Chapter 376

1961 REPLACEMENT PART

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GENERAL PROVISIONS

376.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" means the governing body of the county, whether it is a county court or board of county commissioners.

STATUTORY WAYS OF NECESSITY

376.105 Petition to establish way; appointing viewers; notifying owners. Whenever it appears to any county court by the sworn petition of any person that the farm or residence of such person is not reached conveniently by any public road provided by law, and that it is necessary that the public and such person have ingress to and egress from the farm or residence of such person, the county court shall:

(1) Appoint a board of county viewers.

(2) Cause an order to be issued directing the viewers to meet at a time therein specified, not less than 10 days from the making of the order.

(3) Make an order notifying the person owning the land across which the roadway or gateway is to be established, notifying him of the time and place of the meeting, if he is a resident of the county. If such person is not a resident of the county then the meeting shall be appointed at a later date and four weeks' notice shall be given him by publication in some newspaper published in the county.

376.110 Locating way and assessing damages. The board of county road viewers shall:

(1) Meet upon the day mentioned in the order of the county court.

(2) View out, locate and mark out either a suitable public road not exceeding 60 feet wide, or a gateway not less than 10 nor more than 30 feet wide, or both, as may be found best by the viewers, having regard to all surrounding circumstances and conditions of the case and so as to do the least damage to the land through which the road or gateway is located, from the farm or residence of such person to the nearest point practicable on another public road, gateway, steamboat landing or railroad station.

(3) Assess the damages sustained.

(4) Make a report to the county court at its next regular session of the public road or gateway located, the amount of damages assessed and the persons entitled to such damages.

376.115 Answer of owner; trial of issues; establishment of way. (1) Any person owning land across which a roadway or gateway is sought to be established under ORS 376.105 and 376.110 may file an answer:

(a) Controverting any allegation of the petition or report of the viewers; and

(b) Alleging any new matter calculated to defeat the proceeding, which allegations may be controverted by the petitioner.

(2) The issues formed shall be tried by the county court.

(3) If the county court is satisfied that the report of the viewers is just, it shall, after payment within 20 days by the petitioner of the costs of the viewers and the damages assessed, order the report to be confirmed and recorded as such, and declare the road or gateway to be a public road or a perpetual right of way.

376.120 Appeal from county court. (1) Either the petitioner for the road or the landowner may appeal from the decision of the county court upon the issues mentioned in ORS 376.115 to the circuit court within 20 days after the confirmation of the report of the viewers.

(2) Any person aggrieved by the assessment may appeal to the circuit court within 20 days after the confirmation of the report of the viewers.

(3) In case a landowner appeals from both an assessment of damages and from the decision of the county court upon the issues mentioned in ORS 376.115, the appeals shall be combined.

376.125 Procedure when land state-owned. (1) Whenever it appears to the county court in any proceeding for the establishment of a roadway or gateway pursuant to ORS 376.105 to 376.140, that the land on or over which the roadway or gateway is to be established is owned by the state, a copy of the petition for establishment, accompanied by a copy of the order of the county court giving notice of the time and place of meeting of the board of county road viewers, shall be forwarded by registered mail to the Secretary of State and like copies to the officer, board, commission, department or institution of the state having the use or control of such land, at least four weeks prior to the date of the meeting.

(2) Upon filing in the office of the county clerk satisfactory proof by affidavit of the mailing of such copies, the county court has jurisdiction over such lands to the same extent as land in private ownership.

(3) The roadway, gateway or both may be established on or over the state-owned land by the procedure and to the extent prescribed by ORS 376.105 to 376.140, except that a copy of the report of the viewers shall be served upon the state agency having use or control of such land, or its attorney appearing in the proceeding, not less than 10 days prior to final determination by the county court, and an opportunity shall be given to be heard thereon.

376.130 Opening, maintaining, altering and vacating way. (1) Public roads or rights of way mentioned in ORS 376.110 shall be opened and kept passable by the person applying for them.

(2) No such road or public easement shall be altered or vacated except by the county court in the manner provided by law.

(3) No county shall be bound to work, improve or keep in repair such road or public easement.

376.135 Notice before closing way. No person, firm, or corporation shall close, fence, obstruct or attempt to close, fence, obstruct or in any manner interfere with the free use of any roadway which is now being and has been continuously used and traveled for more than 10 years as a means of ingress and egress from the farm or residence of such person who is or has been threatened with such closure, without first giving notice in writing of his intention to close, fence or obstruct such roadway at least 60 days prior to such closing to the persons using the roadway.

376.140 Obstruction of way prohibited. No person shall obstruct a public road or gateway located under ORS 376.110 or refuse to allow them to be opened.

376.145 Franchise for logging way upon way of necessity. (1) The county court of any county may, if in its judgment deemed proper and to the best interests of the public, upon such terms, in such manner and for such time, not exceeding 10 years, as it may determine, upon the petition of any person or corporation engaged in logging, grant such person or corporation a franchise to construct and maintain in and upon any road mentioned in ORS 376.110 in the county a logging road, skid road, logging railroad, chute, tramway or track, suitable for hauling or transporting logs, timber or lumber thereon.

(2) Any such logging road, skid road, logging railroad, chute, tramway or track shall:

(a) Be at the expense of the petitioner.

(b) Be removed at the expense of the petitioner, upon the expiration or sooner termination of the franchise.

TRAILS

376.205 Procedure to establish trail or use watercourse therefor; county roads excepted. (1) When a majority of the freeholder citizens of a road district of any county determine to have a trail, or use a watercourse, slough or stream as a road or trail, they shall petition the county court of the county where the trail, watercourse, slough or stream is situated.

(2) The provisions of this section and ORS 376.210 to 376.220 do not apply to county roads.

