

CHAPTER 430

LAND FOR STREETS AND PARKS; ELWELL LAW

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| 430.01 | Designation of land for various uses. | 430.07 | Method of improvements; assessments. |
| 430.011 | Ordinances limiting use of streets; pedestrian malls and districts. | 430.08 | Limit on assessment installments. |
| 430.02 | Proceedings for acquisition of lands. | 430.09 | Title acquired. |
| 430.023 | Clerk to mail notices in condemnation proceedings in certain cases. | 430.10 | Control of streets, parks, and parkways. |
| 430.03 | Objections; appeal; reappraisal. | 430.101 | Pedestrian malls. |
| 430.031 | Appeals from pedestrian mall ordinances. | 430.102 | Pedestrian mall annual costs; annual improvement assessments. |
| 430.04 | Awards on appeal; assessments. | 430.11 | Improvements to be made promptly. |
| 430.05 | Council may abandon; effect on awards. | 430.12 | Bonds for improvements. |
| 430.06 | Spreading of assessment installments. | 430.13 | Scope of chapter. |
| | | 430.14 | Additional powers. |
| | | 430.15 | Payment by city; gifts. |

430.01 DESIGNATION OF LAND FOR VARIOUS USES.

Subdivision 1. Streets; parks; and parkways. The council and the board of park commissioners of a city of the first class may designate land to be acquired for a system of streets, parks, and parkways. They may take this action only by concurrent resolution adopted by a majority vote of each body. The land must be acquired under this chapter, in proceedings conducted either by the city council or the board of park commissioners, as stated in the resolution.

Subd. 2. Parking lots; pedestrian malls and uses. The council of a city of the first class may by resolution designate land to be acquired, improved, and operated for motor vehicle parking lots. By resolution, the council may designate lands to be acquired, improved, and operated for pedestrian malls. By ordinance adopted under section 430.011, the council may designate streets in central business districts to be improved primarily for pedestrian uses.

Subd. 3. Performance of duties. If the board of park commissioners acts, the duties to be performed under this chapter by the city clerk, the city engineer, and the city attorney, respectively, must be performed by the secretary, the engineer, and the attorney elected and employed by the board of park commissioners, and the powers to be exercised under this chapter by the city council may be exercised by the board of park commissioners.

Subd. 4. Definition. As used in this chapter, the term "system of streets, parks, and parkways" means a body of contiguous land designed to be used in part for streets and in part for parks or parkways. The concurrent resolution must designate which part is for streets, which part is for parks, and which part is for parkways.

Subd. 5. Independent action. If the city council wants to take, improve, or take and improve land for street purposes, to take land for motor vehicle parking lots, to take land for pedestrian malls, or to improve streets for pedestrian uses, it may act under this chapter for that purpose without the concurrence of the board of park commissioners. If the board of park commissioners wants to take, improve, or take and improve land for parks or parkways, it may act under this chapter without the concurrence of the city council.

History: (1552) 1911 c 185 s 1; 1917 c 103 s 2; 1945 c 470 s 2; 1963 c 504 s 1; 1987 c 229 art 9 s 1

430.011 ORDINANCES LIMITING USE OF STREETS; PEDESTRIAN MALLS AND DISTRICTS.

Subdivision 1. Legislative findings. The legislature finds that: (1) increases in population and automobile usage have created traffic congestion in central business districts

of cities of the first class; (2) those conditions endanger pedestrians and impede the movement of police and fire equipment, ambulances, and other emergency vehicles; (3) streets in those central business 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 those city streets as pedestrian facilities, and impairing the cities' sources of tax revenue; and (4) limitation on the use of those streets by private vehicles may be found by the council of any city of the first class 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 the streets for street purposes.

Subd. 2. Statement of policy. It is the state's policy 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 cities of the first class by adopting pedestrian mall ordinances under this section.

Subd. 3. Pedestrian mall ordinances authorized. A pedestrian mall ordinance may be adopted if the city council finds that:

(1) a street or a part of a street (i) is not a part of any state highway, (ii) is located primarily in a central business district, (iii) is improved to its maximum width for roadway and sidewalk purposes, and (iv) is congested during all or a substantial part of normal business hours;

(2) reasonably convenient alternate routes exist for private vehicles to other parts of the city and state;

(3) continued unlimited use of the street or part of the street by private vehicles may endanger pedestrians;

(4) abutting properties can reasonably and adequately receive and deliver merchandise and materials from other streets and alleys or through arrangements for limited use of the streets by carriers of merchandise and materials; and

(5) it would be in the best interests of the city and the public and of benefit to adjacent properties to use the street primarily for pedestrian purposes and pedestrian use is the highest and best use of the street or part of it.

Subd. 4. Ordinance provisions. An ordinance under subdivision 3 must (1) set forth the findings required in subdivision 3, (2) designate a street or part of a street as a pedestrian mall, (3) limit the use of the surface of the street or part of the street at times or during hours or days set by the council to pedestrians and to classes of emergency, public works, maintenance, service, and utility transportation vehicles defined in the ordinance, and (4) include other provisions required in this chapter.

Subd. 5. Intersecting streets. An ordinance under subdivision 3 must state that a limitation of use does not apply to vehicles on an intersecting street crossing the street or part of a street designated as a pedestrian mall unless the intersecting street is similarly designated.

