assessed or taxed to benefited properties pursuant to the provisions of section 430.102. In lieu thereof and at any time after a pedestrian mall ordinance has been adopted or lands have been acquired or improved for a pedestrian mall, the council may upon such determination provide, by separate ordinance or by amendment to a pedestrian mall ordinance, that the improvement and facilities thereof shall be so operated and maintained and the costs so taxed and assessed to benefited properties, subject to appeal as provided in section 430.031. In any such case, such ordinance shall describe the properties to be assessed or taxed for such annual costs, which area may be given the name "(name of street) Pedestrian Mall Improvement District."

Subd. 12. **Protests.** If the owners of lands abutting on a street or part thereof proposed as a pedestrian mall representing a majority of the frontage on the proposed pedestrian mall have made written objection to the establishment of the proposed pedestrian mall at any time before the ordinance shall have been given its final reading and adopted, the council shall so find and shall terminate the proceedings for such establishment. In such event no ordinance for the establishment of the same or substantially the same pedestrian mall shall be introduced or adopted within one year after such termination.

Subd. 13. **Interpretation; repeal and amendments.** Notwithstanding the improvement of any street as a pedestrian mall or the adoption of a pedestrian mall ordinance, the city and its council shall retain its police powers and other rights and powers relating to the city street or part thereof constituting the pedestrian mall, and no such action shall be interpreted or construed to be a vacation, in whole or in part, of any city street or part therein, it being intended that the establishment of a pedestrian mall pursuant to this chapter be a matter of regulation only. Nothing in this chapter shall be interpreted or construed to prevent the city and its council, at any time subsequent to the adoption of a pedestrian mall ordinance, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, from supplying or amending the description of the district to be specially assessed or taxed for annual costs of the pedestrian mall, or from changing or repealing any limitations on the use of the pedestrian mall by private vehicles or any plan, rules or regulations adopted for the operation of a pedestrian mall.

Subd. 14. **When effective.** Any ordinance or amendment thereto adopted pursuant to this section shall not become effective or be in force until 20 days after the final adoption and publication thereof.

[1963 c 504 s 2]

430.02 PROCEEDINGS FOR ACQUISITION OF LANDS. Subdivision 1. **Plat and survey.** After the adoption of the resolution it shall be the duty of the city engineer to make and present to the council a plat and survey of the proposed improvement, showing the character, course, and extent of the same

and the property necessary to be taken or interfered with thereby, with the name of the owner of each parcel of the property, so far as the engineer can readily ascertain the same, and such statement as may in the opinion of the engineer be proper to explain the plat and survey and the character and extent of the proposed improvement. For constructing pedestrian malls or improving streets primarily for pedestrian uses, the council may employ a competent engineer or landscape architect or both to assist, and may purchase plans or designs prepared by a competent engineer or landscape architect to aid, the city engineer in the performance of his duties under this chapter.

When the plat and survey shall be finally adopted by the city council, it shall be filed with the city clerk, and it shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the city council.

The plat shall also show the amount of land taken from each owner, so far as the owners may be known, and the lands contiguous to these improvements.

Subd. 2. Commissioners or appraisers. The city council shall then or afterwards appoint five freeholders of the city, no two of whom shall reside in the same ward, as commissioners, 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 improvement, and to assess the amount of the damages and compensation and the expenses of the improvement upon the lands and property to be benefited by the 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 these commissioners; and they shall be notified of their appointment, and vacancies in their number shall be filled by the city council, and they shall be sworn to the faithful discharge of their duties.

Subd. 3. Notice of hearing; hearing; award and appraisal. The commissioners shall give notice, by two publications in the official newspaper of the city, that the survey and plat and the pedestrian mall ordinance, if any, is on file in the office of the city clerk for the examination of all persons interested and that they will, on a day designated in this notice, which shall be at least ten days after the first publication of the notice, meet at a place designated in the notice on or near the proposed improvement, and view the property proposed to be taken or interfered with for the purposes of these improvements, and ascertain and award therefor compensation and damages, and view the premises to be benefited by this improvement, and assess thereon in proportion to benefits, the amount necessary to pay the compensation and damage and the cost of making the improvement and that they will then and there hear such allegations and proofs as interested persons may offer. These commissioners shall meet and view the premises pursuant to the notice, and may adjourn, from time to time, and, after having viewed the premises, may, for the hearing of evidence and preparation of their award and assessment, adjourn or go to any other convenient place in the city, and may have the aid and advice of the city engineer and of any other officer of the city, and adjourn from time to time. If a pedestrian mall ordinance is proposed by the council under section 430.011, in connection with an improvement, the commissioners may consider the business uses of abutting property affected by such ordinance and by the improvement to which it relates and the probable effect which the ordinance and improvement will have on the value of such property and such uses and shall consider whether such property has access to some other street or alley for delivering and receiving merchandise and materials and the extent to which the use and value of property without such access will suffer as a result of the adoption of such ordinance and the making of such improvement. After viewing the premises and hearing the evidence offered, these commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or injured by the making of the improvement; but if the remainder of the same property, a part of which only is to be taken or damaged by the improvement, shall be benefited by the improvement, then the commissioners, in considering and awarding compensation and damages, shall also consider, estimate, and offset the benefits which will accrue to the same owner, in respect to the remainder of the same property, and award him only the excess of the compensation or damages over and above these benefits.

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Subd. 4. Assessment of compensation and damages; report; list. The commissioners shall then assess the amount of the compensation and damages so awarded upon the land and property benefited by the proposed improvements, together with the expense and cost of making the improvements, as fixed by the city council, and in proportion to the benefits, but in no case shall the amount of the assessment exceed the actual benefit to the lot or parcel of land so assessed, deducting therefrom any damages or injuries to the same parcels which are less than the benefits, and assessing only the excess, and prepare and report to the city council their appraisal and award and, if in the judgment of the commissioners, the whole amount of the compensation and damages, together with the cost of making the improvement, shall exceed the actual benefits to the specific property subject to assessment, they shall so indicate in their report and shall state the amount of the excess. The commissioners shall also report to the city council an assessment list containing their assessment of the compensation, damages, and costs, or so much thereof as shall not exceed the actual benefits to the property so assessed, which list shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed against each parcel of property and the amount of the excess of the compensation, damages, and costs which they shall return unassessed. If the city council has proposed a pedestrian mall ordinance pursuant to section 430.011 in connection with an improvement, the commissioners shall include in the assessment list only those properties proposed to be assessed for the improvement under the proposed ordinance.