376.210 Viewers to locate trail. The county court, upon approving the petition, shall appoint three competent men as viewers, who shall meet on a given day at one of the points of terminus of the trail or watercourse and proceed without delay to view out and locate, by legible tree marks if a trail, the most eligible and best route from point to point in the petition. A trail shall not be less than six feet wide.

376.215 Report of trail location by viewers. After the trail or watercourse has been located as a public highway by the viewers, they shall make a report to the county court of the county in which the location has been made, giving a complete description of the route located.

376.220 Control over and working of trails. The trails or watercourses shall:

(1) Be under the control of the county court of the county in which they are located, as public highways.

(2) Be worked from year to year as roads or highways are worked.

FOREST ROADS

376.305 Policy and purpose of Act. (1) It is declared that a substantial part of the forest resources of this state are now left unharvested and are lost by reason of the excessive cost of transportation thereof to market; that substantial forest areas can be economically managed, harvested and the products thereof transported to market only by use of certain county and public roads which the counties of this state are unable to construct, improve and maintain so as to enable their safe and economical use for such purposes.

(2) It is declared to be the public policy of this state to conserve and develop its natural resources, to encourage and facilitate the transportation of products of the forest and the salvage and utilization of such products now being wasted, and to develop and improve certain county and other public roads for such purposes.

376.310 Definitions for ORS 376.305 to 376.390. As used in ORS 376.305 to 376.390:

(1) "Forest road" means any county or public road, or part thereof, outside the corporate limits of a city, which is within or extends into or toward a mountainous or timbered area, and which is under the control and supervision of a county court of this state.

(2) "Contract forest road" means a forest road improved or maintained pursuant to a contract made under ORS 376.305 to 376.390.

(3) "Logging operator" means any person having the right to cut and remove timber or forest products in this state, or who is engaged or desirous of engaging in this state in the transportation of forest products, by motor vehicle, to market or processing plant.

(4) "Forest road contractor" means a logging operator who has entered into a contract under ORS 376.305 to 376.390 to improve or maintain, or improve and maintain, a contract forest road.

(5) "Motor vehicle" includes any motor vehicle with or without a trailer or semi-trailer.

(6) "Person" means any person, firm or corporation, or group or combination thereof.

376.315 Application to become forest road contractor. (1) Any logging operator desiring to become a forest road contractor may make application to the county court having jurisdiction and control over a forest road, to improve or maintain, or improve and maintain, such road.

(2) The application shall set forth:

(a) A description of the road and the termini thereof.

(b) If the applicant proposes to improve the road, a general statement of the improvements proposed to be made.

(c) If the applicant proposes to maintain the road, a general description of the maintenance work proposed to be done.

(3) The application shall be verified and signed by the applicant and filed in the office of the county clerk, together with an affidavit showing service thereof, either personally or by registered mail, on the Public Utility Commissioner and on the secretary of the State Highway Commission.

376.320 Hearing on application; posting, publishing, serving and proof of notice. (1) The county court shall:

(a) Fix a date for hearing the application.

(b) Cause a notice of the hearing to be posted at the place where the county court sessions are held and at three public places in the vicinity of the forest road specified in the application, for at least 30 days immediately prior to the date set for hearing.

(c) Cause notice of the hearing to be published in a newspaper published in the county and having general circulation therein, but if there is no such newspaper published in the county, then in any newspaper having general circulation in the county, for not less than once a week for two weeks immediately prior to the date set for the hearing.

(2) A copy of the notice shall be served personally or by registered mail on the Public Utility Commissioner and on the secretary of the State Highway Commission at least 15 days prior to the date set for hearing.

(3) Proof that the notice has been posted and served shall be made by affidavit and filed in the proceeding.

376.325 Signing and contents of notice. The notice of hearing shall be signed by the county clerk and shall state:

(1) The date the application was filed.

(2) The name of the applicant.

(3) The description of the forest road proposed to be improved or maintained, or both.

(4) The proposal for improvement or

maintenance, or both, as set forth in the application.

(5) The time and place of hearing.

(6) That all persons interested may appear and be heard for or against the application.

376.330 Order approving application; service of order. After the hearing, the county court may, in its discretion, approve or disapprove the application. If the application is approved, a copy of the approving order together with a copy of the findings of the county court shall be served by the county clerk by registered mail within 10 days after the order is made, upon the Public Utility Commissioner and the secretary of the State Highway Commission. The county clerk shall file in the proceeding his certificate of such service.

376.335 Contracting with applicant. Any county court that has approved any such application may contract with the applicant, in accordance with ORS 376.305 to 376.390, and without advertisement for bids, for the improvement or maintenance, or both, of the forest road described in the application. The terms of the contract as to specifications of the work shall not be limited by the proposal for improvement or maintenance as contained in the application.

376.340 Bond and insurance of forest road contractor. (1) Before execution of any contract under ORS 376.305 to 376.390, the forest road contractor shall execute and file with the county clerk a performance bond in an amount to be fixed by the county court. The bond shall conform with the requirements of ORS 279.510 and 368.235.

(2) The forest road contractor shall furnish, and have in force during the entire term of the contract, public liability and property damage insurance covering his operation and the operation of his agents and subcontractors in the improvement, maintenance and use of the contract forest road in any amount that may be fixed in the contract, but the public liability insurance shall be for an amount of not less than $50,000 for bodily injuries to or death of one person and, subject to that minimum amount for each person, not less than $100,000 for bodily injuries to or death of more than one person in any one accident, and the property damage insurance shall be for an amount of not less than $5,000 for injury to or destruction of property in any one accident.

