

ORDINANCE NO. 146

AN ORDINANCE PROVIDING FOR PUBLIC IMPROVEMENTS, PRESCRIBING THE METHODS AND PROCEDURES FOR MAKING PUBLIC IMPROVEMENTS, FOR LEVYING AND COLLECTING SPECIAL ASSESSMENTS THEREFOR, AND FOR THE CREATION AND ENFORCEMENT OF ASSESSMENT LIENS; REPEALING ORDINANCES NO. 43, NO. 48 AND NO. 99 AND DECLARING AN EMERGENCY.

The city of Brookings does ordain as follows:

Section 1. Acquisition of Land by Condemnation for Public Improvements.

- (1) The city shall have power
 - (a) To acquire by purchase, gift, devise, or condemnation any property either within or without its corporate boundaries for any municipal purpose, for the purpose of
 - (1) Protecting, preserving, and facilitating an improvement,
 - (2) Bringing about such development of property along or in the vicinity of an improvement as will make such development harmonious with and adjusted to the improvement, or
 - (3) Achieving any combination of these purposes;
 - (b) To acquire by condemnation property in excess of that needed for the actual improvement; and
 - (c) To sell or lease such excess property with building and use restrictions and conditions to make its development harmonious with and adjusted to adjacent public improvements.
- (2) The necessity for taking any property by the city shall be
 - (a) Determined by the council, and
 - (b) Declared by a resolution which shall describe such property as accurately as possible and state the use to which it is to be devoted.

Section 2. Special Assessments, Remonstrance.

- (1) The city shall have power to provide for the payment of all or any part of the cost
 - (a) Of land or other property acquired for public use,
 - (b) Of the construction, reconstruction, repair, operation, or maintenance of any structure of work in the nature of a public facility or improvement, including a public utility, and
 - (c) Of any public work or service, by levying and collecting special assessments upon property specially benefited thereby.

(2) Any proposal to levy and collect such assessment may be defeated by a remonstrance of the persons owning two-thirds of the front footage of the property to be subject to the assessment when the proposal is to levy and collect such assessment against only the property abutting upon such public improvement or by a remonstrance of the persons owning two-thirds of the area within the boundaries of any special assessment district whether the property within the boundaries of said proposed assessment district abuts upon any such proposed public improvement or not.

Section 3. Bids. All contracts for public improvements shall be let to the lowest responsible bidder or shall be made by the city with power and authority to make the public improvement or any portion thereof and to assess the property benefited thereby with like effect as when let to bid. All such public improvements to be done according to the plans and specifications to be furnished by the proper office or department of the city and approved by the council, provided, however, that such public improvements may be done according to plans and specifications furnished by any department of the state of Oregon and approved by the council.

Section 4. Declaration of Intention, Report from City Engineer or Engineer Employed by the City, Recommendations. Whenever the council shall deem it expedient to construct, alter, repair, or improve any street or streets, or to construct, alter, improve or repair any sewer, sidewalk or drain for all or any part of which it is anticipated special assessments will be levied, it shall by resolution declare its intention to initiate such improvement and direct the city engineer or engineer employed by the city to make a survey and plat of such project and to submit a written report. The city engineer or engineer employed by the city shall make such survey, plat and report and file the same with the recorder within the time set forth in such resolution. Such report shall contain a full description of such project and a description of each lot, tract and parcel of land, or portion thereof, specially benefited thereby, with the name of the record owner or owners and may contain the name or names of other persons found to have any interest in or lien upon said property, a description of the boundaries of the district benefited and to be assessed for such improvement as shown by the council's resolution, an estimate of the probable cost of such project, which estimate shall include legal, administrative and engineering costs attributable to such project and a recommendation of a fair apportionment of the whole or any portion of the costs of the project to the property specially benefited.

Section 5. Method of Assessment. The council may:

(1) Use any just and reasonable method of determining the extent

of any improvement district consistent with the benefits derived.

(2) Authorize payment by the city of Brookings of all or any part of the cost of any such improvement, provided the method selected creates a reasonable relation between the benefits derived by the property specially assessed, and the benefits derived by the city as a whole.

(3) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.

Section 6. Notice - Objections.

(1) In the resolution provided for in Section 4 hereof the council shall specify whether the notice provided for in this section shall be published or posted, as herein provided. The notice, whether published or posted, shall be prepared by the city recorder and shall contain the following:

(a) That the city engineer or other officer's report is on file in the office of the recorder containing the proposed assessment with the date of filing of the report.