Subd. 5. Assistance and expense. The commissioners may employ clerical assistance, and the cost thereof, as well as the commissioners' compensation, and the expenses of printing the notices required, including the notice of consideration by the city council, estimated at the same rate per line as the cost of printing the prior notices, shall be added to the other amounts to be assessed and shall be assessed therewith. The city attorney shall represent the city before the commissioners and produce such evidence as the case may require.

Subd. 6. Percentage payment by city. The city council may provide, in all cases, except motor vehicle parking lots, by the resolution appointing such commissioners, that a certain specified percentage, not exceeding 75 percent, of the total damages and costs shall in any case be payable out of the city's general funds, and in that case the city's share either shall be added to the amount of the certificates to be issued and sold under section 430.12, or shall be provided by the issue of general obligation permanent improvement bonds and the city council shall from year to year levy a sufficient tax upon the taxable property of the city to pay the same with interest. In such case the amount provided to be paid out of the general funds shall not be assessed.

Subd. 7. Publication of notice of hearing. The commissioners shall, upon the completion of their report, file the same with the city clerk and thereupon it shall be the duty of the city clerk to give notice to all interested parties by publishing, as soon as possible, in the official newspaper of the city a notice containing descriptions of the several lots and parcels of land taken for these proposed improvements, the amount awarded for the taking of each lot or parcel, the names of the owner or owners of the same, descriptions of the several lots or parcels of land upon which benefits have been assessed, the amount assessed against each lot or parcel and the names of the owner or owners of the same the names of all owners referred to herein to be obtained from the commissioners, and, so far as may be necessary, from the records in the office of the county treasurer. If a pedestrian mall ordinance is proposed to be adopted in connection with the improvement under section 430.011, a copy of the proposed ordinance shall be published with the notice and the notice shall refer to the ordinance and shall state that any and all objections to the adoption of the ordinance will be heard and considered. The published notice shall also designate and fix a place and time, not earlier than three weeks from date of publication of the same, at which a committee therein designated by the board of park commissioners or of the council will meet to hear and consider, from or on the part of the owner or owners of the several lots or parcels of land taken for the proposed improvement and of the several lots or parcels of land upon which benefits have been assessed, any and all objections to the making of the improvement, to the amount of damages awarded for the taking of or interference with the property involved, to the amount of

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the assessment for benefits to any property affected by the proceedings, and any and all claims of irregularities in the proceedings of the city council, board of park commissioners, or the commissioners so appointed by either thereof.

Subd. 8. Service of published notice. Immediately after the publication of this notice and at least two weeks prior to the time designated for the meeting of the committee specifically designated in the notice, the city clerk shall serve upon each of the owners of the several lots or parcels of land taken for this proposed improvement and of the several lots or parcels of land upon which benefits have been assessed a copy of the published notice, by depositing the same in the post-office of the city, postage prepaid, in an envelope plainly bearing on its front in type no smaller than ten point the words "Notice of Tax Assessments for improvements affecting your property" directed to each of the persons at his last known place of residence, if known to the city clerk, otherwise as obtained from the records in the office of the county treasurer, provided, that the failure of any owner or owners to receive the notice shall not in any wise operate to invalidate any of the proceedings covered by this chapter. If a pedestrian mall ordinance is proposed to be adopted in connection with the improvement under section 430.011, a copy of the proposed ordinance shall be mailed with each such notice.

Subd. 9. Written objections. Any person whose property is proposed to be taken, interfered with, or assessed for benefits under any of the provisions of this chapter, who objects to the making of the improvement, or who deems that there is any irregularity in the proceedings of the city council, or on the part of the commissioners so appointed by it, by reason of which the award of the commissioners 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 with the amount of the assessment for benefits to any property affected by the proceedings, shall appear at the hearing or file with the city clerk, designated in this published notice, at any time before the hearing or before the report and recommendation of the committee is filed his written objection to the making of the improvement, or his objection to the damages awarded or benefits assessed, or his claim of the irregularities, specifically designating the same, and a description of the property affected by the proceedings. Any such person and any citizen or taxpayer of the city may appear at the hearing in support of or to object to the adoption of any pedestrian mall ordinance proposed under section 430.011 or may file written statements in support of or objecting to the adoption of such ordinance.

Subd. 10. Hearings by council committee. At the time and place designated by this published notice for the hearing, the city clerk shall present to the committee the report of the commissioners so appointed together with all written objections or statements so filed with the city clerk and the committee shall then consider the same and hear the objectors, and persons appearing in favor of or against the adoption of any proposed pedestrian mall ordinance, or their representatives, in person, and shall adjourn the hearing from time to time as may be necessary.

Subd. 11. Committee report. Within ten days from the conclusion of the hearing or hearings the committee shall file with the city clerk its report and recommendation on the matter so submitted, and upon such filing the city clerk shall give notice that this report and recommendation has been filed and that the same, together with the report of the commissioners, will be considered by the city council at a meeting thereof to be designated in the notice, which notice shall be published in the official newspapers of the city once a week for two consecutive weeks, the last publication thereof being at least two weeks before the meeting of the city council.

