

1975 Assembly Bill 495

Date published: May 19, 1976

CHAPTER 255, Laws of 1975

AN ACT to create 66.610 of the statutes, relating to prescribing the methods by which cities of the 1st class may establish or improve pedestrian malls in or adjacent to business districts.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Legislative findings; public policy. (1) The legislature finds that increases in population and automobile usage have created conditions of traffic congestion in business districts of cities of the 1st class which constitute hazards to the health, safety and welfare of pedestrians, impede the movement of fire fighting equipment, ambulances and other emergency vehicles and contribute to urban blight and economic loss.

(2) It is the public policy of this state to permit cities of the 1st class to limit the use of private vehicles and to establish pedestrian malls on such streets for the purposes of protecting public welfare, providing for the effective movement of persons and preserving and enhancing the function and appearance of its business districts.

SECTION 2. 66.610 of the statutes is created to read:

66.610 Pedestrian malls in cities of the 1st class. (1) **PURPOSE.** The purpose of this section is to authorize any city of the 1st class to undertake, develop, finance, construct and operate pedestrian malls as local improvements.

(2) **DEFINITIONS.** As used in this section:

(a) "Annual pedestrian mall improvement" includes, without limitation because of enumeration, any reconstruction, replacement or repair of trees, plantings, furniture, shelters or other pedestrian mall facilities.

(b) "Annual pedestrian mall improvement cost" includes, without limitation because of enumeration, planning consultant fees, public liability and property damage insurance premiums, reimbursement of the city's reasonable and necessary costs incurred in operating and maintaining a pedestrian mall, levying and collecting special assessments and taxes, publication costs, and any other costs related to annual improvements and the operation and maintenance of a pedestrian mall.

(c) "Board of assessment" means the board created under chapter 275, laws of 1931, as amended, for the purpose of estimating benefits and damages in connection with the creation or improvement of a pedestrian mall.

(d) "Business district" means an existing recognized area of a city principally used for commerce or trade.

(e) "City" means a city of the 1st class.

(f) "Commissioner of public works" means the board of public works, commissioner of public works, or any other city board or officer vested with authority over public works.

(g) "Community development advisory body" means any corporation or unincorporated association whose shareholders or members are owners or occupants of property included in a proposed or existing pedestrian mall district.

(h) "Council" and "common council" mean the governing body of the city.

(i) "Intersecting street" means, unless the council declares otherwise, any street which meets or intersects a pedestrian mall, but includes only those portions thereof which lay between the mall or mall intersection and the first intersection of such intersecting street with a street open to general vehicular traffic.

(j) "Mall intersection" means any intersection of a city street which is part of a pedestrian mall with any other street.

(k) "Owner" includes any person holding the record title of an estate in possession in fee simple or for life, or a vendor of record under a land contract for the sale of an estate in possession in fee simple or for life.

(L) "Pedestrian mall" means any street, land or appurtenant fixture designed primarily for the movement, safety, convenience and enjoyment of pedestrians.

(m) "Pedestrian mall improvement" means, without limitation because of enumeration, any construction or installation of pedestrian thoroughfares, perimeter parking facilities, public seating, park areas, outdoor cafes, skywalks, sewers, shelters, trees, flower or shrubbery plantings, sculptures, newsstands, telephone booths, traffic signs, sidewalks, traffic lights, kiosks, water pipes, fire hydrants, street lighting, ornamental signs, ornamental lights, graphics, pictures, paintings, trash receptacles, display cases, marquees, awnings, canopies, overhead or underground radiant heating pipes or fixtures, walls, bollards, chains and all such other fixtures, equipment, facilities and appurtenances which, in the council's judgment, will enhance the movement, safety, convenience and enjoyment of pedestrians and benefit the city and the affected property owners.

(n) "Pedestrian mall district" means any geographical division of the city designated by the board of assessment for the purpose of undertaking, developing, financing, constructing and operating a pedestrian mall.

(o) "Skywalk" means any elevated pedestrian way.

(p) "Street" means any public road, street, boulevard, highway, alley, lane, court or other way used for public travel.

(3) ACQUISITION, IMPROVEMENT AND ESTABLISHMENT OF PEDESTRIAN MALLS. (a) Upon petition of any community development advisory body or upon its own motion, the council may by resolution designate lands to be acquired, improved and operated as pedestrian malls or may by ordinance designate streets, including a federal, state, county or any other highway system with the approval of the jurisdiction responsible for maintaining that highway system, in or adjacent to business districts to be improved for primarily pedestrian uses. The council may acquire by gift, purchase, eminent domain, or otherwise, land, real property or rights-of-way for inclusion in a pedestrian mall district or for use in connection with pedestrian mall purposes. The council may also make improvements on mall intersections, intersecting streets or upon facilities acquired for parking and other related purposes, if such improvements are necessary or convenient to the operation of the mall.