[Amended by 1953 c.370 §5, 1957 c.650 §14]

376.345 Contents of forest road contract. Every contract entered into pursuant to ORS 376.305 to 376.390 shall:

(1) Describe the road and the termini thereof.

(2) Specify the width of the roadbed and contain reasonably complete specifications, prepared by the county roadmaster or other competent person, of the improvement and maintenance work to be done.

(3) Specify the time within which the improvement work other than maintenance shall be completed.

(4) Contain such provisions pertaining to maintenance as may be agreed upon by the parties.

(5) Obligate the forest road contractor to furnish all labor and materials required for the work he has contracted to do.

(6) Provide that the same rights and privileges on the contract forest road as are available to the forest road contractor are available to any other logging operator:

(a) Upon approval by the county court;

(b) Upon his furnishing insurance as provided in ORS 376.340;

(c) Upon his reimbursing the forest road contractor for an equitable portion of the construction costs, if any, borne by the forest road contractor; and

(d) Upon his equitable sharing with the forest road contractor in the costs of maintaining the road, provision being made for either the specific rates therefor per 1,000 feet board measure of timber or equivalent of forest products transported over the road or, in the alternative, a formula for determining such rates with a provision for arbitration, in accordance with ORS 33.210 to 33.340, in the event of disagreement between the forest road contractor and another logging operator respecting the application of the formula.

376.350 Filing copies of forest road contract. One copy of the contract shall be filed with the county clerk, one with the Public Utility Commissioner and one with the secretary of the State Highway Commission.

376.355 Limitations on using motor vehicles to transport forest products over forest road; regulations and permits for crossing state highways. (1) During such term as may be specified in the contract, the forest road contractor and his agents and sub-

contractors have the right and privilege to:

(a) Use and operate over the contract forest road, motor vehicles limited as to wheel base, weights, dimensions, tire widths and tire surfaces only as specified in the contract.

(b) Transport forest products upon such motor vehicles over the road, with loads limited as to gross weights, axle load weights, tire load weights, and load dimensions and heights only as specified in the contract.

(2) Whenever any forest road contractor operates any motor vehicle having a size or weight prohibited by or in excess of the limitations contained in any law pertaining to state highways, on a contract forest road which crosses a state highway, the State Highway Commission may adopt rules and regulations and issue permits for said motor vehicle to cross said state highway in the use of such contract forest road. Such rules and regulations and such permits may include, but need not be limited to, provisions for reinforcing and strengthening the highway and for the installation of signs and signals, and such other requirements as the State Highway Commission may deem necessary for the preservation of the highway and for the safety and best interest of the public. All construction and installations under such permits shall be under the supervision of the State Highway Commission and at the expense of the forest road contractor.

[Amended by 1953 c.370 §5]

376.360 Signs giving notice of certain vehicles on forest road. In the event the forest road contractor is authorized by the provisions of the contract to operate vehicles or combinations of vehicles, including any load thereon, of any size or description not otherwise authorized by law, the county court shall erect and maintain signs giving notice thereof in a conspicuous manner and placed at each end of the forest road or section of forest road covered by the contract, and at such other places as may be necessary to inform and warn the public.

376.365 Persons having rights under forest road law and contract. During the term of the forest road contract, all exemptions, privileges and rights granted or provided for by ORS 376.305 to 376.390, and by the provisions of the contract made pursuant thereto, are limited to the forest road contractor, his agents and subcontractors, and to such other logging operators as may meet the provisions required to be included in the contract by subsection (6) of ORS 376.345. This section does not, however, prevent the use of the forest contract road by the general public.

[Amended by 1953 c.370 §5]

376.370 Supervision over forest road work by roadmaster. (1) All improvement and maintenance work done pursuant to a forest road contract shall be under the supervision of the county roadmaster of the contracting county.

(2) On request of the forest road contractor, the county roadmaster shall inspect any completed segment of the contract forest road, and if he determines the work to be in compliance with the contract he shall approve the completion in writing, deliver a copy of the approval to the contractor and file a copy with the county clerk. Except in case of fraud, the approval of the county roadmaster shall be conclusive proof that the work approved is in compliance with the contract.

376.375 Contract liability of forest road contractor. The liability of any forest road contractor for failure to improve or maintain the contract forest road or any bridge or culvert thereon in accordance with the contract is limited to the contracting county.

376.380 Assignment of forest road contract. Any forest road contractor may assign the forest road contract in its entirety, with approval of the contracting county court and not otherwise. A copy of each assignment shall be filed with the county clerk. A copy of the assignment together with a copy of the resolution of the county court approving the assignment shall be delivered or sent by registered mail to the Public Utility Commissioner and the secretary of the State Highway Commission.

376.385 Paying over fines, penalties and forfeited bail to county treasurer. All fines and penalties collected, or bail forfeited, under subsections (2) and (3) of ORS 376.990, shall be paid by the court or judicial officer collecting the same to the county treasurer of the county within which the violation occurred. The county treasurer shall credit moneys so received to the general road fund of the county.

376.390 Payment of taxes and fees by forest road contractor. Nothing in ORS 376.305 to 376.390 relieves the forest road

contractor or his agents or subcontractors from payment of any taxes or fees prescribed by law, except that, with respect to a motor vehicle operated upon a contract forest road by a forest road contractor, his agent or subcontractor, the road tax mileage fees prescribed by ORS 767.325 to 767.340 shall be assessed upon the declared combined weight of the motor vehicle or 76,000 pounds, whichever is less.
[Amended by 1953 c.370 §5]

CONDEMNATION OF LAND FOR FOREST PRODUCT WAYS

376.505 Filing statement of route and bond; right of entry. Any person, firm or corporation who requires land for transportation of the raw products of the forest may file with the county clerk of the county in which the land is located:

(1) A statement showing the approximate route of any proposed road or railway and a general description of the tract which the road or railway may travel.