Subd. 12. Action by council. The city council, upon the day fixed for the consideration of the reports and recommendation or at any subsequent meeting to which the same may stand over or be referred, may, by resolution, annul and abandon the proceedings, or may confirm the awards and assessments or any or either thereof, or annul the same, or send the same back to the commissioners for further consideration; and the commissioners may, in such case, again meet at a time and place to be designated in a notice which shall be published by the city clerk once in the official newspaper of the city, copies of which to be similarly mailed by the city clerk to all interested persons, at least

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two weeks prior to the meeting, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and may correct any mistakes in the award and assessment and alter and revise the same as they may deem just, and again report the same to the city council, who may thereupon confirm or annul the same. If it shall desire to confirm the awards and assessments, the city council shall then give its final reading to and vote on the adoption of any pedestrian mall ordinance proposed in connection with the improvement pursuant to section 430.011, and if it shall be amended or shall fail of adoption for lack of a sufficient majority of votes or otherwise, any improvement instituted in connection with such proposed ordinance shall either be abandoned or the awards and assessments shall be returned to the commissioners for further consideration.

Subd. 13. Levy of assessment; assessment roll. When the city council shall confirm any award and assessment the confirmation shall make the award and assessment final and conclusive upon all parties interested, except as hereinafter provided, and the city council shall proceed, at the same or at any subsequent meeting, to levy an assessment, or such fractional part thereof as the city council may deem necessary, to pay the costs of the proceedings and making the improvements therein upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with the assessments so confirmed or in proportion to the assessments herein provided. The city council may, in its discretion, delay the levying of these assessments in any proceeding under this chapter until the completion or substantial completion of the improvements proposed to be made therein, and the actual costs of these improvements and proceedings have been determined, which cost may include interest at five percent per annum on moneys actually advanced by the city, and thereupon the city council shall proceed to levy assessments in the proceeding, aggregating the amount of the cost, or that portion of these costs as the city council shall have determined, in conformity with the provisions of this chapter, upon the several parcels of land described in the assessment list reported to the city council by the commissioners in the proceeding, and the assessments so levied shall be in amounts proportionate to and not greater than the several amounts theretofore confirmed upon such parcels of land, respectively, by the council or by the court upon appeal in the proceeding. The city council shall cause to be made, and shall adopt, an assessment roll of the assessments, which may be substantially in the following form, or any other form the council may adopt:

"The city council doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking of an injury to private property, and estimated cost of improvement, and in and about the.....as shown on the plat and survey of the same on file in the office of the city clerk of the city. This levy is made conformably to the report and assessment of commissioners duly appointed to make the assessment and in proportion to benefits from the improvements to accrue to the parcels and not exceeding the benefits to the parcels so assessed.

Name of Owner, if known	Description of land Lot Block	Amount Dollars Cents
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Done at a meeting of the council this day of

A. D. 19.....

Attest.....

City Clerk

Pres't of the Council."

[1911 c 185 s 2; 1913 c 345 s 1; 1925 c 417 s 1; 1929 c 419 s 1; 1945 c 470 s 3; 1945 c 530 s 1; 1953 c 264 s 1; 1963 c 504 s 3-10; 1967 c 201 s 1; 1969 c 678 s 1] (1553)

430.023 CLERK TO MAIL NOTICES IN CONDEMNATION PROCEEDINGS IN CERTAIN CASES. In any city of the first class which, under its charter, is authorized to condemn property for public use and to appoint commissioners to assess damages or benefits upon property to be taken for such use, which charter provides for notices of the filing of the commissioners' report in such proceedings, the clerk of such city shall mail to the person whose name appears on the records of the auditor of the county in which such city is located as the person who last paid the taxes on the property proposed to be taken, within 48 hours after the filing of the commissioners' report in such proceedings, a notice of such filing.

[1943 c. 249 s. 1]

430.03 OBJECTIONS TO CONFIRMATION; APPEAL TO DISTRICT COURT; REAPPRAISAL; APPEAL TO SUPREME COURT. Any person whose property is proposed to be taken, interfered with, or assessed for benefits under any of the provisions of this chapter, who deems that there is any irregularity in the proceedings of the council or action of the commissioners, by reason of which the award of the commissioners 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 with the amount of the assessment for benefits to any property affected by the proceedings, specifically shall have the right to appeal from the order of confirmation of the city council, to the district court of the county at any time within 20 days after the order. This appeal shall be made by serving a written notice of the appeal upon the clerk of the city, which shall specify the property of the appellant affected by the award and assessment, and refer to the objection filed, as aforesaid, and also by delivering to the city clerk a bond to the city, executed by the appellant, or by someone on his behalf, with two sureties, who shall justify in the penal sum of \$50 conditioned to pay all costs that may be awarded against the appellant. Thereupon the city clerk shall make out and transmit to the clerk of the district court a copy of the award of the commissioners, as confirmed by the council, and of the order of the council confirming the same, and of the objection filed by the appellant, all certified by the clerk to be true copies, within ten days after the taking of the appeal. If more than one appeal be taken from any award, it shall not be necessary that the clerk, in appeals subsequent to the first, shall send up anything except a certified copy of the appellant's objections. There shall be no pleading on the appeal, but the court shall determine, in the first instance, whether there was in the proceedings any irregularity or omission of duty prejudicial to the appellant and specified in his written objections, that, as to him, the award or assessment of the commissioners ought not to stand and whether the commissioners had jurisdiction to take action in the premises. If any such person shall claim that any pedestrian mall ordinance proposed in connection with such improvement pursuant to section 430.011, and adopted by the city council, shall be invalid, he shall perfect an appeal pursuant to the provisions of section 430.031, subject to the right of the court to consolidate for hearing any appeal taken pursuant to such section with an appeal taken pursuant to this section 430.03.

The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and shall have precedence of other civil cases, and the judgment of the court shall be either to confirm or annul the proceedings only as the same affects the property of the appellant proposed to be taken, damaged, or assessed for benefits and described in the written objection. From this determination no appeal or writ of error shall lie.