(b) In establishing or improving a pedestrian mall, the council may narrow any street designated a part of a pedestrian mall, reconstruct or remove any street vaults or hollow sidewalks existing by virtue of a permit issued by the city, construct crosswalks at any point on the pedestrian mall, or cause the roadway to curve and meander within the limits of the street without regard to the uniformity of width of the street or curve or absence of curve in the center line of such street.

(c) 1. Subject to subd. 2, the council may authorize the payment of the entire cost of any pedestrian mall improvement established under this section by appropriation from the general fund, by taxation or special assessments, and by the issuance of municipal bonds, general or particular special improvement bonds, mortgage bonds, mortgages or certificates, or by any combination of such financing methods.

2. If such improvement is financed by special assessments and special improvement bonds are not issued, such special assessments, when collected, shall be applied to the payment of the principal and interest on any general obligation bonds issued or to the reduction of general taxes if such general obligation bonds or general tax levy are used to finance the improvement.

(d) The council may exercise the powers granted by this subsection only if it makes the findings required under sub. (4) and complies with the procedures and requirements under subs. (5), (6) and (8).

(4) PRELIMINARY FINDINGS. No pedestrian mall may be established under sub. (3) unless the council finds that:

(a) The proposed pedestrian mall will be located primarily in or adjacent to a business district.

(b) There exist reasonably convenient alternate routes for private vehicles to other parts of the city and state.

(c) The continued unlimited use by private vehicles of the streets or parts thereof in the proposed mall district endangers pedestrian safety.

(d) Properties abutting the proposed mall can be reasonably and adequately provided with emergency vehicle services and delivery and receiving of merchandise or materials either from other streets or alleys or by the limited use of the pedestrian mall for such purposes.

(e) It is in the public interest to use such street or portions thereof primarily for pedestrian purposes.

(5) PROCEDURES. (a) Before establishing a pedestrian mall or undertaking any pedestrian mall improvement, the council shall by resolution authorize the commissioner of public works and the local planning agency to make studies and prepare preliminary plans for the proposed project. The local planning agency shall hold a public hearing on these studies and preliminary plans.

(b) Upon receiving the authority under par. (a) and upon completion of the public hearing, the commissioner of public works shall prepare a report which shall include:

1. A plat and survey showing the character, course and extent of the proposed pedestrian mall.

2. A description of any proposed alterations of any street and of any public or private utilities running under or over any public way.

3. A description of the methods to be used in completing the project, including information on grading, drainage, planting, street lighting, paving, curbing, sidewalks, the types of construction materials and the proposed initial distribution and location of any movable furniture, sculptures, pedestrian or vehicle traffic control devices, flowers and plantings and any other structures or facilities.

4. A description of the property necessary to be acquired or interfered with and the identity of the owner of each such parcel if the same can be readily ascertained by the commissioner.

5. An estimate of the cost of each item in the proposed project, described separately or in reasonable classifications detailed to the council's satisfaction.

(c) In preparing such report, the commissioner of public works shall consult with any community development advisory body which has been organized in the proposed pedestrian mall district.

(d) After referring the report described in par. (b) to the city plan commission for review and recommendations, the commissioner of public works shall submit such report, with the city plan commission's recommendations, if any, to the council and shall file a copy in the office of the city clerk. The council may then refer the report and recommendations, with any modifications it deems necessary, to the board of assessment for action pursuant to chapter 275, laws of 1931, as amended.

(e) Notwithstanding any other provision of this section, if a petition protesting the establishment of a pedestrian mall or a pedestrian mall improvement, duly signed and acknowledged by the owners of 51% or more of the front footage of lands abutting a street or part thereof proposed as a pedestrian mall, is filed with the city clerk at any time prior to the conclusion of all proceedings required under this section, the council shall terminate its proceedings, and no proposal for the establishment of the same or substantially the same mall may be introduced or adopted within one year after such termination.

(f) Proceedings governing the establishment of a pedestrian mall or the undertaking of a pedestrian mall improvement shall be governed by chapter 275, laws of 1931 as the same has been and from time to time may be amended, the provisions of which are made a part of this section so far as applicable and not inconsistent herewith.

(6) ORDINANCES; REQUIRED PROVISIONS. Any ordinance establishing a pedestrian mall shall:

(a) Contain the findings required under sub. (4).

(b) Designate the streets, including intersecting streets, or parts thereof to be used as a pedestrian mall.

(c) Limit the use of the surface of such street or part thereof to pedestrian users and to emergency, public works, maintenance and utility transportation vehicles during such times as the council determines appropriate to enhance the purposes and function of the pedestrian mall.

(7) **USE BY PUBLIC CARRIERS.** If the council finds that a street or part thereof which is designated as a pedestrian mall is served by a common carrier engaged in mass transportation of persons within the city and that continued use of such street or part thereof by such common carrier will benefit the city, the public and adjacent property, the council may permit such carrier to use such street or part thereof for such purposes to the same extent and subject to the same obligations and restrictions which are applicable to such carrier in the use of other streets of the city. Upon like findings, the council may permit use of such street or part thereof by taxicabs or other public passenger carriers.