Subd. 6. Use of pedestrian mall by public carriers. If the council finds that a street or part of a street limited under this section 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 the street or part of the street by the transit utility will benefit the city and the public and to adjacent property, the council shall permit the transit utility to use the street or part of the street for transit purposes to the extent and subject to the obligations and restrictions applicable to the transit utility in the use of other streets of the city. Upon similar findings, the council may permit use of the street or part of the street by utilities engaged in carrying persons by taxicabs.

Subd. 7. Special access permits. If any property abutting on a street or part of a street limited under this section does not, when an ordinance is adopted, have access to some other street or alley for delivery of or receiving merchandise and materials, the council shall provide for deliveries in the ordinance. It may do so by issuing a permit to the owners or occupants of the property for the use of the street or part of the street

for deliveries, or otherwise. The council shall provide for deliveries during hours and days, which need not be ordinary business hours or days, the council finds to be reasonably adequate for the purpose and not to interfere with the use of the street or part of the street by pedestrians and other authorized vehicles.

Subd. 8. Adoption with improvement proceedings. If an ordinance is to be adopted in connection with an improvement of the street under this chapter, it must so state, must be introduced as a proposed ordinance and given its first reading concurrently with the introduction and adoption of the resolution of the council beginning the improvement proceedings, and must not be given its final reading or be finally adopted until the council has taken action on the proposed improvement under section 430.02, subdivision 12.

Subd. 9. Adoption in other cases. An ordinance that is not being adopted in connection with an improvement of the street under this chapter must state that fact and be considered and adopted like other ordinances, subject to the right of appeal under section 430.031. The council shall not meet to give the ordinance its final reading or to finally adopt the 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 has been published in the official newspaper of the city at least once and has been mailed to the owners of the lots or parcels of land abutting on the proposed pedestrian mall at least three weeks before the meeting.

Subd. 10. Description of assessable properties. An ordinance adopted in connection with an improvement of the street under this chapter must describe the property to be assessed for the improvement. No property is subject to assessment for the improvement unless it is described in the ordinance.

Subd. 11. Annual costs; districts. If an ordinance is to be adopted in connection with an improvement of the street under this chapter and the ordinance includes a council determination that (1) the improvement will involve annual costs in addition to the initial cost of constructing and making the improvement, and (2) the annual costs will provide benefits primarily to adjacent property rather than to the city as a whole, the ordinance may require that the improvement and its facilities be operated and maintained under section 430.101 and the costs assessed or taxed to benefited properties under section 430.102.

Alternatively, after a pedestrian mall ordinance has been adopted or lands have been acquired or improved for a pedestrian mall, the council may require by separate ordinance or by amendment to a pedestrian mall ordinance that the improvement and its facilities be operated and maintained and the costs taxed and assessed to benefited properties under sections 430.101 and 430.102, subject to appeal under section 430.031. In that case, the ordinance must describe the properties to be assessed or taxed for annual costs. The area may be given the name "(name of street) Pedestrian Mall Improvement District."

Subd. 12. Protests. The owners of lands abutting on a street or part of a street proposed as a pedestrian mall representing a majority of the frontage on the proposed pedestrian mall may make written objection to the establishment of the proposed pedestrian mall at any time before the ordinance has been given its final reading and adopted. If they do the council shall end the proceedings for establishment of the mall. In that event, no ordinance establishing the same or substantially the same pedestrian mall may be introduced or adopted within one year after the termination.

Subd. 13. Interpretation; repeal and amendments. Notwithstanding the improvement of a street as a pedestrian mall or the adoption of a pedestrian mall ordinance, the city and its council keep their police powers and other rights and powers relating to the city street or street part constituting the pedestrian mall, and the pedestrian mall action may not be construed to be a vacation, in whole or in part, of any city street or street part in the mall area. The establishment of a pedestrian mall under this chapter is a matter of regulation only. This chapter does not prevent the city and its council, at any time after 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.** An ordinance or amendment adopted under this section does not become effective until 20 days after its final adoption and publication.

History: 1963 c 504 s 2; 1987 c 229 art 9 s 1

430.02 PROCEEDINGS FOR ACQUISITION OF LANDS.

Subdivision 1. **Plat and survey.** After adoption of the resolution, the city engineer shall make and present to the council a plat and survey of the proposed improvement. The plat or survey must show character, course, and extent of the improvement and the property necessary to be taken or interfered with, the name of the owner of each parcel of property, to the extent the engineer can readily find the name, and a statement 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, and may purchase plans or designs prepared by a competent engineer or landscape architect, to aid the city engineer in duties under this chapter.

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

The plat must also show the amount of land taken from each owner, to the extent the owners are known, and the lands contiguous to the improvements.

Subd. 2. **Commissioners or appraisers.** The city council shall appoint five freeholders of the city, no two of whom reside in the same ward, as commissioners. Their duties are to view the premises and to determine and award the amount of damages and compensation to be paid to the owners of property 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, in proportion to the benefits to be received by each parcel and without regard to a cash valuation.

Three or more commissioners constitute a quorum and may perform any duty required of the commissioners. Commissioners must be notified of their appointment. Commissioners must be sworn to the faithful discharge of their duties. A vacancy must be filled by the city council.

Subd. 3. **Notice of hearing; hearing; award and appraisalment.** (a) The commissioners shall give notice, in a manner appropriate to inform the public:

(1) that the survey and plat and the pedestrian mall ordinance, if any, are on file and available for examination in the office of the city clerk;

(2) that the commissioners will meet on a day and 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 the improvement, ascertain and award compensation and damages, view the premises to be benefited by the improvement, assess on the benefited premises, in proportion to the benefits, the amount necessary to pay the compensation and damage, and the cost of making the improvement, and hear allegations and proof offered by interested persons.