In case the amount of damages awarded or assessment made for benefits is complained of by the appellant, the court shall, if the proceedings be confirmed in other respects, upon such confirmation, appoint three disinterested freeholders, residents of the city, commissioners to reappraise such damages or benefits. The parties to the appeal shall be heard by the court upon the appointment of these commissioners, and the court shall fix the time and place of the meeting of the commissioners. They shall be sworn to the faithful discharge of their duties as such commissioners, proceed to view the premises, and hear the parties interested, with their allegations and proofs pertinent to the question of the amount of the damages or assessments. These commissioners shall be governed by the same provisions in respect to the method of arriving at the amount of damages and the offset thereto of benefits to other property of the same owners, and in all other material respects, as are in this chapter made for the government of commissioners appointed by the city council. They shall, after the hearing and view of the premises, make report to the court of their appraisal of damages or assessments of benefits in respect to the appellant. The award or assessment of these commissioners shall be final unless set aside by the court for good cause shown. In case this report is set aside, the court may, in its discretion, recommit the same to the same commissioners or appoint a new board as it shall deem best. The court shall allow a reasonable compensation to these commissioners for their services, and make such award of costs on the appeal, including the compensation of commissioners, as it shall deem just in the premises.

In case the court shall be of the opinion that the appeal was frivolous or vexatious, it may adjudge double costs against the appellant.

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An appeal may be taken from the court's final order to the supreme court by the city or any party thereto.

In case of proceedings conducted by the city council, all reports and other papers shall be filed in the office of the city clerk, and notices of appeal and other notices to the city shall be served upon the city clerk. In case of proceedings conducted by the board of park commissioners, all papers shall be filed in the office of the secretary or other recording officer of the board, and all notices of appeal and other notices to the city shall be served upon the secretary or other recording officer of the board.

[1911 c 185 s 3; 1913 c 345 s 2; 1925 c 417 s 2; 1963 c 504 s 11] (1554)

430.031 APPEALS FROM ADOPTION OF PEDESTRIAN MALL ORDINANCES; LIMITATION OF ACTIONS. Subdivision 1. **Limitation of actions.** No action shall be commenced or maintained, and no defense interposed, questioning the validity, regularity or legality of any pedestrian mall ordinance, or any part thereof or amendment thereto, adopted by any city of the first class under the authority of subdivision 3 or 13 of section 430.011 except by an appeal taken to the district court of the county in which such city is located within 20 days after the final adoption and publication of any such ordinance or amendment.

Subd. 2. **Appeals authorized.** Such appeal may be commenced and maintained on the grounds that such ordinance is unreasonable or arbitrary or unlawfully obstructs the public use and interest in the street or part thereof named in such ordinance or takes or interferes with the appellant's property without due process of law, or on any other lawful grounds, and any citizen or taxpayer of the city shall have standing to commence and maintain such appeal, as well as any person whose property is or may be taken or interfered with without due process of law, by reason of the enactment or enforcement of such ordinance.

Subd. 3. **Proceedings on appeal.** Any such appeal may be taken by serving a written notice upon the clerk of the city setting forth the grounds for the appeal and shall specify any property which the appellant shall claim to be taken or interfered with. The city clerk shall make out and transmit to the clerk of the district court a certified copy of the ordinance and, if not previously filed, a certified copy of the award of commissioners as confirmed by the council and the order of the council confirming the same rendered in any improvement proceeding connected with the ordinance, and no other pleadings shall be required. No surety bond shall be required except upon motion of the city pursuant to the provisions of Minnesota Statutes, Chapter 562.

Subd. 4. **Effect of appeal; appeal to supreme court.** An appeal taken pursuant to this section shall suspend the effectiveness of the ordinance until the determination of the action by a final order of the court. The court shall advance the case on its calendar for trial at the earliest feasible date. An appeal from any judgment entered in the district court in any such action shall be taken to the supreme court within 30 days after notice of entry of judgment, notwithstanding Minnesota Statutes, Section 605.08. The party appealing, or the respondent, may apply to the supreme court for an order fixing the time and manner of the hearing of the appeal, whereupon the supreme court may provide for a speedy hearing in the manner provided by Minnesota Statutes, Section 605.09, and laws amendatory thereof and supplemental thereto.

[1963 c 504 s 12]

430.04 AWARDS; HOW PAID; ASSESSMENTS. When any award of damages made to appellants upon any appeal to the district court shall exceed the amount of the award appealed from, and when any assessment of benefits made in respect to any appellant upon appeal shall be less than the amount of the assessment of benefits appealed from, the amount of this increase in the amount of the award of damages and the amount of this decrease in the assessment of benefits may be paid by the city from the permanent improvement fund or any fund of the city available therefor, or the city council may cause the same to be assessed upon and against any property benefited by the proposed improvements in addition and without prejudice to prior assessments made thereon in the proceedings, and may refer the matter to the commissioners theretofore appointed by the council in the proceeding or to new commissioners to be appointed by the city council. These commissioners, whether new or old, shall have the same qualifications as required of commissioners appointed by section 430.02 and shall take oath to faithfully discharge their duties as commissioners and give notice of the time and place when and

where they will meet to hear persons interested and assess the amounts of the increase of awards of damages and decrease of assessments of benefits upon the land and property, theretofore assessed for these benefits, or assess benefits on lots or parcels of land not theretofore assessed for benefits in the proceeding. The notice, as to the owners of the lots or parcels of land entitled to increase of awards upon any appeal, and as to the owners of any lots or parcels of land to be then assessed for benefits that were not so assessed in the original proceeding by the commissioners, shall be given by these commissioners by depositing the same in the post-office of the city, postage postpaid, directed to each of the persons at his last known place of residence, if known to the commissioners, otherwise as obtained from the office of the county treasurer; provided that the failure of any owner to receive this notice shall not in any wise operate to invalidate any of the proceedings covered by this chapter. The commissioners shall meet, at the time and place so designated in their notice, hear all persons interested, and assess the amount of the increased awards of damages and decreased assessments of benefits, or new and original assessments of benefits, upon the property benefited by the proposed improvements, in proportion to the benefits, but in no case shall the amount of this assessment exceed the actual benefit to the lot or parcel of land so assessed, and the commissioners shall prepare and file with the city clerk an assessment list of the assessment so made by them, containing a brief description of each piece of property assessed, the name of the owners thereof, if known, and the amount assessed against the same, and the city clerk shall present this list to the city council for consideration. A brief minute of the presentation of this assessment list to the city council shall be made and published in the record of the proceedings of the city council, which shall be held to be sufficient notice to all persons concerned. This assessment list shall lie over without action thereon by the city council until the next regular meeting of the council which will occur at least one week thereafter, at which time, or at any meeting thereafter, the city council may confirm the assessments and assessment roll, or send the same back to the commissioners for further consideration and report thereon. Any person interested who is dissatisfied with the amount of an assessment may appeal from the confirmation of the assessment by the city council to the district court, in like manner and with like proceedings as provided in section 430.03 in respect to filing objections and taking appeals from original appeals made in such proceedings from such order of confirmation. Any decrease made in any assessments upon any appeal may be paid by the city from the permanent improvement fund or from any fund of the city available therefor, or the city council may cause the same to be reassessed as hereinabove provided.