(2) At the time of filing the statement, a bond in such sum as may be fixed by order of the county court, conditioned upon the payment to the owners of the lands required for the road or railway of any and all damage which the owners may sustain by reason of entry upon the land for the survey or location of the road or way.

When the bond has been filed, such person, firm or corporation shall have the right to enter upon the tract for the purpose of examining, locating or surveying the line of the road or logging railroad.

376.510 Right to acquire and condemn land for logging road. Any such person, firm or corporation has the right to acquire and own all lands reasonably necessary for the logging road or way to promote the transportation of logs or the raw products of the forests. If such person, firm or corporation is unable to agree with the owners of the land over which the logging railroad is necessary, as to the amount of compensation to be paid therefor, such person, firm or corporation has the right to condemn so much of the land necessary for the logging railroad, road or ways as may be necessary for the use thereof, and may maintain the suit for condemnation in the circuit court of the county wherein the lands are located. No land shall be taken until compensation has been assessed and tendered.

376.515 Property subject to appropriation. No more lands shall be appropriated under ORS 376.505 to 376.540 than are reasonably necessary for the purposes specified therein. No building nor the land upon which it is situated, which is exempt from execution as a homestead under the laws of the state, nor any land belonging to the homestead owner within 100 feet of the building, shall be so appropriated.

376.520 Condemnation procedure. Procedure for condemnation under ORS 376.505 to 376.540 shall be the same, so far as practical, as set forth in ORS 35.020 to 35.140.

376.525 Assessment of damages. In assessing damages under ORS 376.510, full compensation shall be allowed for the value of the land appropriated and all other injury and damage which the owner may suffer by reason of the appropriation of the land.

376.530 Fencing appropriated land. The person, firm or corporation appropriating land under ORS 376.505 to 376.540, and his successors and assigns, shall fence with a good and suitable fence both sides of the lands appropriated, in the event the lands are used for agricultural purposes, and shall take such other means and precautions reasonably necessary to protect the adjoining lands not appropriated from damage or injury by reason of the use of the lands appropriated.

376.535 Use of appropriated property; reversion on disuse. (1) Any property acquired under ORS 376.505 to 376.540 shall be used exclusively for the purposes set forth therein or such incidental purposes as may be necessary to the continued carrying out of such purposes.

(2) Whenever the use of property as contemplated in ORS 376.505 to 376.540 ceases for a period of two years, it shall revert to the original owner, his heirs or assigns, but in assessing damages the amount allowed shall not be in any manner lessened or decreased by reason of the possibility that the lands may so revert to their original owner.

(3) The limitations set out in this section shall not apply to or run against any interest acquired by the state.

376.540 Logging roads. Any logging road which is necessary for the transportation of a single tract of timber is within ORS 376.505 to 376.540, whether it is a common carrier or otherwise. Such road is not under the jurisdiction of the Public Utility Commissioner unless the owners thereof declare it a common carrier.

MISCELLANEOUS WAYS

376.605 Construction of trails and bridle paths to Pacific shore. (1) The State Highway Commission may establish, lay out, construct and improve public pedestrian trails and bridle paths not exceeding 30 feet in width, connecting legally established streets, roads and public parks with the shore of the Pacific Ocean.

(2) For the purpose set forth in subsection (1) of this section, the commission may acquire real property or any interest therein by purchase, donation, agreement or exercise of the power of eminent domain. The provisions of ORS 366.360 to 366.390 are applicable to proceedings of the commission authorized by this subsection.

376.610 Grant of right to construct and maintain flume way. The county court of any county may, in its discretion, upon the petition of any person, company or corporation engaged in the operation of a sawmill, grant such person, company or corporation the right to construct and maintain in and upon any county road in the county a flume way, suitable for floating and transporting by water in the flume way the products of the sawmill, including cord wood. The flume way shall be placed on such portion of the county road as is designated by the county court. The county court shall provide the manner in which the flume way shall be constructed and the length of time it may be maintained in and upon the county road.

376.615 Bridge or culvert over ditch, flume or pipe line across highway; construction and maintenance. (1) Any person, company, corporation, irrigation or drainage district owning or constructing any ditch, canal, flume or pipe line across any public highway or public traveled road shall put a good, substantial bridge or culvert, of such width and material as the county court of the county in which the bridge or culvert may be situated, if the crossing is on a county highway, and the State Highway Commission, if the crossing is over a state highway, shall order over the ditch, canal, flume or pipe line where it crosses the highway or road.

(2) Travel shall not be suspended by the construction of the ditch, canal, flume or pipe line.

(3) The bridge or culvert shall be completed within three days from the time the highway or road is intersected.

(4) If the bridge or culvert is not so constructed or completed the county roadmaster shall construct the bridge or culvert and bring an action in his own name, as county roadmaster, for the use and benefit of the county, in any court of competent jurisdiction, to recover the expenses of constructing the bridge or culvert. In such action, in addition to the costs and disbursements provided by statute, the county roadmaster shall recover such sum as the court or justice, if the action is brought in a justice's court, adjudges to be reasonable as attorney's fees in the action. Appeals may be taken in such cases as in other actions.

(5) After the bridge or culvert has been built in accordance with orders of the county court or the State Highway Commission, the same, if over a county highway, shall be maintained by the county, and if over a state highway the maintenance is under the jurisdiction and control of the State Highway Commission. All bridges or culverts constructed prior to 1922 and now in place are deemed to have been constructed in accordance with the orders of the county court or the State Highway Commission.