(b) The commissioners shall meet and view the premises according to the notice. After having viewed the premises, they 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 city officer. 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 the ordinance and by the related improvement and the probable effect the ordinance and improvement will have on the value of the property

and its uses, and the commissioners shall consider whether the property has access to another street or alley for delivering and receiving merchandise and materials and the extent to which the use and value of the property without the access under consideration will suffer as a result of the adoption of the ordinance and the making of the improvement.

(c) After viewing the premises and hearing the evidence offered, the 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 in making the improvement. If the rest of the property, only a part of which is to be taken or damaged by the improvement, will be benefited by the improvement, the commissioners, in considering and awarding compensation and damages, shall also consider, estimate, and offset the benefits that will accrue to the owner because of the rest of the property, and award that owner only the excess of the compensation or damages over the benefits.

Subd. 4. Assessment of compensation and damages; report; list. The commissioners shall assess the amount of the compensation and damages awarded under subdivision 3 upon the land and property benefited by the proposed improvements in proportion to the benefits, along with the expense and cost of making the improvements as fixed by the city council. No assessment may exceed the actual benefit to the assessed lot or parcel of land, less damages or injuries to the parcel that are less than the benefits. The commissioners shall prepare and report to the city council their appraisal and award. If, in their judgment, the total amount of the compensation and damages and the cost of making the improvement exceeds the actual benefits to the specific property subject to assessment, they shall also state that fact and the amount of the excess in their report.

The commissioners shall also prepare for the city council an assessment list containing their assessment of the compensation, damages, and costs in excess of the benefits to the property assessed. The list must contain a brief description of each tract or parcel of property assessed, the name or names of known owners of the tract, the amount assessed against each parcel of property, and the amount of the excess of the compensation, damages, and costs that they must return unassessed. If the city council has proposed a pedestrian mall ordinance under 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. The cost of the clerical help, 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, must be added to the other amounts to be assessed and must be assessed with them. The city attorney shall represent the city before the commissioners and produce required evidence.

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

Subd. 7. Notice of hearing. The commissioners shall file their completed report with the city clerk. The city clerk shall then prepare a list of descriptions of the several lots and parcels of land taken for the proposed improvements, the amount awarded for the taking of each lot or parcel, the names of the owner or owners of each lot or parcel, 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 each lot or parcel. The names of owners must be obtained from the commissioners or, if necessary, from the records in the office of the county treasurer. The

clerk shall give notice of the proceedings appropriate to inform the owners of the proposed action. The notice must designate a place and time at which a committee appointed by the board of park commissioners or of the council will meet to hear and consider objections to making the improvement, to the amount of damages awarded for taking or interfering with the property involved, and to the amount of the assessment for benefits to any property affected by the proceedings, and claims of irregularities in the proceedings of the city council, the board of park commissioners, or the commissioners appointed by the council or the board. Objections or claims may be made by or on behalf of an owner of a lot or parcel taken or interfered with or assessed for benefits because of the improvements.

Subd. 8. Service of notice. Immediately after the notice is given under subdivision 7 and at least two weeks before the time of the meeting of the committee designated in the notice, the city clerk shall serve a copy of the notice upon each owner of land taken for the proposed improvement or land upon which benefits have been assessed. The notice must be served by depositing it in the United States mail, postage prepaid, in an envelope plainly bearing on its front in at least 10-point type the words "Notice of Tax Assessments for Improvements Affecting Your Property," and the owner's last known address, as obtained from the records of the city clerk or the county treasurer. The failure of an owner to receive notice does not invalidate proceedings under this chapter.

If a pedestrian mall ordinance is proposed to be adopted in connection with an improvement under section 430.011, a copy of the proposed ordinance must be mailed with the notice.

Subd. 9. Written objections. (a) A person may protest the proposed improvement if the person's property is proposed to be taken, interfered with, or assessed for benefits under this chapter and if the person: (1) objects to the making of the improvement; or (2) thinks that there has been an irregularity in the proceedings of the city council or the commissioners appointed by it so that the award of the commissioners ought not to be confirmed; or (3) is dissatisfied with the amount of damages awarded for the taking of or interference with the person's property or with the amount of the assessment for benefits to any property affected by the proceedings.

(b) To protest, the person shall appear at the hearing or file with the city clerk designated in the published notice, at any time before the hearing or before the report and recommendation of the committee is filed, the person's (1) written objection to the making of the improvement, (2) objection to the damages awarded or benefits assessed, or (3) claim of a specific irregularity affecting specific property. An affected property owner or citizen or taxpayer of the city may appear at the hearing in support of or to object to the adoption of a pedestrian mall ordinance proposed under section 430.011 or may file written statements in support of or objecting to the adoption of the ordinance.

Subd. 10. Hearings by council committee. At the time and place designated in the published hearing notice, the city clerk shall present to the committee the report of the appointed commissioners and written objections or statements filed with the city clerk. The committee shall then consider those items, hear the objectors and persons appearing in favor of or against the adoption of a proposed pedestrian mall ordinance or their representatives, and adjourn the hearing as necessary.