[1911 c. 185 s. 3a; 1915 c. 86 s. 1; 1925 c. 417 s. 3] (1555)

430.05 RIGHT OF COUNCIL TO ABANDON; EFFECT OF AWARD; PAYMENT. The city council shall have the right at any time during the pendency of any proceedings for the improvements authorized in this chapter or at any time within 90 days after the final order of the court, on the last of all appeals from such proceedings, to set aside any or all awards and abandon all such proceedings as to any or all parcels when it shall deem it for the interest of the city to do so. The city council shall also have the right to rescind and annul any pedestrian mall ordinance adopted after being proposed pursuant to section 430.011 within 90 days after the final order of the court on the last of all appeals from such proceedings, taken pursuant to section 430.03 or section 430.031, and in case it shall do so, any improvement instituted in connection with such ordinance shall be deemed abandoned and any awards and assessments shall be deemed to have been set aside. Such awards, if not set aside, as aforesaid, shall be a charge upon the city, for the payment of which the faith and credit of the city shall be pledged and shall entitle the city to immediate possession. The city council may in its discretion order such awards to be paid into the district court of the county for the use and benefit of the persons who shall be found entitled thereto, in which case the moneys so paid into court shall be paid out under order of the court upon application of parties interested and upon such notice as the court may prescribe.

[1911 c 185 s 4; 1963 c 504 s 13] (1556)

430.06 SPREADING OF ASSESSMENT INSTALMENTS. The city clerk shall transmit a certified copy of the assessment roll to the auditor of the county in which the land lies, and the auditor shall include five per cent of the principal

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amount of the assessment with and as part of the taxes upon each parcel for each year for 20 years, together with annual interest at the rate ascertained, as herein-after provided. The city council and board of park commissioners may, by concurrent resolution, determine that the amount of the assessment shall be collected in five or ten equal annual instalments instead of 20, and in such case the county auditor shall include a corresponding per cent of the principal amount of the assessment with and as part of the taxes of each year, together with annual interest until the whole is collected. The auditor shall include in the taxes for each year one of the instalments, together with one year's interest upon that instalment, and all subsequent instalments at the same rate, each of which, together with interest, shall be collected with the annual taxes upon the land, together with like penalties and interest in case of default, all of which shall be collected with and enforced as the annual taxes and credited to the proper city fund. Any parcel assessed may be discharged from the assessment at any time after the receipt of the assessment by the auditor by paying all instalments that have gone into the hands of the county treasurer, with accrued interest, penalties and costs, and by paying all subsequent instalments; or any parcel assessed may be discharged from the assessment by presenting certificates or bonds sold against the assessments, as herein provided, sufficient in amount to cover all instalments due on such parcel and accrued interest, penalties and costs, and all instalments yet to accrue, by surrendering the certificates or bonds to the county treasurer for cancellation or having endorsed thereon the instalments, interest, penalties, and costs. The assessment shall be a lien on the land from the time of the making thereof as against the owner and every person in any way interested in the land. The owner of the land and any person interested therein may defend against an assessment at the time of application for judgment in the regular proceedings for the enforcement of delinquent taxes, but the assessment shall not be deemed invalid because of any irregularity, provided the notices have been published substantially as required, and no defense shall be allowed except upon the ground that the cost of the improvement is substantially less than the amount of the assessment, and then only to the extent of the difference between the assessment and the actual cost. Assessments made under this chapter shall be called special street, motor vehicle parking lot, and parkway assessments of the city of and numbered consecutively. When an assessment is certified by the city clerk to the county auditor, a duplicate thereof shall be sent to the city comptroller, and all these assessments shall be sufficiently identified by name and number.

[1911 c. 185 s. 5; 1913 c. 345 s. 4; 1917 c. 103 s. 3; 1929 c. 419 s. 2; 1945 c. 470 s. 4] (1557)

430.07 METHOD OF IMPROVEMENTS; ASSESSMENTS. The city council and park commissioners may, by concurrent resolution, or by separate resolution when acting separately, specify the method of improving any such street, pedestrian mall, park or parkway, including grading, drainage, planting, street lighting, paving, curb, gutter, and sidewalk, as well as sewer and water mains where necessary, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. A pedestrian mall improvement shall mean and include any improvement designed and to be used primarily for the movement, safety, convenience and enjoyment of pedestrians, whether or not a part of a street is set apart for roadway for emergency vehicles, transit vehicles and private vehicles or any of them, and a pedestrian mall improvement may provide for, and include space for, seating, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting, ornamental signs, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead radiant heating fixtures, underground radiant heating pipes and devices, walls, bollards and chains and all such other fixtures, equipment, facilities and appurtenances which in the judgment of the council will enhance the movement, safety, convenience and enjoyment of pedestrians and benefit the city and adjoining properties; sidewalks on pedestrian malls may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets or such other materials and such combinations of materials as the council shall approve. The council may in its discretion narrow any roadway to be kept and maintained in connection with any pedestrian mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within a block as well as at the ends of blocks, and may cause the roadway to curve and meander within the limits of the street regardless of the uniformity of width of the street or curve or absence of curve in the center line of such street to enhance the