376.620 Skyline, logging line, ferry sky line or cable footbridge; authorization and regulation by land board. (1) When authorized by the State Land Board, it is lawful for any person, firm or corporation to construct, maintain and operate a skyline, high lead logging line, ferry skyline or cable footbridge across any navigable river, bay, inlet or other navigable waters within the state, not inconsistent with any Act of Congress regulating the construction of bridges across navigable waters. The structures shall be so constructed as not to interfere unnecessarily with the navigation of such navigable waters.

(2) The State Land Board may make and enforce such regulations and restrictions as it deems necessary to carry out the purposes of this section and may make reason-

able charges for any services rendered in connection therewith.

PEDESTRIAN MALLS

376.705 Definitions for ORS 376.705 to 376.825. Unless the context otherwise requires, the definitions contained in this section shall govern the construction of ORS 376.705 to 376.825.

(1) "City" includes every county, city, and city and county within this state. "The city" means the particular county, city, or city and county, acting pursuant to ORS 376.705 to 376.825.

(2) "Legislative body" means the legislative body of the city.

(3) "Street" as used in the definitions of the terms "city streets," "mall intersection" and "intersecting streets," defined in subsections (4), (6) and (7) of this section, means any public street, road, highway, alley, land, court, way or place of any nature open to the use of the public.

(4) "City street," as used with regard to streets located within a city or city and county, means any street located within the city or city and county, except a freeway, state highway, or county highway. "City street," as used with regard to streets located within a county, means any street, located within the county, except a throughway as defined in ORS 374.010 or state highway as defined in ORS 373.010.

(5) "Pedestrian mall" means one or more city streets, or portions thereof, on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be used exclusively or primarily for pedestrian travel.

(6) "Mall intersection" means any intersection of a city street constituting a part of a pedestrian mall with any street, which intersection is itself part of the pedestrian mall.

(7) "Intersecting street" means any street which meets or crosses a pedestrian mall at a mall intersection but includes only those portions thereof on either side of a mall intersection which lie between the mall intersection and the first intersection of the intersecting street with a public street or highway open to vehicular traffic.

(8) "Assessment roll" means the assessment roll or rolls used by the county for purposes of city ad valorem taxes on real property.

(9) "Improvements" means the improvements referred to in subsection (1) of ORS 376.720.

[1961 c.666 §2]

376.710 Legislative findings; short title. (1) The Legislative Assembly hereby finds and declares that in certain areas in cities, and particularly in retail shopping areas thereof, there is need to separate pedestrian travel from vehicular travel and that such separation is necessary to protect the public safety or otherwise to serve the public interest and convenience. The Legislative Assembly further finds and declares that such objective can, in part, be accomplished by the establishment of pedestrian malls pursuant to ORS 376.705 to 376.825.

(2) ORS 376.705 to 376.825 may be cited as the Pedestrian Mall Law of 1961.

[1961 c.666 §§1, 3]

376.715 Construction of Pedestrian Mall Law; validity of proceedings. (1) ORS 376.705 to 376.825 and all of their provisions shall be liberally construed to the end that their purpose may be effective.

(2) Any proceedings taken pursuant to ORS 376.705 to 376.825 shall not be held invalid for failure to comply with the provisions of ORS 376.705 to 376.825, if the acts done and proceedings taken are not invalid under the State or Federal Constitutions.

[Enacted as part of 1961 c.666 §5]

376.720 Powers of city with respect to pedestrian mall. (1) The legislative body of a city shall have the power:

(a) To establish pedestrian malls.

(b) To prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

(c) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall.

(d) To construct on city streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such city streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, gutters, sewers, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas,

retaining walls, landscaping, tree planting, child care facilities, display facilities, information booth, public assembly facilities and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing city-owned works, improvements or facilities on such city streets.

(e) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on property benefited by any such improvements, the whole or any portion of the cost of such improvements.

(f) To do any and all other acts necessary or convenient for the accomplishment of the purposes of ORS 376.705 to 376.825.

(2) The powers granted in ORS 376.705 to 376.825 to prohibit, in whole or in part, vehicular traffic on any city street shall be in addition to and not limited by the powers granted by any other law.

[1961 c.666 §4; subsection (2) enacted as part of 1961 c.666 §5]

376.725 Resolution for establishment of mall; general contents of resolution. When the legislative body shall determine that the public interest and convenience require the establishment of a pedestrian mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to establish such pedestrian mall. Such resolution shall contain:

(1) The determination and declaration referred to above.

(2) A general description of the city streets, or portions thereof, which are proposed to be established as a pedestrian mall.

(3) A general description of the mall intersections.

(4) A general description of the intersecting streets.

(5) A statement that the legislative body proposes to adopt an ordinance prohibiting, in whole or in part, vehicular traffic on such pedestrian mall. If vehicular traffic is proposed to be prohibited only in part, the resolution shall also contain a general statement of the exceptions proposed to be made. Such exceptions may include exceptions in favor of public, emergency, utility and other classes of vehicles, may include exceptions in favor of all or certain classes of vehicles during certain days or during portions of days, and may include other exceptions of any kind or nature.

(6) A general statement of the source or sources of moneys proposed to be used to pay damages, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall.

(7) A day, hour and place for the hearing by the legislative body of protests and objections to the establishment of the proposed pedestrian mall, and a statement that any and all persons having any objection to the establishment of the proposed pedestrian mall may file a written protest with the city recorder at any time not later than the hour so fixed for the hearing.

(8) A statement that any person owning or having any legal or equitable interest in any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall may file a written claim of damages with the city recorder at any time not later than the hour so fixed for hearing; that such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed.

[1961 c.666 §6]

376.730 Description in resolution, of proposed mall and intersecting streets. In such resolution any street may be described by referring thereto by its lawful or official name, or the name by which it is commonly known, and the pedestrian mall, the mall intersections and the intersecting streets may be described by reference to a map or plat thereof on file in the office of the city recorder.