Subd. 11. Committee report. Within ten days after the conclusion of the hearing the committee shall file with the city clerk its report and recommendation on the matter submitted to it. At that time the city clerk shall give notice that the report and recommendation have been filed and that they and the report of the commissioners will be considered by the city council at a meeting designated in the notice. The notice must be given so as to inform the persons affected and the public.

Subd. 12. Action by council. On the day set in the notice for the consideration of the reports and recommendation, or at a later meeting to which the reports and recommendation may stand over or be referred, the city council may, by resolution, annul the proceedings, confirm or annul any or all of the awards and assessments, or send

MINNESOTA STATUTES 1994

them back to the commissioners for further consideration. If further consideration is required, the commissioners may meet again at a time and place designated in a notice mailed by the city clerk to interested persons at least two weeks before the meeting, hear any further evidence given by interested persons, adjourn the meeting as necessary, correct, alter, or revise any mistakes in the award and assessment, and again report to the city council.

The council may confirm or annul the new report. In confirming the awards and assessments, the city council shall give its final reading to and vote on the adoption of any pedestrian mall ordinance proposed in connection with the improvement under section 430.011. If the ordinance is amended or fails to be adopted any improvement begun in connection with the proposed ordinance must either be abandoned or the awards and assessments must be returned to the commissioners for further consideration.

Subd. 13. Levy of assessment; assessment roll. Confirmation of an award and assessment by the city council makes the award and assessment final upon all parties interested. The city council shall then levy an assessment or, if the city council considers it necessary, a partial assessment to pay the costs of the proceedings and the improvements upon the parcels of land described in the assessment list reported by the commissioners, in accordance with the confirmed assessments or in proportion to the assessments levied.

The city council may delay levying assessments under this chapter until completion or substantial completion of the improvements proposed to be made when the actual cost of the improvements and proceedings has been determined. The cost may include interest at five percent per year on money advanced by the city. The city council shall then levy assessments in the proceeding, aggregating the amount of the cost or the part of the cost the city council has determined, in conformity with this chapter, upon land described in the assessment list reported to the city council by the commissioners. Assessments must be proportionate to and not greater than the amounts confirmed upon the parcels of land by the council or by the court upon appeal in the proceeding. The city council shall adopt an assessment roll of the assessments. The roll may be substantially in the following form:

“The city council assesses and levies on and against the land described below the sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking of or injury to private property and the estimated cost of improvements in and about the as shown on the plat and survey on file in the office of the city clerk. This levy conforms to the report and assessment of commissioners 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 assessed parcels.

| Name of Owner, if known | Description of land Lot Block | Amount Dollars Cents |
|---|----------------------------------|-------------------------|
| Done at a meeting of the council this day of, A.D. | | |
| Attest | | |
| City Clerk | | Council President.” |

History: (1553) 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; 1984 c 543 s 51-54; 1986 c 444; 1987 c 229 art 9 s 1

430.023 CLERK TO MAIL NOTICES IN CONDEMNATION PROCEEDINGS IN CERTAIN CASES.

If a city of the first class is authorized in its charter to condemn property for public use and to appoint commissioners to assess damages or benefits on condemned property and is required by its charter to give notice of the filing of the commissioners' report, the city clerk shall give the required notice. Notice must be given by mailing it to the person whose name appears on the records of the auditor of the county in which

the 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.

History: 1943 c 249 s 1; 1987 c 229 art 9 s 1

430.03 OBJECTIONS; APPEAL; REAPPRAISAL.

Subdivision 1. Appeal procedure; bond. A person whose property is proposed to be taken, interfered with, or assessed for benefits under this chapter, who (1) thinks there is an irregularity in the council proceedings or action of the commissioners so that the award of the commissioners ought not to be confirmed, or (2) is dissatisfied with the amount of damages awarded for taking or interfering with the person's property or with the amount of the assessment for benefits to any property affected by the proceedings, may appeal from the city council's order of confirmation to the district court of the county within 20 days after the order. This appeal must be made by serving a written notice of the appeal upon the city clerk. The appeal must specify the property of the appellant affected by the award and assessment and refer to the objection filed. The appellant shall also deliver to the city clerk a bond to the city, executed by the appellant or someone on the appellant's behalf, with two sureties, in the amount of \$50 conditioned to pay costs that may be awarded against the appellant. The city clerk shall then make out and send to the court administrator of the district court a copy of the commissioners' award as confirmed by the council, the order of the council confirming it, and the objection filed by the appellant, all certified by the clerk to be true copies, within ten days after the taking of the appeal.

Subd. 2. Multiple appeals. If more than one appeal is taken from an award, the city clerk need not, in subsequent appeals, send anything to the court administrator except a certified copy of the appellant's objections.

Subd. 3. Pleading; issues. An appeal requires no pleading. The court shall determine (1) whether there was any irregularity in the proceedings or omission of duty prejudicial to the appellant and specified in the appellant's written objections, so that the appellant's award or assessment ought not to stand, and (2) whether the commissioners had jurisdiction to take action affecting the appellant.

Subd. 4. Consolidation. If a person claims that a pedestrian mall ordinance proposed in connection with an improvement under section 430.011 and adopted by the city council is invalid, the person shall appeal under section 430.031, subject to the right of the court to consolidate for hearing any appeal taken under that section with an appeal taken under this section.

Subd. 5. Hearing; affected parties. The case may be heard on eight days' notice at any general or special term of the court. It has precedence over other civil cases. The judgment of the court must be either to confirm or annul the proceedings only as they affect the property of the appellant proposed to be taken, damaged, or assessed for benefits and described in the written objection. No appeal or writ of error may be taken from this determination.