usefulness and appearance of a pedestrian mall. The city engineer shall estimate the cost of each item in the improvement separately, or by reasonable classifications detailed to the satisfaction of the city council or the park commissioners, and submit the estimate with the plat. In the case of property used for residential purposes only and for not to exceed a four-family dwelling these estimates shall be for not to exceed six-inch water mains and not to exceed 24-inch sewers. The city council shall examine the estimates and, after modifying, if necessary, find and adopt an estimate of the cost. The city council, in appointing commissioners, shall recite the estimate, and the commissioners shall assess the amount thereof, or so much thereof as shall be directed by the city council, upon such lots and parcels of land in the city as they shall deem specifically benefited, in proportion to such benefits, not exceeding the actual benefit to any parcel, and add the same to the benefits assessed under section 430.02 and report the net result of damages or benefits as required by section 430.02, and with like proceedings thereafter. If, in any proceedings under this chapter, the actual cost of the improvement of any street, park, or parkway in the manner herein designated is less than the estimated cost thereof, as found and adopted by it, the city council shall immediately cancel and annul the assessments made in the proceedings to an amount which, in the aggregate, shall not exceed such fractional part of the total amount of the excess of estimated cost over the actual cost as shall be equivalent to the fraction obtained by dividing the total amount of the assessments by the total amount of the estimated cost. In case the assessments in any proceeding have not been entirely collected or in case the city council deems that any such assessments cannot be fully collected, the city council may direct the city comptroller to retain in the fund in the proceeding a sum sufficient, in the judgment of the city council, to cover the deficiencies in the collection of the assessments, and the city council shall direct that the balance of the excess of estimated cost shall be disposed of in the manner hereinafter provided. The city council shall direct the city comptroller to certify the amount of this balance to the county auditor. The auditor shall thereupon deduct the amount from the first instalment of the assessment to be collected after the receipt of this certificate. This deduction shall be made from the assessment against each piece or parcel of property in the proportion that the excess, as certified by the city comptroller, bears to the total of the instalment of the assessment. If the balance as certified, exceeds one instalment, it shall also be deducted in like manner from succeeding instalments until the same is fully deducted. If any portion of the damages and cost of the improvement has been paid by the city, the city council shall direct the city comptroller to certify to the county auditor only that percentage of the balance or excess of estimated cost as shall be equal to the percentage of the total estimated cost of the improvement and damages which has been or is assessed against benefited property. No such certificate shall be directed by the council or issued to the county auditor until after a report from the city engineer that the work under any such proceeding has been completed and each item of damage or cost in the proceeding has been paid, and this report by the city engineer shall be made to the city council immediately upon the completion of the work in the proceeding. In any proceeding where there is or may be an excess of estimated cost and there is or shall be a balance in the fund in the proceeding over and above the actual cost, the city council shall be entitled to withdraw from this fund a percentage of the fund equal to the percentage of the cost of the improvement paid by the city, and cause this percentage to be deposited in the fund from which it was originally drawn or taken by the city council. Any existing street, park or parkway or pedestrian mall may be improved and the expense thereof assessed and raised in the manner provided by this chapter for acquiring and opening streets, parks, parkways and pedestrian malls and improving the same, including any or all of the following improvements: widening, grading, drainage, planting, pavement, sidewalks, curb and gutter, sewers and water mains, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. In case of streets or parkways exceeding 80 feet in width, the resolution may, for the purpose of facilitating connections with private property and obviating the necessity of cutting or breaking into the improvements, order a double water main or a double sewer, one on either side of the street or parkway, or adopt such other arrangement or device as may seem most feasible.

[1911 c 185 s 6; 1913 c 345 s 3; 1917 c 103 s 4; 1923 c 438 s 1; 1925 c 417 s 4; 1953 c 184 s 1; 1963 c 504 s 14; 1969 c 500 s 1] (1558)

430.08 ASSESSMENTS IN FIVE INSTALMENTS. Where lands are acquired

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hereunder for streets, parks, and parkways and the total cost thereof shall be less than \$3,000, the amount of the assessment therefor shall be collected in not more than five equal annual instalments.

[1917 c. 103 s. 3; 1919 c. 219] (1559)

430.09 TITLE ACQUIRED. The title obtained to land designated for park purposes and motor vehicle parking lots under this chapter shall be an absolute estate in fee simple unqualified in any way, and vest in the city. In other lands an easement only shall be taken.

[1911 c. 185 s. 7; 1945 c. 470 s. 5] (1560)

430.10 STREETS, PARKS, AND PARKWAYS, HOW GOVERNED. When the proceedings are completed, the streets, parks, and parkways shall be governed as other streets, parks, and parkways by the city council and board of park commissioners respectively; but such streets may be taken by the board of park commissioners for parkways with the consent of the city council and parkways may be taken by the city council for streets with the consent of the board of park commissioners. When proceedings for the acquisition of motor vehicle parking lots are completed, the parking lots so acquired shall be controlled and operated by the city council. The city council shall fix rates for parking, which rates shall be sufficient to defray the cost of operation of such parking lots. All moneys so received shall be deposited in a fund designated by the city council and shall be kept separate and distinct from all other city funds. Funds which may be available in any other permanent or current fund may be advanced to such fund for temporary use, and shall be returned to the fund, or funds, from which advanced when receipts from operation permit.

[1911 c. 185 s. 8; 1945 c. 470 s. 6] (1561)

430.101 PEDESTRIAN MALLS, HOW USED; PLAN, REGULATION AND PERMITS; ADVISORY BOARDS. Subdivision 1. **Pedestrian malls, how used.** Any pedestrian mall acquired pursuant to section 430.01 or improved pursuant to section 430.07 may be used, under the direction of the city council, for any purpose or activity which will enhance the movement, safety, convenience or enjoyment of pedestrians, including seating, sidewalk cafes, displays of merchandise, exhibits, advertising, telephone, transit, newsstands, bus shelters, plantings, adornment, protection against the elements, and any other use or activity which in the judgment of the council will enhance the movement, safety, convenience or enjoyment of pedestrians and any other use or activity permitted by any applicable pedestrian mall ordinance adopted pursuant to section 430.011 or other applicable law, ordinance or power.

