

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: July 19, 2012

MEMORANDUM

TO: Downtown Coordinating Committee

FROM: Michael P. May, City Attorney
Carolyn S. Hogg, Assistant City Attorney

RE: **State Street Grant Restrictions**

The Office of the City Attorney and Metro have been asked to determine what federal grant restrictions may apply to State Street, particularly as related to controlling access to the street by categories of drivers other than Metro Transit buses. Use of the street as a transit mall, transit way or bus service fixed guideway dates back to the seventies as do the initial USDOT (UMTA and later FTA) grant applications.

This memo is based on the material – grant documents and federal statutes and regulations – that have been located to date. Staff continues to search for relevant City of Madison historic records. A key document that we have not located yet is the original grant application(s) from 40 years ago. We are also seeking federal guidance which may shed further light on the matter; some key FTA personnel have been on vacation. Consequently, this memo provides general, preliminary conclusions based on the information gathered thus far. As further information is obtained, our conclusions will be supplemented.

In the 1970s, the City of Madison made a series of grant applications and was awarded by USDOT grants under the Urban Mass Transportation Act of 1964 (now 49 USC 5301, et seq.) to aid in financing the construction of the “State Street Transit Mall” construction projects. Federal funding was provided pursuant to USDOT’s authority to make grants for “mass transportation” projects (Res. No. 27,310 presented January 7, 1975). Since the original construction, the City (Metro Transit) has periodically applied for and has been awarded fixed guideway modernization grants to rehab/renovate the State Street, (e.g. 1998 grant # WI-03-0065; WI-03-0065-01; 1999 #WI-03-0070; 2000 grant # WI-03-0071) continuing its use as a transit way/transit mall/bus service fixed guideway to the present.

Both the original grants (under § 3 of UMTA) and the subsequent grants (49 USC 5309) were provided to assist the City in financing the construction, rehab and/or renovation of State Street as a fixed guideway transit corridor, transit way or transit mall (the use of the street has been variously described as such in City and Federal documents).¹

¹ In addition to these discretionary grants, State Street’s status as a “fixed guideway” figures substantially in the

As construction was completed and State Street transitioned from an ordinary public street to a transit way ordinances were adopted to control/restrict use of the street by other vehicles -- with limited exceptions. I note the following as examples:

In 1978 Sec. 12.805(11) MGO was created restricting access as follows:

On State Street between West Mifflin Street and West Johnson Street for bicycles and buses only, except that taxicabs may enter for the sole purpose of receiving or discharging passengers specifically requesting service to properties adjacent to said street and provided that such taxicabs shall enter and leave such lane at points closest to the immediate destination.

In 1979 Sec. 12.905(14) MGO was created extending the restrictions:

On State Street between West Johnson Street and North Lake Street, subject to the following restrictions:
(a) Use is limited to bicycles, motor buses and authorized emergency vehicles only except that taxicabs may enter for the sole purpose of receiving or discharging passengers specifically requesting service to properties adjacent to said street and provided that such taxicabs shall enter and leave such lane at points closest to immediate destination and except motor trucks may enter for the sole purpose of receiving or delivering merchandise or services to adjacent properties specifically requesting such merchandise or service provided such motor trucks shall only enter and leave such lands at points closest to immediately destination and utilize loading zones provided and except vehicles with a special permit issues by the Mall Activities Coordinator in accordance with standards to be adopted by the Common Council.

We think these restrictions are significant, since they were placed on the use of State Street at the time the street was converted to a transit mall. Presumably, the City fashioned the restrictions to meet the conditions on federal funding. Thus, we would be reluctant to recommend major changes in the limitations without a full analysis of all the documents.

Since the federal funds were awarded under statutory authority to fund the construction and renovation of fixed guideways, the meaning of the term "fixed guideway" in the context of bus service is important. FTA defines fixed guideway as follows:

n. *Fixed Guideway*: Any transit service that uses and occupies a separate right-of-way or rails for the exclusive use of public transportation and other high occupancy vehicles, or uses a fixed catenary system and a

FTA's annual formula grant program under which the City receives financial assistance for public transit using formulas based on several criteria including level of fixed guideway service. 49 USC 5307.

right-of-way usable by other forms of transportation. The term includes, but is not limited to, heavy rail, commuter rails, rapid rail, light rail, trolleybus, streetcars, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, ***that portion of motor bus service operated on exclusive or controlled rights-of-way***, and high-occupancy vehicle (HOV) lanes. (FTA Circular C9300.13). *Emphasis added.*

It is important to note that federal grant conditions require that property acquired/constructed with grant funds continue to be used for appropriate project purposes for the duration of the useful life of the property. The 1975 resolution authorizing the execution of the federal grant refers to the project as the “*State Street Transit Mall.*” Although the original project description in the grant application has not been located as yet, State Street appears to have historically been operated as a “controlled” rather than “exclusive” fixed guideway, transit mall or transit right-of-way. This is evidenced by the ordinance language cited above.

Any changes to traffic access to State Street must be mindful of the character of the street as a “fixed guideway”, transit mall, or transit way under the grants which have been awarded to the City both for the initial construction of the Street and its periodic rehab/renovation. Changes that erode its purpose as an efficient transit corridor are therefore problematic.

We will continue to search for relevant documents and seek guidance from the FTA. We do not recommend any significant changes until our analysis is completed.

CC: Mayor Paul Soglin
Chuck Kamp
Anne Monks