

**CHAPTER 40-62**  
**CITY PEDESTRIAN MALL IMPROVEMENTS**

**40-62-01. Authority for pedestrian mall and skyway improvements - Definitions.**

1. The governing body of any city may by resolutions create a special improvement district, order and approve plans and specifications, determine the necessity, advertise and enter contracts, issue special improvement warrants and bonds, and levy special assessments for the improvement of one or more streets within its central business district to be regulated and maintained as a mall for primarily pedestrian use, or for the construction of skyways within its central business district, in the manner and upon the terms and conditions set forth in chapters 40-22 to 40-27, except as otherwise provided in this chapter.
2. For the purposes of this chapter:
  - a. "Pedestrian mall" means a street within a city designated by the governing body and improved to encourage a high concentration of pedestrian use.
  - b. "Skyway" means an overhead walkway, whether open or enclosed, allowing pedestrian traffic between buildings separated by a street, and includes all corridors, passageways, methods of ingress and egress, and other appurtenances necessary for an integrated and connected system.

**40-62-02. Determination of necessity.**

The resolution determining the necessity of the improvement shall designate the portions of streets to be included within the mall or crossed by skyways and shall state the reason or reasons why such designation is deemed necessary. It is recognized by state policy that such necessity may exist in a city of substantial size for one or more of the following reasons:

1. Increases in population and in automobile usage and parking may create conditions of traffic congestion in the central business district during part or all of normal business hours which may be alleviated by a pedestrian mall or skyways.
2. Continued unlimited use of the designated street or streets may constitute a hazard to the safety of pedestrians and may impede necessary movement of police and fire equipment, ambulances, and other emergency vehicles.
3. Certain streets may be improved to their maximum width for sidewalk and roadway purposes, and may be incapable of further widening without taking buildings and improvements or substantially impeding the movements of pedestrians using the facilities of the central business district.
4. Orderly plans for urban renewal, rehabilitation, and redevelopment may require or may be facilitated by such an improvement.
5. Pedestrian use may be the highest and best use of the designated streets, and the limitation of the use thereof by vehicles may be in the best interest of the city and of the optimum benefit to the properties in the improvement district, if:
  - a. Reasonably convenient alternate routes exist for vehicles going through the central business district to other parts of the city and the state;
  - b. The designated streets are not federal, state, or county highways, or, if they are, the making of the improvement is conditioned upon the relocation of such highways in the manner provided by law; and
  - c. Properties abutting on the designated streets can reasonably and adequately receive and deliver merchandise and materials either from other streets or alleys, or by providing for limited use of the designated streets for this purpose.
6. Construction of skyways may alleviate the conflict between pedestrian and motor vehicle traffic.

**40-62-03. Plans and specifications.**

The plans and specifications must provide for improvement of the designated streets or construction of skyways in a manner designed for the free movement, safety, convenience, and enjoyment of pedestrians, whether or not part of the mall is made available for emergency or

other permitted vehicles. A 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, streetlighting, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all other fixtures, equipment, facilities, and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or other materials or combinations of materials as the governing body may approve. The governing body may alter any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, and may cause any roadway to curve and meander within the limits of the street, if determined desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the centerline of the street. A skyway may be heated or unheated and may include any fixtures, equipment, facilities, and appurtenances the governing body determines will enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city.

#### **40-62-04. Jurisdiction to improve and regulate.**

Upon hearing of any protests made by the owners of property within the improvement district in the time and in the manner provided by law, if the governing body shall determine the protests to be insufficient, it may proceed with the improvement as in the case of other special improvements; provided, that before so proceeding a certified transcript of the resolution of necessity must be recorded in the office of the recorder, and any person aggrieved thereby may appeal to the district court of the county in accordance with the procedure provided in section 28-34-01, but only on the ground that the establishment of the mall or construction of the skyway in accordance with the resolution will unreasonably and arbitrarily obstruct the public use of and interest in the designated street or streets, or that such resolution has been adopted in a manner contrary to law. Notwithstanding the establishment of a mall or skyway, or the improvement of any street or any portion thereof as a part of such mall or skyway, or any limitation of the use thereof by vehicles, the city and the governing body shall retain at all times their police powers and other powers and rights pertaining thereto, and no such action shall constitute a vacation, in whole or in part, of any portion of a city street.