Subd. 2. **Regulation and permits.** After a pedestrian mall ordinance shall have been adopted or lands shall have been acquired for a pedestrian mall, the city engineer, with the assistance of the city attorney and of any consulting engineer or landscape architect or other consultant employed by the council for the purpose and the assistance of any advisory board appointed pursuant to subdivision 3, shall prepare and submit to the city council a plan encompassing:

(a) The initial distribution and location of movable furniture, sculpture or pedestrian traffic control devices, flowers and other facilities belonging to the pedestrian mall and not otherwise located or fixed by the plans and specifications;

(b) The initial uses to be permitted on the mall to occupants of abutting property, any transit or telephone utility, vendors and others to serve the convenience and enjoyment of pedestrians and the location of such uses;

(c) Proposed regulations governing the modification of such distribution of movables and such permitted uses, the issuance of permits for such uses and fees and rentals to be charged for such permits and uses; and

(d) The operation of any lighting, heating or other facilities in the mall, replacing flowers, and maintaining the furniture and facilities in the mall.

Such plan shall be filed with the city clerk and be open to inspection and the city council shall by ordinance or ordinances approve and adopt such plan and such regulations, with such additions or modifications as it shall deem proper and after such notice and such hearings before it or its appropriate committee as the council shall deem necessary or desirable. The council shall have like authority to

amend the plan and regulations at any time and from time to time. Any furniture, structure, facility or use located or permitted pursuant to the plan or a pedestrian mall improvement in the street or part thereof covered by the plan or improvement shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit shall be liable for any injury to person or property unless such furniture, structure, facility or use shall be negligently constructed, maintained or operated.

Subd. 3. Advisory board. In its discretion, the city council may create and appoint an advisory board, consisting of seven persons, at least a majority of whom shall be owners or occupants of properties adjoining a pedestrian mall or their representatives, to advise the city council and the city engineer in connection with the acquisition, construction and improvement of a pedestrian mall, the making of a plan therefor and the operation and maintenance thereof and to meet and furnish recommendations on complaints and requests of members of the public and of owners and occupants of adjoining property. Such advisory board may elect an executive secretary, who need not be a member of the board, to keep its minutes, records and correspondence and to communicate with the city council, city engineer and other officials and with owners and occupants of adjoining properties and users of the pedestrian mall.

[1963 c 504, s 15]

430.102 PEDESTRIAN MALL ANNUAL COSTS; ANNUAL IMPROVEMENT ASSESSMENTS AND SPECIAL TAXES; APPEALS; COSTS DEFINED. Subdivision 1. **Costs; estimates; categories.** Concurrently with the submission of the plan, and annually thereafter on or before June 15 of each year, the city comptroller and city engineer shall, with the assistance of the advisory board, if any, report to the city council an estimate of the cost of operating and maintaining and annual improvement costs to each pedestrian mall improvement district in the city for the next fiscal year of the city to be incurred under the plan then in effect, and an estimate of changes in the amounts of such costs which would follow upon the adoption of any addition or amendment to the plan recommended to or under consideration by the city council. Such estimate shall be reasonably itemized and shall include a summary of the categories of cost properly chargeable as follows:

- (a) The amount of such costs to be charged against the general funds of the city, which shall be that amount which the city would pay from its general funds for street maintenance and operations on a street of similar size and location but not improved as a pedestrian mall.
- (b) The amount of costs to be charged against benefited properties in the district in proportion to benefits, which shall be the aggregate of costs of annual improvements to be made in the district during the ensuing year, not exceeding the aggregate of benefits to the assessable tracts and parcels of land in the district received from such annual improvements.
- (c) The amount of costs, if any, to be specially taxed against properties in the district in proportion to the cash valuation of such properties, which shall be the net amount of estimated costs remaining after deducting the amounts to be charged to the general funds of the city pursuant to paragraph (a), the amount to be specially assessed pursuant to paragraph (b), and rentals to be received on account of use of the mall by vendors.

Subd. 2. Council approval; effect; special tax levy limitation. The council shall receive and consider such estimate and the items of cost after such notice and hearing before it or its appropriate committee as it shall deem necessary or expedient, and shall approve the same, with such amendments thereto as it shall find necessary, and the amounts of each item of cost estimated shall be deemed appropriated and expendable for and to operate, maintain and improve the pedestrian mall during the ensuing fiscal year. The amount of the special tax to be charged pursuant to paragraph (c) of subdivision 1 shall not, however, exceed 50 cents per \$100 of assessed valuation of taxable property in the district, and the council shall make such adjustment in costs of operating and maintaining the district as may be necessary to keep the amount of such tax within such limitation.

Subd. 3. Annual improvement assessment procedure; appeals. When the council shall have acted on the estimate of costs, the city engineer, with the assist-

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ance of the city assessor, shall prepare an assessment roll setting forth separately the amounts to be specially assessed against the benefited and assessable properties in the district in proportion to the benefits, descriptions of such properties, and the names of the owners of such properties, so far as such names are available to him. The assessment roll, when so prepared, shall be filed in the office of the city clerk and be there available for inspection. The city council shall meet to consider objections to the amounts of such special assessments at least ten days after a notice of hearing has been published once in the official newspaper and mailed to the named owners of all tracts, parcels and lots of property proposed to be assessed. The notice shall set forth the time and place of meeting, and set forth the purpose of such meeting, but may refer to the assessment roll for further particulars. When the city council shall have approved the amounts of the special assessments set forth therein, or as may be changed by it, the city clerk shall forthwith certify a copy of the assessment roll, with such changes, if any, to the county auditor to be extended on the tax lists of the county and to be collected with and in the same manner as other taxes on property for the current year. Within 20 days after the adoption of the assessment, any person aggrieved may appeal to the district court as provided in section 430.03 except that commissioners shall not be appointed to consider the amount of benefits; if the court shall find that the assessment is not arbitrary, unreasonable, or made under a demonstrable mistake of fact or erroneous theory of law, it shall confirm the proceedings, but otherwise shall remand the same to the city council for reconsideration and reassessment of the benefits upon like notice and hearing as in the case of original assessments under this subdivision. All objections to the assessment shall be deemed waived unless presented on such appeal.