(8) **PERMITS.** (a) If, at the time an ordinance establishing a pedestrian mall is adopted, any property abutting such pedestrian mall or part thereof does not have access to some other street or alley for the delivery or receiving of merchandise or materials, such ordinance shall provide for either:

1. The issuance of special access permits to the affected owners for such purposes;
or

2. The designation of the hours or days on which such pedestrian mall may be used for such purposes without unreasonable interference with the use of the mall or part thereof by pedestrians and other authorized vehicles.

(b) The council may issue temporary permits for closing a pedestrian mall or any part thereof to all vehicular traffic for the promotion and conduct of sidewalk art fairs, sidewalk sales, craft shows, entertainment programs, special promotions and for such other special activities consistent with the ordinary purposes and functions of the pedestrian mall.

(9) **EXCESS ESTIMATED COST; ASSESSMENT ADJUSTMENTS.** (a) If, after the completion of any pedestrian mall improvement, the commissioner of public works certifies that the actual cost is less than the estimated cost upon which any aggregate assessment is based, such aggregate assessment shall be reduced, subject to par. (c), by a percentage amount of the excess estimated cost which is equal to the percentage of the estimated cost financed by such aggregate assessment. The city comptroller shall certify to the city treasurer the amount refundable under this subsection.

(b) If such aggregate assessment has been fully collected, the city treasurer shall refund the excess assessment to the affected property owners on a prorata basis.

(c) If such aggregate assessment has not been fully collected, the amount of the refundable assessment shall be reduced by a sum determined by the council to be sufficient to cover anticipated assessment collection deficiencies, and the balance, if any, shall be refunded to the affected owners on a prorata basis. The treasurer shall deduct the appropriate amount from instalments due after the receipt of the certificate from the city comptroller.

(10) **ANNUAL COSTS; SPECIAL ACCOUNT.** (a) Concurrently with the submission of the plan, and annually thereafter by June 15 of each year, the city comptroller and the commissioner of public works, with the assistance of a community development advisory body, if any, shall furnish the council with a report estimating the cost of improving, operating and maintaining any pedestrian mall district for the next fiscal year. Under the plan in effect, such report shall include itemized cost estimates of any

proposed changes in the plan under consideration by the council and also a detailed summary of the estimated costs chargeable to the following categories:

1. The amount of the annual costs chargeable to the general fund. Such amount may not exceed that amount which the city normally allocates from the general fund for maintenance and operation of a street of similar size and location not improved as a pedestrian mall.

2. The amount of the annual costs chargeable to owners of property in the district who are benefitted by such annual mall improvements. The aggregate amount assessed against such owners may not exceed the aggregate benefits accruing to all such assessable property.

3. The amount of the annual costs, if any, to be specially taxed against taxable property in the district. Such amount shall be determined by deducting from the estimated annual costs the amounts under subds. 1 and 2 and the amount of anticipated rentals received from vendors using pedestrian mall facilities.

(b) Moneys appropriated and collected for annual pedestrian mall improvement costs shall be credited to a special account. The council may incur such annual costs as it deems necessary, whether or not they have been included in the budget for that fiscal year, except that such nonbudgeted expenditures shall be included in the estimate required under par. (a) for the next following fiscal year. Any unexpended balances in such special account remaining at the end of a fiscal year shall be carried over to the appropriate category of the estimate required under par. (a) for the next following fiscal year.

(11) NUISANCES: LIMITATION OF LIABILITY. (a) The installation of any furniture, structure or facility or the permitting of any use in a pedestrian mall district under a final plan adopted under this section may not be deemed a nuisance or unlawful obstruction or condition by reason of the location of such installation or use.

(b) Such installation or use may not cause the city or any person acting under permit to be liable for injury to persons or property in the absence of negligence in the construction, maintenance, operation or conduct of such installation or use.

(12) INTERPRETATION: AMENDMENT AND REPEAL. No action by the council establishing a pedestrian mall or undertaking a pedestrian mall improvement under this section may be construed as a vacation, abandonment or discontinuance of any street or public way. This section may not be construed to prevent the city from abandoning the establishment or operation of a pedestrian mall, changing the extent of a pedestrian mall, amending the description of the district to be assessed or taxed for annual improvement costs, or changing or repealing any limitations on the use of a pedestrian mall by private vehicles or any plan, rule or regulation adopted for the operation of a pedestrian mall.

(13) SUBSTANTIAL COMPLIANCE; VALIDITY. Substantial compliance with the requirements of this section is sufficient to give effect to any proceedings hereunder and any error, irregularity or informality not affecting substantial justice does not affect the validity of such proceedings.