#### **40-62-05. Use of mall or skyways.**

The jurisdiction of the city to make a pedestrian mall improvement or to construct skyways, when established in the manner provided by law, shall include jurisdiction to establish by ordinance and from time to time amend reasonable regulations for the use of the mall or skyways, conforming to the following provisions:

1. Vehicles may be permitted within the pedestrian mall in designated driving and parking lanes as determined by the governing body.
2. The owners and occupants of all properties abutting upon the mall which have access to no other street or alley for delivery or receipt of merchandise and materials shall be permitted to use the mall during such days and hours, which need not be ordinary business days or hours, and in such manner and over such distance, as the governing body shall find to be reasonably adequate for this purpose and to be possible without interfering with use by pedestrians and by emergency and other vehicles for which use is permitted.
3. The regulations may permit use for any purpose or activity which will enhance the freedom of movement, safety, convenience, or enjoyment of pedestrians, including but not limited to, seating, sidewalk cafes, displays of merchandise, exhibits, advertising, telephones, transit, transit stops and shelters, newsstands, plantings, ornaments, protection from the elements, emergency vehicles, and police and fire equipment.
4. The governing body may adopt a use plan prepared by city officers or consultants, providing for the location and distribution within the mall of furniture, sculpture,

pedestrian traffic control devices, trees, flowers, lighting or heating facilities, and any other equipment or properties placed or installed in the mall, whether owned by the city or others, and may license and regulate the operation and maintenance thereof.

5. Any furniture, structure, facility, or use located or permitted pursuant to such a plan shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit shall be liable for any injury to person or property therefor unless directly caused by its own negligence or that of its employees in the construction, maintenance, or operation of such furniture, structure, facility, or use.
6. The regulations for skyways may establish reasonable hours for use, permit closure during hours of nonuse, prohibit use of the skyway for nonpublic purposes, and provide methods necessary to prevent vandalism and other unauthorized use of the skyway.

#### **40-62-06. Maintenance and improvement.**

A pedestrian mall or skyway established pursuant to this chapter may be maintained and the cost of such maintenance may be paid by all means permitted by law for streets. The governing body may also annually cause an estimate to be made of the probable cost of the maintenance during the current fiscal year, in excess of the cost of maintenance of streets of similar length, width, and location not used as a mall, and may assess the excess cost of maintenance on properties within the improvement district; provided, that the assessments may not exceed the special benefits determined to be received by the properties from the maintenance. The assessment list approved by the governing body must be filed in the office of the city auditor, who must mail to the street address of each lot and parcel proposed to be assessed, and to any other address as may be requested in writing by the owner or occupant of a lot or parcel, a notice stating the amount proposed to be assessed upon the lot or parcel, and that any objection thereto may be made in writing filed with the city auditor on or before a specified date, not less than twenty days after the mailing, on which date, at a time and place specified in the notice, the governing body will consider all objections. At this meeting, or any adjournment thereof, the governing body shall review all assessments and hear all persons desiring to be heard, and may amend the assessments in such manner as it determines to be just and reasonable, and may confirm the same and direct the assessment list to be filed with the county auditor, and the assessments made therein to be extended upon the tax lists of the city for the current year and collected with interest and penalties as general taxes are collected and paid over to the city auditor and placed by the auditor in a special fund to be used only for the purpose of current, reasonable and necessary expenses of the operation and maintenance of the mall or skyway.

#### **40-62-07. Additional improvements and extensions.**

An established pedestrian mall or skyway may be subsequently improved or extended by proceedings taken in the same manner as for its establishment, and the improvements or extensions may thereafter be regulated and maintained as provided in this chapter.