Subd. 6. Reappraisal. If the amount of damages awarded or assessment made for benefits is complained of by the appellant, the court shall, if the proceedings are confirmed in other respects, appoint as commissioners three disinterested freeholders who are residents of the city to reappraise the damages or benefits. The parties to the appeal must be heard by the court upon the appointment of these commissioners. 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 commissioners, view the premises, and hear from interested parties allegations and proofs pertinent to the question of the amount of the damages or assessments. These commissioners are governed by the provisions in this chapter governing commissioners appointed by the city council, including the method of arriving at the amount of damages and the offset of benefits to other property of the same owners. They shall, after the hearing and after they view the premises, report to the court their appraisal of damages or assessments of benefits in respect to the appellant. The award or assessment of these commissioners is final unless it is set aside by the court for good cause. If the report is set aside, the court may recommit it to the same commissioners or appoint new commissioners.

Subd. 7. Costs. The court shall allow a reasonable compensation to commissioners for their services and award costs of the appeal including the compensation of commissioners, as it thinks just. If the court decides that the appeal was frivolous or vexatious, it may charge double costs against the appellant.

Subd. 8. Appeal to court of appeals. The city or any party may appeal from the court's final order to the court of appeals.

Subd. 9. Filing reports and papers; serving notices. Reports and other papers from city council proceedings under this chapter must be filed in the office of the city clerk; notices of appeal and other notices to the city must be served upon the city clerk. Reports and other papers from park board proceedings under this chapter must be filed in the office of the secretary or other recording officer of the board; notices of appeal and other notices to the city must be served upon the secretary or other recording officer of the board.

History: (1554) 1911 c 185 s 3; 1913 c 345 s 2; 1925 c 417 s 2; 1963 c 504 s 11; 1983 c 247 s 154; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 9 s 1

430.031 APPEALS FROM PEDESTRIAN MALL ORDINANCES.

Subdivision 1. Limitation of actions. No action may be commenced or maintained, and no defense interposed, questioning the validity, regularity, or legality of all or part of a pedestrian mall ordinance, or an amendment, to it adopted by a city of the first class under section 430.011, subdivision 3 or 13 except by an appeal to the district court of the county in which the city is located within 20 days after the final adoption and publication of the ordinance or amendment.

Subd. 2. Appeals authorized. An appeal under this section may be commenced and maintained on the grounds that the ordinance is unreasonable or arbitrary or unlawfully obstructs the public use and interest in a street or part of a street named in the ordinance or takes or interferes with the appellant's property without due process of law, or on any other lawful grounds. An appeal under this section may be taken by a citizen or taxpayer of the city or a person whose property is or may be taken or interfered with without due process of law by reason of the enactment or enforcement of the ordinance.

Subd. 3. Proceedings on appeal. An appeal under this section may be made by serving a written notice on the city clerk setting forth the grounds for the appeal and any property the appellant claims to be taken or interfered with. The city clerk shall make out and send to the court administrator of the district court (1) a certified copy of the ordinance, (2) if not previously filed, a certified copy of the award of the commissioners as confirmed by the council, and (3) the order of the council confirming the award in any improvement proceeding connected with the ordinance. No other pleadings are required. No surety bond is required except upon motion of the city under chapter 562.

Subd. 4. Effect of appeal. An appeal under this section suspends the ordinance until the action is determined 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 a district court judgment in the action must be taken within 30 days after notice of entry of the judgment. A party may apply to the court of appeals for an order fixing the time and manner of hearing the appeal; the court may provide for a speedy hearing.

History: 1963 c 504 s 12; 1976 c 239 s 44; 1983 c 247 s 155; 1Sp1986 c 3 art 1 s 82; 1987 c 229 art 9 s 1

430.04 AWARDS ON APPEAL; ASSESSMENTS.

Subdivision 1. Direct payment or assessment. If an award of damages to appellants after an appeal to the district court exceeds the amount of the award appealed from, or if an assessment of benefits made in respect to an appellant upon appeal is less than the amount of the assessment of benefits appealed from, the city may pay the amount of this increase or decrease from the permanent improvement fund or any available city fund. Alternatively, the city council may have the amount assessed upon any property

benefited by the proposed improvements in addition and without prejudice to prior assessments made in the proceedings, referring the matter to the commissioners appointed by the council in the proceeding or to new commissioners to be appointed by the council. The commissioners must have the qualifications required of commissioners appointed under section 430.02 and must take an oath to faithfully discharge their duties as commissioners.

Subd. 2. Notice of assessment hearing. The commissioners shall give notice of the time when and the place where they will meet to hear persons interested and assess the amounts of the increase of awards of damages or decrease of assessments of benefits on land previously assessed or to assess benefits on land not previously assessed for benefits in the proceeding. The notice must be sent to owners of land entitled to increase of their awards upon any appeal and to owners of land to be assessed for benefits that were not assessed in the original proceeding by the commissioners. It must be deposited in the post office of the city, postage paid, addressed to the owners' last known place of residence, either known to the commissioners or obtained from the office of the county treasurer. The failure of any owner to receive notice does not invalidate any proceedings under this chapter.