Subd. 4. **Costs and annual improvements defined.** For the purposes of this chapter "annual improvements" shall, with respect to pedestrian malls, mean and include any reconstruction, replacement or repair of trees and plantings, furniture, shelters and other facilities of a pedestrian mall, furnishing overhead or underground heating for snow removal or for enjoyment of pedestrians, and any other local improvement which benefits properties within the district. For the purposes of this chapter, "costs" shall, with respect to annual improvements to and operation and maintenance of pedestrian malls, mean and include costs of annual improvements; fees of consultants employed by the city council to assist in the planning of annual improvements; premiums upon public liability insurance insuring the city and users of the pedestrian mall and upon property damage insurance for pedestrian mall facilities; reasonable and necessary costs to the city for the time of city officials and employees spent in connection with annual improvements to and operating and maintaining a pedestrian mall and levying and collecting special assessments and special taxes therefor; publication costs; and all other costs incurred or to be incurred in connection with annual improvements to and operation and maintenance of pedestrian malls.

Subd. 5. **Special account; excess costs; balances.** Moneys appropriated and collected on account of annual improvement costs and costs of operating and maintaining a pedestrian mall shall be credited to a special account. The council shall have authority to incur costs for annual improvements to or operating and maintaining a pedestrian mall during any fiscal year, though not provided for in an approved estimate for such fiscal year, if in its discretion it shall deem it necessary to provide for such annual improvements or operation or maintenance prior to the succeeding fiscal year. In such case, the costs incurred shall be included in the next estimate of costs to be approved. Any balances to the credit of the account established for a pedestrian mall and remaining unexpended at the end of the fiscal year shall be charged against the proper category of the next estimate of costs to be approved.

[1963 c 504 s 16]

430.11 IMPROVEMENTS, WHEN AND HOW MADE. The improvements so ordered shall be made as soon as possession after the land is secured, and shall be made by the body which conducts the proceedings for acquisition.

[1911 c. 185 s. 9] (1562)

430.12 BONDS FOR IMPROVEMENTS. The city council, for the purpose of realizing the funds for making an improvement and paying damages may, from time to time as may be needed, issue and sell special certificates of indebtedness,

or special street or parkway improvement bonds, as they may decide, which shall entitle the holder thereof to all sums realized upon any assessment or, if deemed advisable, a series of two or more certificates or bonds against any one assessment, or against the assessments in two or more different proceedings, the principal and interest being payable at fixed dates out of the funds collected from the assessments, including interest and penalties, and the whole of the fund or funds is hereby pledged for the pro rata payment of the certificates or bonds and the interest thereon, as they severally become due. These certificates or bonds may be made payable to the bearer, with interest coupons attached, and the city council may bind the city to make good deficiencies in the collection up to, but not exceeding, the principal and interest at the rate fixed, as hereinafter provided, and for the time specified in section 430.06. If the city, because of this guaranty, shall redeem any certificate or bond, it shall thereupon be subrogated to the holder's rights. For the purpose of this guaranty, penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. These certificates or bonds shall be sold at public sale or by sealed proposals at a meeting of which at least two weeks' published notice shall be given, to the purchaser who will pay the par value thereof at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed seven percent per annum, payable annually or semiannually. The city clerk shall certify to the county auditor the rate of interest so determined at the first bond sale held for any such improvement, and interest shall be computed upon the assessments at this annual rate, in accordance with the terms of section 430.06. In case the rate of interest so determined at any subsequent bond sale for the same improvement is greater than the rate so determined at the first bond sale therefor, the difference between these rates of interest shall be a general city charge.

In case the proceeds of any special certificates of indebtedness or special street or parkway improvement bonds are in excess of the amount actually necessary to make the improvements for which the same were issued, or in case the proceeds are not immediately required for the prosecution or completion of the improvement, these proceeds may meanwhile be used by the city council for the making of other improvements authorized under the provisions of this chapter, and the amount of the proceeds so used shall be replaced and made good so far as may be necessary from the proceeds of special certificates of indebtedness or special bonds issued for the purpose of making such other improvements.

[1911 c 185 s 10; 1913 c 345 s 5; 1917 c 11 s 1; 1925 c 417 s 5; 1969 c 484 s 1] (1563)

430.13 SCOPE. The provisions of this chapter shall apply to all cities of the first class.

The term "city council" shall be held to refer to the governing body of such cities, whether so-called or called common council or otherwise. Any certificates or bonds that may be issued to finance an improvement shall be accounted a part of the bonded debt of the city. In calculating the net indebtedness of the city due to the issue of any such certificates or bonds there may be deducted from the gross debt of the city the amount of any such certificates or bonds that are payable wholly or partly from collections of special assessments levied on property benefited thereby including those which are the general obligations of the city issuing the same, if the city is entitled to reimbursement, in whole or in part, from the proceeds of special assessments levied upon property especially benefited by such improvements.

[1911 c. 185 s. 11; 1913 c. 345 s. 6; 1923 c. 438 s. 2; 1945 c. 530 s. 2] (1564)

430.14 POWERS ADDITIONAL. The powers herewith granted shall be deemed an addition to all powers under existing laws and city charters and not a repeal or modification thereof.

[1911 c. 185 s. 12; 1923 c. 438 s. 3] (1565)

430.15 PAYMENT BY CITY; GIFTS. The city may also, if it have funds available from other sources, pay any portion of the total cost of any improvement as it deems best and raise the remainder by the methods provided in this chapter. It may also accept gifts to be used for any such purpose.

[1911 c. 185; 1913 c. 345 s. 8] (1566)