(b) The boundaries of the proposed assessment district or a statement of the property affected by the proposed assessment.

(c) Specifying the time and place where the council will hear and consider written objections to the proposed assessment.

(d) Notifying all persons interested to file their written objections to said report and proposed assessment, if any they have, with the city recorder on or before the date specified in the notice for the hearing of objections.

(e) The time fixed for the hearing of such written objections, if any, shall be not less than 10 days after the date of the first publication or posting or mailing of said notice, as hereinafter provided.

(2) If the notice is published, it shall be published at least once each calendar week for two calendar weeks prior to the date of hearing and no further notice need be given if the notice is published.

(3) If the notice of hearing is posted, one copy thereof shall be posted in the city hall and not less than two copies thereof shall be posted within the boundaries of the area where the proposed improvement is to be made. In addition to so posting the notice, the city recorder shall cause to be mailed to the address of each record owner of property subject to the proposed assessment in the district a copy of said notice. As herein provided, the hearing shall be held not less than 10 days after the posting or mailing of said notice, whichever is the later.

Section 7. Hearings - Assessments - Increase in Proposed Assessments. If the council, after hearing the written objections, if any there be, finds such report and proposed assessment to be reasonable and just,

it may adopt the same or amend it, and as amended, adopt the same. It may require a supplementary or further report from the city engineer or engineer employed by the city. When the council, after such hearing, shall have ascertained what it deems to be a fair, just and proper assessment of benefits to the property it determines to be specially benefited, it shall pass an ordinance specifying in detail such assessment which shall give the name of the record owner or owners of the property, a brief description of the property and the amount of the assessment against each lot, tract or parcel of property. This ordinance shall be passed after the hearing or may be passed at the same council meeting in which the hearing was had but after the hearing of any objections. If the council deems it just and proper to increase the amount of any proposed assessment ~~against any proposed assessment~~ against any parcel of land embraced in said engineer's report, it shall fix a time for a further hearing with respect to such increase and cause the city recorder to send a notice by mail to such person who is the record owner of the property against which the assessment is proposed to be increased, stating what is proposed with respect to such property and giving a date not less than 10 days after the mailing of such notice for the further hearing. After such hearing, the council may pass an ordinance assessing such increase.

Section 8. Alternative Methods of Financing. When, in the opinion of the council, on account of topographical or physical layout, unusual or excessive public travel or other character of work is involved, or when the council otherwise believes the situation warrants it, it may pay what it deems fair proportion of the cost of such improvement in relation to the benefits derived by the property directly benefited from general funds of the city, and the amount to be assessed to the property benefited shall be proportionately reduced. Nothing herein contained shall preclude the council from using other available means of financing improvements, including federal or state grant-in-aid, sewer service or other types of service charges, revenue bonds, general obligation bonds, or other legal means of finances. In the event any other such means of finance are used, the council may, in its discretion, levy special assessments hereunder to cover any part of the costs of the improvement not covered by such means.

Section 9. Appeal. Any person feeling aggrieved by assessments made as herein provided may, within 20 days from the passage of the ordinance levying the assessment by the council, appeal therefrom to the circuit court of the state of Oregon for Curry County. Such appeal and the requirements and formalities thereof shall be heard, governed and determined and the judgment thereon rendered and enforced so far

as practicable in the manner provided for appeals from reassessments contained in Sections 223.460 to 223.480 inclusive, Oregon Revised Statutes, as now or hereafter amended. The result of such appeal shall be a final and conclusive determination of the matter of such assessment, except with respect to the city's right of reassessment as provided herein.

Section 10. Lien Recording, Collection of Assessments. Upon the passage of the ordinance making the assessment, as provided in Section 7 above, the recorder shall immediately enter in the docket of city liens a statement of the respective amounts assessed upon each particular lot or parcel of land with the names of the record owners thereof. Upon entry in such lien docket, the amount so entered shall be a lien and charge upon the respective lots, tracts and parcels of land against which the same are placed and shall be due and payable within 30 days after the date of entry of the lien. Such lien shall be prior to all other liens, except as otherwise provided by law. Interest shall be charged at the rate of 6 per cent per annum until paid on all such assessments and amounts not paid within 30 days from the date of such entry and the interest shall run from the day of entry if not paid within 30 days.