Subd. 3. Assessment list. The commissioners shall meet at the time and place designated in their notice, hear interested persons, and assess the amount of the increased awards of damages, decreased assessments of benefits, or new and original assessments of benefits on property benefited by the proposed improvements in proportion to the benefits. The amount of an assessment may not exceed the actual benefit to the assessed land. The commissioners shall file with the city clerk an assessment list containing a brief description of each piece of property assessed, the names of the owners, if known, and the amount assessed; the city clerk shall present this list to the city council for consideration. Minutes of the presentation of this assessment list to the city council, included in the record of the proceedings of the city council, are sufficient notice to concerned persons. This assessment list must lie over without action by the city council until a regular meeting of the council at least one week later. At that or a later meeting the city council may confirm the assessments and assessment roll or send them back to the commissioners for further consideration.

Subd. 4. Appeal. An interested person 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 under section 430.03. A decrease in an assessment on appeal may be paid by the city from the permanent improvement fund or from any available city fund, or the city council may have the amount reassessed under this chapter.

History: (1555) 1911 c 185 s 3a; 1915 c 86 s 1; 1925 c 417 s 3; 1984 c 543 s 55; 1986 c 444; 1987 c 229 art 9 s 1

430.05 COUNCIL MAY ABANDON; EFFECT ON AWARDS.

During proceedings for improvements under this chapter or within 90 days after the final order of the court on the last appeal from those proceedings, the city council may set aside awards and abandon proceedings concerning parcels if it thinks that is in the city's interest. The city council may also rescind and annul a pedestrian mall ordinance adopted after being proposed under section 430.011 within 90 days after the final order of the court on the last appeal from those proceedings under section 430.03 or 430.031. If it does, any improvement begun in connection with the ordinance is abandoned and any awards and assessments are set aside. Awards, if not set aside, are a charge upon the city, for the payment of which the city pledges its faith and credit, and the city is entitled to immediate possession. The city council may order awards that are not set aside to be paid into the district court of the county for the use and benefit of those who are entitled to them. The money paid into court must be paid out under order of the court upon application of interested parties after notice required by the court.

History: (1556) 1911 c 185 s 4; 1963 c 504 s 13; 1987 c 229 art 9 s 1

If the assessment against a piece or parcel of property has been paid in full, and the amount to be refunded does not exceed \$1, the city council may deposit the amount of the potential refund in the city's permanent improvement fund or bond redemption fund.

If the amount to be refunded exceeds \$1, but does not exceed \$20, the city comptroller shall mail to the current owner of the property a notice stating that the refund is available. The notice must be mailed within 60 days after the city council determines the actual cost of the improvement.

If the amount to be refunded exceeds \$20 the following notice procedure must be followed. The city comptroller shall mail to the person who owned the property when the assessment was paid, at the person's last known address, a notice stating that the refund is available. The notice must be mailed within 60 days after the city council determines the actual cost of the improvement. If a response is not received from the owner within ten days of the date of mailing, a second notice must be mailed. If the refund is not claimed by the person who owned the property when the assessment was paid within 30 days of the date of mailing the last required notice, the city council may deposit the amount of the potential refund in the city's permanent improvement fund or bond redemption fund.

Subd. 6. Payments by city. If some 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 part of the excess of estimated cost equal to the part of the total estimated cost of the improvement and damages that has been or is assessed against benefited property. The council shall not direct that a certificate be issued to the county auditor until the city engineer reports that the improvement work has been completed and each item of damage or cost in the proceeding has been paid. This report by the city engineer must be made to the city council immediately upon completion of the work in the proceeding. In a proceeding where there is or may be an excess of estimated cost and there is or will be a balance in the fund in the proceeding over and above the actual cost, the city council may withdraw from the fund a percentage of the fund equal to the percentage of the cost of the improvement paid by the city and have this money deposited in the fund from which it was originally drawn or taken by the city council.

Subd. 7. Permissible improvements. A street, park, parkway, or pedestrian mall may be improved and the cost assessed and raised under this chapter, including 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. For streets or parkways over 80 feet wide, the resolution may, to facilitate connections with private property and avoid 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 another feasible arrangement or device.

History: (1558) 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; 1977 c 75 s 1; 1984 c 543 s 56; 1986 c 444; 1987 c 229 art 9 s 1; 1989 c 115 s 5

430.08 LIMIT ON ASSESSMENT INSTALLMENTS.

If land is acquired under this chapter for streets, parks, and parkways for less than \$3,000, the amount of the assessment for the cost must be collected in less than six equal annual installments.

History: (1559) 1917 c 103 s 3; 1919 c 219; 1987 c 229 art 9 s 1

430.09 TITLE ACQUIRED.

Title obtained to land designated for park purposes and motor vehicle parking lots under this chapter must be an absolute estate in fee simple, unqualified in any way, and must vest in the city. The city shall take only an easement in other land.

History: (1560) 1911 c 185 s 7; 1945 c 470 s 5; 1987 c 229 art 9 s 1

430.10 CONTROL OF STREETS, PARKS, AND PARKWAYS.

When proceedings under this chapter are completed, the streets, parks, and parkways must be governed as other streets, parks, and parkways are governed by the city council and board of park commissioners respectively. Streets, however, 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 acquired must be controlled and operated by the city council. The city council shall set parking rates so as to pay the cost of operation of the lots. Money received must be deposited in a fund designated by the city council and kept separate from other city funds. Funds available in another permanent or current fund may be advanced to the designated fund for temporary use and must be returned to the fund from which advanced when receipts from operation permit.

History: (1561) 1911 c 185 s 8; 1945 c 470 s 6; 1987 c 229 art 9 s 1

430.101 PEDESTRIAN MALLS.

Subdivision 1. Use of pedestrian malls. A pedestrian mall acquired under section 430.01 or improved under section 430.07 may be used under the direction of the city council for any purpose or activity that 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 permitted by an applicable pedestrian mall ordinance adopted under section 430.011 or other applicable law, ordinance, or power.

Subd. 2. Regulation and permits. After a pedestrian mall ordinance has been adopted or land has been acquired for a pedestrian mall, the city engineer shall prepare a plan and submit it to the city council. The plan must be prepared with the assistance of the city attorney and any consulting engineer or landscape architect or other consultant employed by the council to assist an advisory board appointed under subdivision 3. The plan must include:

(1) 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;

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

(3) proposed regulations governing charges in the distribution of movables and permitted uses, the issuance of permits for uses, and fees and rentals to be charged for permits and uses; and

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

The plan must be filed with the city clerk and be open to inspection. The city council shall by ordinance approve and adopt the plan and regulations with additions or modifications it considers proper after notice and hearings before it or its appropriate committee that the council considers necessary or desirable. The council may amend the plan and regulations. Any furniture, structure, facility, or use located or permitted under the plan or a pedestrian mall improvement in the street covered by the plan or improvement is not, because of that location or use, a nuisance or unlawful obstruction or condition. Neither the city nor any user acting under permit is liable for any injury to person or property unless the furniture, structure, facility, or use is negligently constructed, maintained, or operated.

Subd. 3. Advisory board. In its discretion, the city council may create and appoint an advisory board. A majority of the members must be owners or occupants of properties adjoining a pedestrian mall or their representatives. The board shall advise the city council and the city engineer on the acquisition, construction, and improvement of a

pedestrian mall, the making of a plan for the mall, and the operation and maintenance of the mall, and meet and make recommendations on complaints and requests of members of the public and owners and occupants of adjoining property. An 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, the city engineer, other officials, owners and occupants of adjoining properties, and users of the pedestrian mall.

History: 1963 c 504 s 15; 1975 c 28 s 1; 1987 c 229 art 9 s 1

430.102 PEDESTRIAN MALL ANNUAL COSTS; ANNUAL IMPROVEMENT ASSESSMENTS.

Subdivision 1. Costs; estimates; categories. (a) When the plan is submitted and then annually on or before June 15, the city comptroller and city engineer shall, with the assistance of the advisory board, report to the city council: (1) an estimate of the cost of operating and maintaining and annual improvement costs to each pedestrian mall improvement district in the city for the city's next fiscal year to be incurred under the plan then in effect; and (2) an estimate of changes in the amounts of those costs that would result from any change in the plan recommended to or under consideration by the city council.

(b) The estimate must be reasonably itemized and include a summary of the categories of cost properly chargeable as follows:

(1) the amount to be charged against the general funds of the city, which the amount 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;

(2) the amount to be charged against benefited properties in the district in proportion to benefits, which is the total of costs of annual improvements to be made in the district during the ensuing year, not exceeding the total benefits to the assessable tracts and parcels of land in the district received from the annual improvements; and

(3) the amount if any, to be specially taxed against properties in the district in proportion to the cash valuation of those properties, which is the net amount of estimated costs remaining after deducting the amount to be charged to the general funds of the city under clause (1), the amount to be specially assessed under clause (2), and rentals to be received for use of the mall by vendors.

Subd. 2. Council approval; special tax levy limitation. The council shall receive and consider the estimate required in subdivision 1 and the items of cost after notice and hearing before it or its appropriate committee as it considers necessary or expedient, and shall approve the estimate, with necessary amendments. The amounts of each item of cost estimated are then appropriated to operate, maintain, and improve the pedestrian mall during the next fiscal year. The amount of the special tax to be charged under subdivision 1, clause (3), must not, however, exceed 0.12089 percent of market value of taxable property in the district. The council shall make any necessary adjustment in costs of operating and maintaining the district to keep the amount of the tax within this limitation.

Subd. 3. Annual improvement assessment procedure; appeals. When the council has acted on the estimate of costs, the city engineer, with the assistance of the city assessor, shall prepare an assessment roll. The roll must list separately the amounts to be specially assessed against benefited and assessable property in the district in proportion to the benefits, descriptions of the property, and the names of the owners of the property to the extent they are available to the engineer. The assessment roll must be filed in the office of the city clerk and be available there for inspection.

The city council shall meet to consider objections to the amounts of special assessments at least ten days after a notice of hearing has been mailed to the named owners of the tracts, parcels, and lots of property proposed to be assessed. The notice must give the time, place, and purpose of the meeting, but may refer to the assessment roll for further particulars. When the city council has approved the amounts of the special

assessments in the assessment roll or has changed them, the city clerk shall certify a copy of the assessment roll, with any changes, to the county auditor to be extended on the tax lists of the county. The special assessments must 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, an aggrieved person may appeal to the district court as provided in section 430.03 except that no commissioners will be appointed to consider the amount of benefits. If the court finds 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. If the court finds that the assessment is valid but for the inclusion of one or more items of cost, it shall reduce the assessment by the amount erroneously included and confirm the assessment as reduced. Otherwise the court shall remand the matter to the city council for reconsideration and reassessment of the benefits after notice and hearing like those for the original assessments under this subdivision. Objections to the assessment are waived unless appealed under this paragraph.