[1961 c.666 §7]

376.735 Contents of resolution when landowners to be paid for damages by assessments on benefited property. In such resolution the legislative body may propose to pay the whole or any part of damages based on claims filed pursuant to subsection (2) of ORS 376.755, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall from the proceeds of assessments levied upon lands benefited by the establishment of the pedestrian mall. In such cases the resolution shall also contain:

(1) General description of the district (which may consist of noncontiguous portions) within which lie the lands deemed

by the legislative body to be benefited by the establishment of the proposed pedestrian mall. Such district may be described by metes and bounds.

(2) A statement that an assessment will be levied pursuant to ORS 376.706 to 376.825 to pay the whole or a stated portion of the damages based on claims filed pursuant to subsection (2) of ORS 376.755, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall and the costs and expenses in connection with proceedings or actions taken pursuant to ORS 376.706 to 376.825.

(3) If bonds are to be issued, a statement that bonds to represent unpaid assessments will be issued, and the interest rate, or maximum interest rate, and term, or maximum term, of any such bonds.
[1961 c.666 §8]

376.740 Contents of resolution when improvements are proposed. If, in connection with the initial establishment of a pedestrian mall, the legislative body proposes to make any improvements of the kind or type referred to in paragraph (d) of subsection (1) of ORS 376.720, such resolution shall also contain:

(1) A general description of the improvements proposed to be made. Such description may be made (but is not required to be made) in any manner permitted or provided in any law under which such improvements are to be made or financed.

(2) A general statement of the source or sources of moneys proposed to be used to pay the costs and expenses of such improvements.
[1961 c.666 §9]

376.745 Resolution to be published and posted. (1) The resolution of intention shall be published in a newspaper of general circulation published within the county, city or city and county, as the case may be. The first publication shall be not less than 60 days prior to the date fixed therein for hearing. In a city where no such newspaper is published, the resolution shall instead be so published in a newspaper of general circulation published in the county in which the city is located.

(2) Copies of the resolution headed "Notice of Intention to Establish a Pedestrian Mall" in letters at least one-half inch in height shall be posted not more than 300 feet apart as follows:

(a) On all city streets, or portions thereof, proposed to be established as a pedestrian mall.

(b) On all intersecting streets.

(c) If assessments are to be levied as contemplated by ORS 376.735, then upon all open streets within the district described in the resolution pursuant to such section.

Such copies shall be posted not less than 60 days prior to the hearing.
[1961 c.666 §§10, 11]

376.750 Copies of resolution to be mailed to affected persons. (1) A copy of the resolution shall be mailed, postage prepaid, not less than 60 days prior to the hearing to each person to whom any of the following described lands is assessed as shown on the last equalized assessment roll, at his address as shown upon such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any of such lands whose name and address and a designation of the land in which he is interested is on file in the office of the city clerk or county clerk, as the case may be. Such lands are as follows:

(a) All parcels of land abutting upon any portion of the pedestrian mall or any portion of any intersecting street.

(b) If assessments are to be levied as contemplated by ORS 376.735, then all parcels of land within the assessment district described in the resolution pursuant to such section.

(2) The legislative body may determine that such resolution shall also be mailed to such other persons as it may specify.
[1961 c.666 §12]

376.755 Objections to mall; claims for damages; right to damages not created. (1) Not later than the hour set for hearing any interested person may, severally or with others, file with the city recorder written objection to the establishment of the proposed pedestrian mall or to the extent of any district described pursuant to ORS 376.735, or both. Any protest or objection may be withdrawn at any time by written notice of such withdrawal filed with the city recorder with the same effect as if it had never been made.

(2) Not later than the hour set for hearing any person owning, or having any legal or equitable interest in, any real property which might suffer legal damage by reason

of the establishment of the proposed pedestrian mall may file with the city recorder a written claim of damages. Such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed. Any such claim may be withdrawn by the claimant at any time by written withdrawal with the same effect as if it had never been filed.

(3) Anything in ORS 376.705 to 376.825 to the contrary notwithstanding, nothing in ORS 376.705 to 376.825 shall be construed or interpreted as creating any right in any person to damages or compensation by reason of the establishment of a pedestrian mall, it being the intention of the Legislative Assembly in enacting ORS 376.705 to 376.825 to provide an orderly method for the determination and payment only of such damages and compensation as are required by the Constitutions of the State of Oregon and the United States of America. In this connection the Legislative Assembly hereby expressly declares that it is its intention that to the extent to which the establishment of a pedestrian mall is justifiable as an exercise of the police power for which no compensation is constitutionally required, no damages or compensation shall be allowed in any action.

[1961 c.666 §§13, 14, 24]

376.760 Effect of objections by landowners. (1) If the owners of lands abutting on the proposed pedestrian mall representing 10 percent of the frontage on the proposed pedestrian mall have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and shall terminate the proceedings for such establishment. In such event no proceeding under ORS 376.705 to 376.825 for the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such termination.

(2) If assessments are to be levied as contemplated by ORS 376.735, then if the owners of more than 10 percent of the area of land included within the district described in the resolution of intention and subject to assessment have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and in that event the legislative body may continue with proceedings for the establishment of the pedestrian mall but shall have no power to make any assessment upon benefited property to pay damages. In such event no proceeding under ORS 376.705 to 376.825 for the levy of assessments upon benefited property to pay damages in connection with the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such finding.