The city of Brookings may proceed to foreclose as delinquent any lien unpaid 30 days after the same shall have been entered in the lien docket. The said lien foreclosure shall be made as provided in Sections 223.505 to 223.595, Oregon Revised Statutes, as amended, or as provided in Sections 223.605 to 223.650, inclusive, Oregon Revised Statutes, and the amendments thereof, in each instance. Said methods of foreclosure shall both be available to the city. The city may follow one or the other procedure for foreclosure, but not both.

The provisions herein made for the due date and entry in the lien docket of assessments, together with the provisions for the foreclosure of the lien of such assessment, if not paid when due, shall be applicable to and govern the due date entry and foreclosure of any reassessments for improvement projects which may be made by the city of Brookings.

Section 11. Manner of Doing Work. Contracts, Bids, Bonds. The council shall provide by resolution the time and manner of doing the work of such project, and may provide for the city to do the work itself, or may award the work on contract. In the event that the work is done under contract, bids shall be received after advertisement, for such time as the council may determine, on all such work, the estimated cost of which is more than \$500.00.

The contract shall be let to the lowest responsible bidder, provided that the council shall have the right to reject all bids when they are deemed

unreasonable or unsatisfactory. The council shall provide for taking security by bond for the faithful performance of any contract let under its authority, and the provisions thereof, in case of default, shall be enforced by action in the name of the city of Brookings.

Section 12. Deficit Assessment. If the assessment is made before the total costs are known, and it be found that the amount assessed is insufficient to defray the expenses of the project, the council may by resolution declare such deficit and prepare a proposed deficit assessment. The recorder shall give notice thereof and of the hearing of objection thereto as above described with reference to the original report, and the council upon such hearing shall make a just and equitable deficit assessment. Such deficit assessment shall be consolidated with the assessment in the lien docket.

Section 13. Rebate. If, upon the completion of the project it is found that any sum theretofore assessed therefor upon any property is more than sufficient to pay the cost thereof, the council must ascertain and declare the same, and when so declared it must be entered in the docket of city liens as a credit upon the appropriate assessment. If any such assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the payment of any portion of the rebate credit which exceeds the assessment by a warrant or check on the city treasurer.

Section 14. Abandonment of Proceedings. The council shall have full power and authority to abandon and rescind proceedings for projects hereunder at any time prior to the final consummation of such proceedings, and if liens have been assessed upon any property under this procedure, they shall be cancelled, and any payments made thereon shall be refunded to the payer, his assigns, or legal representatives.

Section 15. Curative Provisions. No such assessment shall be invalid by reason of a failure to give in any report, in the proposed assessment, in the ordinance making the assessment, in the lien docket or elsewhere in the proceedings the name of the owner of any lot, tract or parcel of land or the name of any person having a lien upon or interest therein, or by a mistake in the name of any such person or the entry of a name other than the name of such owner or other delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps hereinbefore specified, unless it appear that reasonable notice has not been given of the hearing upon the proposed assessment or that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the council shall have power and authority to remedy and correct all such matters by suitable action and proceedings.

Section 16. Bonding of Street Improvements and Sewers. The provisions of Sections 223.205 to 223.300 inclusive, Oregon Revised Statutes, which is known as the "Bancroft Bonding Act," together with amendments or future amendments thereof, are hereby adopted and made a part hereof by reference.

Section 17. If any word, sentence, paragraph or section of this ordinance shall be declared unconstitutional by any court of competent jurisdiction such decision of such court shall not affect the remainder of this ordinance which shall continue in full force and effect thereafter notwithstanding such decision except as to the part so declared unconstitutional.

Section 18. Repealer. Ordinances No. 43, No. 48 and No. 99 are repealed.

Section 19. Emergency Clause. Whereas the ordinances of the city of Brookings are being compiled, an emergency is hereby declared to exist and this ordinance may be introduced, read and placed upon its final passage at any one meeting of the council and shall be in force and effect from and after its passage and approval by the mayor.

Passed by the council of the city of Brookings, Oregon, this 10th day of May, 1960.

Submitted to and approved by the mayor of the city of Brookings, Oregon, this 10th day of May, 1960.

C. F. Campbell
Mayor

Attest:

R. B. Covert
City Recorder Pro-Tem