Subd. 4. Costs and annual improvements defined. For the purposes of this chapter, with respect to pedestrian malls, "annual improvements" means any reconstruction, replacement, or repair of trees and plantings, furniture, roadway fixtures, sidewalks, shelters, and other facilities of a pedestrian mall, snow removal, sweeping, furnishing overhead or underground heating for enjoyment of pedestrians, and any other local improvement benefiting properties within the district. For the purposes of this chapter, with respect to annual improvements to and operation and maintenance of pedestrian malls, "costs" means costs of annual improvements, fees of consultants employed by the city council to assist in the planning of annual improvements, premiums on public liability insurance insuring the city and users of the pedestrian mall and on property damage insurance for pedestrian mall facilities, reasonable and necessary costs to the city for the time of city officials, the advisory board, 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 for the mall, publication costs, and 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. Money appropriated and collected for annual improvement costs and costs of operating and maintaining a pedestrian mall must be credited to a special account. The council may incur costs for annual improvements to or for operating and maintaining a pedestrian mall during any fiscal year, though not provided for in an approved estimate for that fiscal year, if the council considers it necessary to provide for annual improvements or operation or maintenance before the succeeding fiscal year. In that case, the costs incurred must 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 unspent at the end of a fiscal year must be charged against the proper category of the next estimate of costs to be approved.

History: 1963 c 504 s 16; 1984 c 543 s 57; 1986 c 444; 1987 c 229 art 9 s 1; 1988 c 719 art 5 s 84; 1989 c 329 art 13 s 20; 1990 c 480 art 9 s 18; 1991 c 291 art 1 s 35,36

430.11 IMPROVEMENTS TO BE MADE PROMPTLY.

The improvements under this chapter must be made as soon as possible after the land is secured by the body conducting the proceedings for acquisition.

History: (1562) 1911 c 185 s 9; 1987 c 229 art 9 s 1

430.12 BONDS FOR IMPROVEMENTS.

The city council may issue and sell special certificates of indebtedness or special street or parkway improvement bonds as necessary to pay for making improvements and paying damages. The holders of the certificates or bonds are entitled to all amounts realized on any assessment, or, in the council's discretion, the holders of a series of two or more certificates or bonds have those rights against one assessment or against the

assessments in two or more different proceedings. The principal and interest will be payable at fixed dates out of the funds collected from the assessments, including interest and penalties, and those funds are pledged for the pro rata payment of the certificates or bonds and related interest as they 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 under this section and for the time specified in section 430.06. If the city, because of this guaranty, redeems a certificate or bond, it is subrogated to the holder's rights. For the purpose of this guaranty, penalties collected must be credited upon deficiencies of principal and interest before the city is liable. These certificates or bonds must be sold at public sale or by sealed proposals at a meeting after at least two weeks' published notice, to the purchaser who will pay the par value at the lowest interest rate. The certificates or bonds must be drawn accordingly.

The rate of interest may not exceed seven percent per year, payable annually or semiannually. The city clerk shall certify to the county auditor the rate of interest determined at the first bond sale held for any improvement under this chapter, and interest must be computed on the assessments at this annual rate, in accordance with section 430.06. If the rate of interest determined at any subsequent bond sale for the same improvement is greater than the rate determined at the first bond sale, the difference between these rates of interest must be a general city charge.

If the proceeds of 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 they were issued, or if the proceeds are not immediately required for the prosecution or completion of the improvement, the proceeds may meanwhile be used by the city council for other improvements authorized under this chapter, and the proceeds used must be replaced and made good as necessary from the proceeds of special certificates of indebtedness or special bonds issued for other improvements.

Sections 474A.01 to 474A.21 apply to any obligations issued under this section that are subject to limitation under a federal volume limitation act as defined in section 474A.02, subdivision 9, or existing federal tax law as defined in section 474A.02, subdivision 8.

History: (1563) 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; 1984 c 582 s 8; 1986 c 465 art 1 s 4; 1987 c 229 art 9 s 1

430.13 SCOPE OF CHAPTER.

This chapter applies to cities of the first class.

The term "city council" means the governing body of a city.

Certificates or bonds that may be issued to finance an improvement under this chapter are part of the bonded debt of the city. In calculating the net indebtedness of the city due to the issue of certificates or bonds, there may be deducted from the gross debt of the city the amount of certificates or bonds that are payable wholly or partly from collections of special assessments levied on property benefited by the improvements, including general obligations of the issuing city, if the city is entitled to reimbursement, in whole or in part, from the proceeds of special assessments levied upon property especially benefited by the improvements.

History: (1564) 1911 c 185 s 11; 1913 c 345 s 6; 1923 c 438 s 2; 1945 c 530 s 2; 1987 c 229 art 9 s 1

430.14 ADDITIONAL POWERS.

The powers granted in this chapter are in addition to other powers in laws and city charters and do not repeal or modify any law or city charter.

History: (1565) 1911 c 185 s 12; 1923 c 438 s 3; 1987 c 229 art 9 s 1

MINNESOTA STATUTES 1994

679

LAND FOR STREETS AND PARKS; ELWELL LAW 430.15

430.15 PAYMENT BY CITY; GIFTS.

A city may, if it has funds available from other sources, pay part of the cost of an improvement and raise the rest by the methods provided in this chapter. The city may also accept gifts to be used to pay for an improvement.

History: (1566) 1911 c 185; 1913 c 345 s 8; 1987 c 229 art 9 s 1