[1961 c.666 §§16, 17]

376.765 Changing boundaries when assessments to be levied under ORS 376.735; notice; objections. (1) If assessments are to be levied as contemplated by ORS 376.735, then at the hearing the legislative body may change the boundaries of the proposed district by adding thereto land which in its opinion will be benefited by the establishment of the pedestrian mall or by excluding from the district lands which in its opinion will not be so benefited. If the legislative body proposes any such change it shall take proceedings as required by this section and shall continue the hearing to the time fixed for hearing objections to the proposed change.

(2) No such change shall be made except after notice of intention to do so, given by at least one insertion in the newspaper in which the resolution of intention was published, describing the proposed change and specifying the time for hearing objections, which shall not be less than 30 days after publication of the notice. If the change proposed is one to include additional land in the district, a copy of such notice shall be mailed to each person to whom land proposed to be added is assessed as shown on the last equalized assessment roll, at his address as shown on such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any such lands whose name and address and a designation of the land in which he is interested is on file in the office of the county clerk. Such notice shall be mailed at least 25 days prior to the time set for hearing objections.

(3) Written objection to any proposed changes may be filed with the city recorder at any time up to the hour fixed for hearing objections to such changes.

[1961 c.666 §18]

376.770 Allowing claims for damages; payment. (1) At the hearing on the resolution of intention the legislative body may allow any claim for damages made pursuant

to subsection (2) of ORS 376.755. Any such allowance shall be for the full amount of damages claimed in the written claim except that the legislative body, with the written consent of the claimant, may allow a claim for a lesser amount.

(2) The right of any claimant to payment of the amount of any allowed claim shall be contingent upon the final establishment of the pedestrian mall but all allowed claims must be paid by the city, from such source as the legislative body may determine, before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, pursuant to ORS 376.705 to 376.825.
[1961 c.666 §20]

376.775 Hearing objections, claims and protests; waiver; decision; continuations. (1) At the hearing all objections and protests shall be heard and considered, and all claims shall be heard and considered.

(2) Any objections or protests, whether to the things proposed by the resolution of intention or to any changes proposed pursuant to ORS 376.765, not made at the time and in the manner provided by ORS 376.705 to 376.825 are deemed voluntarily waived, and the proceedings under ORS 376.705 to 376.825 shall not be attacked on any ground not stated in a written objection filed as provided in ORS 376.705 to 376.825.

(3) Except in the case of a majority protest, as provided in 376.760, the legislative body may sustain or deny any or all objections or protests and its determination is final.

(4) The hearing may be continued from time to time by order entered on the minutes.
[1961 c.666 §§15, 19]

376.780 Resolution after hearing; fixing boundaries. (1) Following the conclusion of the hearing, the legislative body shall by resolution either abandon the proceeding taken pursuant to ORS 376.705 to 376.825 or determine that the pedestrian mall shall be established.

(2) If assessments are to be levied as contemplated by ORS 376.735, then in the resolution provided for in subsection (1) of this section, the legislative body shall fix and establish the boundaries of the district as finally determined.
[1961 c.666 §§21, 25]

376.785 Judicial proceedings to determine unsettled claims for damages; satisfaction prior to traffic prohibition. (1) If following the hearing the legislative body shall determine that the pedestrian mall shall be established, and if at that time there remain any written claims for damages which have not been allowed pursuant to ORS 376.770 or which have not been withdrawn, the legislative body shall direct that an action or actions be brought in the circuit court of the county in which the city is located in the name of the city by the city attorney, for a determination of the damages, if any, to which the claimant may legally be entitled because of the establishment of the pedestrian mall. Such action shall be in the nature of a proceeding in eminent domain for the condemnation of the right or rights in real property, the taking of which by the establishment of the pedestrian mall results in the damages claimed. In such action the amount set forth in the claim relating thereto shall not constitute a limitation upon the amount which may be pleaded, proved or recovered.

(2) Except as may otherwise be provided in ORS 376.705 to 376.825, such action and proceeding shall be governed so far as the same may be made applicable by those provisions of ORS chapter 35 relating to actions and proceedings in eminent domain. In any such action the resolution adopted under subsection (1) of ORS 376.780 shall be conclusive evidence of the public necessity of the proposed pedestrian mall; that the property or rights in property to be taken are necessary therefor, and that the pedestrian mall is planned and located in the manner which will be compatible with the greatest public good and the least private injury.

(3) The judgment in any such action shall be satisfied and a final order taken before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall pursuant to ORS 376.705 to 376.825.
[1961 c.666 §§22, 23]

376.790 Assessment of damages and other expenses against benefited lands. After all claims for damages filed pursuant to subsection (2) of ORS 376.755 have been finally determined, by allowance by the legislative body, by withdrawal, or by a judgment in an action or actions brought pursuant to ORS chapter 35, and the full amount of damages to be paid has accordingly been finally determined, all or part of the total

amount of such damages (but not exceeding such part thereof as may be specified in the resolution of intention), together with all costs and expenses incurred in connection with any proceedings or actions taken pursuant to ORS 376.705 to 376.825, may be assessed against the lands within the district and subject to assessment in proportion to the benefits to be derived from the establishment of the pedestrian mall.
[1961 c.666 §26]

376.795 Manner of assessment; sale of bonds representing unpaid assessments. (1) Such assessment may be levied and bonds to represent unpaid assessments issued and sold substantially in the manner provided in ORS chapter 223, and to the extent applicable, such law shall govern as to the preparation of the assessment, the lands subject to assessment, the hearing upon the assessment and the notice thereof, the confirmation and recordation of the assessment, the lien of the assessments, the notice of recordation, the collection of assessments, the issuance, sale and delivery of bonds upon unpaid assessments, the term of the bonds, the maximum interest rate thereon, the collection and enforcement of such bonds and all other matters to the extent applicable and except as provided in ORS 376.705 to 376.825.

