

MINNESOTA STATUTES 1977 SUPPLEMENT

LAND FOR STREETS AND PARKS; ELWELL LAW 430.07

CHAPTER 429. LOCAL IMPROVEMENTS, SPECIAL ASSESSMENTS

Sec.
429.041 Council procedure.

429.041 Council procedure.

[For text of subds 1 to 5, see M.S.1976]

Subd. 6. **Percentage payment on engineer's estimate.** In case the contractor properly performs the work, the council shall, from month to month before completion of the work, pay him not to exceed 90 percent of the amount already earned under the contract, upon the estimate of the engineer or other competent person selected by the council, and the contract shall so provide, and shall further agree that when the work is 90 percent or more completed upon the recommendation of the engineer such portions of the retained price shall be released as the governing body of the municipality determines are not required to be retained to protect the municipality's interest in satisfactory completion of the contract. Failure to pay any amount due and payable under the terms of the contract within 30 days of a monthly estimate or 90 days after the final estimate of the amount earned shall obligate the municipality to pay to the contractor simple interest on the past due amount at an annual rate equal to the monthly index of long term United States bond yields for the month prior to the month in which this obligation is incurred plus an additional one percent per annum. Interest shall not be imposed with respect to any amount which a municipality may legally withhold as a result of breach of contract or other contractual claim.

[For text of subd 7, see M.S.1976]

[1977 c 278 s 1]

CHAPTER 430. LAND FOR STREETS AND PARKS; ELWELL LAW

Sec.
430.07 Method of improvements; assessments.

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Subdivision 1. 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.

Subd. 2. 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.

Subd. 3. 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

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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.

Subd. 4. 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.

Subd. 5. 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, except as otherwise provided by this subdivision, 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 following manner. 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 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 shall 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 shall be followed. The city comptroller shall mail to the person who owned the property when the assessment was paid, at his last known address; a notice stating that the refund is available. The notice shall 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 shall be mailed. If a response is not received from the owner within ten days of the date of the second mailing, a notice of refund containing the name of the person who was the owner when the assessment was paid, and the address of the property shall be published in a newspaper of general circulation in the city. 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 of the last required notice or within 30 days of the date of publication of any required notice, whichever is later, the city council may deposit the amount of the potential refund in the city's permanent improvement fund or bond redemption fund.

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Subd. 6. 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.

Subd. 7. 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.

[1977 c 75 s 1]

CHAPTER 458. WATER TRANSPORTATION FACILITIES; PORT AUTHORITIES

Sec. 458.18	Employment of personnel; contracts; audits.	Sec. 458.19 458.195	Application. Additional powers.
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458.18 Employment of personnel; contracts; audits.

Subdivision 1. **Personnel; contracts.** The port authority shall have power and authority, in its own behalf, to employ such engineering, legal, technical, clerical, stenographic, accounting, and other assistance as it may deem advisable; any employee of any port authority created and existing under and pursuant to the provisions of this act shall be considered as an "employee" as the term is used and defined in Laws of Minnesota 1955, Chapter 665, and shall by appropriate action of said port authority be entitled to the benefits provided for in this statute; to enter into contracts for the erection, repair, maintenance or operation of docks, warehouses, terminals, elevators, or other structures upon or in connection with property owned or controlled by it; to contract or make other arrangements with the United States government, or any department thereof, with persons, public corporations, the state of Minnesota or any of its political subdivisions, commissions, or agencies, for separate or joint action, with reference to any matter related to the exercise of the powers or the fulfillment of the duties of such port authority; to contract for the purchase and sale of real and personal property; provided that no such obligation or expense shall be incurred save upon such terms and at such times when existing appropriations, together with the reasonable expected revenue of the port authority from other sources, shall be sufficient to enable the same to be discharged when due; and neither the state nor any municipal subdivision thereof shall be liable on any such obligation.

Subd. 2. **Audits.** Notwithstanding the provisions of any law to the contrary, any seaway port authority may employ a certified public accountant to annually audit and examine the books of the authority. The report of the examination or au-