(2) In so applying the provisions of ORS chapter 223, the following provisions and exceptions shall apply:

(a) The limits provided by such law on the amount of the assessment shall not apply.

(b) The legislative body shall provide for the form of the bonds and of the principal and interest coupons to be attached thereto.

(c) The legislative body may provide that the redemption provision of the bonds shall require the payment of such premium as the legislative body may specify.
[1961 c.666 §§27, 28]

376.800 Special fund for payment of damages and expenses; use of surplus. (1) All collections of assessments and all proceeds of the sale of bonds issued upon unpaid assessments shall be placed in a special fund and used exclusively for the payment of the damages, if any, and expenses for which the assessments were levied.

(2) If there is a surplus in such special fund, the legislative body may expend such surplus for the improvement or operation of the pedestrian mall.
[1961 c.666 §29]

376.805 Payment of damages and other expenses from sources other than assessments and bonds. Notwithstanding the fact that the proceedings under ORS 376.705 to 376.825 have provided that assessments are to be levied as contemplated by ORS 376.735, the legislative body, at any time and either before or after the adoption of the resolution provided for in subsection (1) of ORS 376.780, may determine that such assessments shall not be levied. In lieu thereof the legislative body may provide for the payment of all or any part of the amounts referred to in ORS 376.790, out of general funds of the city or out of any other available funds.
[1961 c.666 §30]

376.810 Ordinance establishing mall; contents. Following the adoption of the resolution provided for in subsection (1) of ORS 376.780, and as soon as moneys have been fully provided for the payment of all claims, if any, allowed pursuant to ORS 376.770, and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant to ORS chapter 35, the legislative body may adopt an ordinance establishing the pedestrian mall. Such ordinance shall contain:

(1) A general description of the pedestrian mall and a declaration and determination that the same is finally established. The mall as finally established shall be substantially the same as that described in the resolution of intention.

(2) Rules and regulations prohibiting vehicular traffic on such pedestrian mall subject to such exceptions as the ordinance may provide. Such rules and regulations and such exceptions shall be substantially in accordance with the statements made in the resolution of intention.

(3) Such additional rules and regulations as the legislative body may determine pertaining to the interpretation, operation and enforcement of the rules and regulations referred to in subsection (2) of this section, and otherwise pertaining to the use, operation, maintenance of the pedestrian mall.

(4) Such provisions as the legislative body may determine pertaining to the operative date or dates of any of such rules or regulations.
[1961 c.666 §31]

376.815 Adoption of ordinance; payment of claims, damages and compensation. (1) Such ordinance shall be adopted and published in the manner, and shall take effect, as provided by law or charter for other ordinances of the city. Such ordinance shall be subject to referendum in the same manner as other ordinances of the city.

(2) No payment of allowed claims or damages or compensation awarded by any court shall be made until such ordinance is in effect but all such allowed claims, damages and compensation shall be paid before the rules and regulations provided in such ordinance become operative.
[1961 c.666 §§32, 33]

376.820 Jurisdiction over mall; abandonment or modification. (1) Proceedings under ORS 376.705 to 376.825 and the adoption of such ordinance notwithstanding, the city and its legislative body shall retain its police powers and other rights and powers relating to the city streets constituting a part of the pedestrian mall. No action taken pursuant to ORS 376.705 to 376.825 shall be interpreted or construed to be a vacation or abandonment, in whole or in part, of any city street or any right therein, it being intended that the establishment of a pedestrian mall pursuant to ORS 376.705 to 376.825 be a matter of regulation only.

(2) Nothing in ORS 376.705 to 376.825 shall be interpreted or construed to prevent the city and its legislative body, at any time subsequent to the adoption of the ordinance provided for in ORS 376.705 to 376.825, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, or from changing or repealing any of the rules and regulations pertaining to the pedestrian mall.
[1961 c.666 §34]

376.825 Improvements on mall; payment of costs. (1) The city and its legislative body shall have the power to improve a pedestrian mall as provided in paragraph (d) of subsection (1) of ORS 376.720, and for the accomplishment, in whole or in part, of that purpose may use ORS chapter 223 or any similar special assessment law. Any work or improvement permitted by such statutes shall be deemed to be work or improvement permitted to be done under any such Act or law. The city may also pay the whole or any part of the cost and expenses of improving a pedestrian mall from its general funds or from any other available money and may let contracts for the work in any manner permitted by law or charter.

(2) A pedestrian mall established or to be established pursuant to ORS 376.705 to 376.825 may be so improved either concurrently with the proceedings taken under ORS 376.705 to 376.825 for the establishment of the pedestrian mall or at any time subsequent to the establishment of the city mall, but no contract for the work or improvement shall be awarded until moneys have been fully provided for the payment of all claims allowed pursuant to ORS 376.770 and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant hereof. If in connection with the establishment of a pedestrian mall and concurrently with the proceedings taken pursuant to ORS 376.705 to 376.825, the legislative body proposes to improve the proposed pedestrian mall and for that purpose uses ORS chapter 223 or any similar special assessment law, the legislative body may combine any part of the proceedings taken pursuant to ORS 376.705 to 376.825 with any part of the proceedings taken under any such special assessment law, to the end that duplication of ordinances, resolutions, notices, hearings and other acts or proceedings may be avoided.
[1961 c.666 §§35, 36]

PENALTIES

376.990 Penalties. (1) Violation of ORS 376.140 is punishable, upon conviction, by a fine of $50 for each offense.

(2) Operation of a motor vehicle by any person over a contract forest road in violation of the contract provisions as to equipment, weight, width, length or height, is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both. The definitions in ORS 376.310 apply to subsections (2) and (3) of this section.

(3) Violation by any person of any of the provisions of ORS 376.305 to 376.390 is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel