

ORDINANCE NO. 393

AN ORDINANCE DESIGNATING THE PROCEDURE TO BE FOLLOWED IN MAKING STREET, SIDEWALK, SEWER AND OTHER PUBLIC IMPROVEMENTS AND IN DETERMINING THE AMOUNT OF SPECIAL ASSESSMENTS THEREFORE, THE APPORTIONMENT OF THE TOTAL ASSESSMENTS TO THE PROPERTY BENEFITED; PROVIDING FOR GIVING NOTICE TO PROPERTY OWNERS AND OTHER INTERESTED PARTIES; PROVIDING FOR HEARINGS ON THE PROPOSED LEVY OF SUCH ASSESSMENTS; PROVIDING FOR THE CREATION, COLLECTION AND ENFORCEMENT OF ASSESSMENT LIENS ARISING THEREFROM AND FOR THE FORECLOSURE THEREOF; PROVIDING FOR THE DEFINITION OF CERTAIN TERMS AS USED IN THIS ORDINANCE; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the Charter of the City of Canby, Oregon, as approved by the voters of the City of Canby at the special city election held Monday, December 6th, 1948, empowers the Council of said city under Section 3 of Chapter 11, to provide by ordinance the procedure for levying special assessments for public improvements, now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definition of terms. Whenever the term "owner" is used herein in relation to the ownership of real property such term shall be held to mean the record holder of the legal title to the land in question except that if there is a purchaser of the land whose interest therein is evidenced by a recorded contract for the sale thereof or by written verified statement of the record holder of the legal title and which said verified statement has been duly filed with the Recorder of the City of Canby, then such purchaser shall be deemed the "owner".

Whenever the term "City Engineer" is used in this ordinance, such term shall be held to refer to the duly appointed and then acting City Engineer of the City of Canby and/or such other engineer or firm of engineers appointed by the City Council of said city in connection with any proposed improvement.

Section 2: Declaration of intention; report from City Engineer; recommendations. Whenever the Council shall decide to make street, sewer, sidewalk or other public improvements to be paid for in whole or in part by special assessments the Council shall by motion, declare its intention to initiate such improvement and by such motion direct the City Engineer to make a survey and a written report of such proposed project and file the same with the City Recorder within the time set forth by the Council in the motion. Such report shall contain:

(a) A plat or map showing the general nature, location and extent of the improvements proposed and the lands to be assessed for the purpose of paying all or any part of the costs thereof;

(b) Plans, specifications and estimates of the work to be done;

(c) An estimate of the probable cost of the improvement, including legal, administrative and engineering costs attributable thereto;

(e) A recommendation as to the method of assessment to be used, in order that a fair apportionment of the whole or any portion of the costs of the improvement can be assessed to the property to be specially benefited thereby and which recommendation shall be in accord with the provisions of the following Section 9.

(f) An estimate of the unit cost of the improvement to the specially benefited properties derived from applying the recommended assessment method to the estimated cost of the improvement;

(g) A description of the location and assessed value of each lot, tract or parcel of land or portion thereof to be specially benefited by the improvement with the names of the record owners thereof and when readily available the names of other owners thereof as herein defined;

(h) A statement showing outstanding assessments against property to be assessed;

(i) Any other information required by the Council.

Section 3. Council consideration of engineer's report. After the City Engineer's report has been filed with the City Recorder the Council shall consider the report. The Council may approve the report as submitted or may amend and approve the report as amended. The Council may direct the City Engineer to furnish the Council with a further report or information or on the basis of the engineer's report the Council may, by motion, record its intention to abandon the improvement.

Section 4. Notice of hearing on Council approved engineer's report. After the Council has approved the engineer's report as submitted or as amended by the Council,

(a) It shall direct the City Recorder to cause to be published forthwith once each week for two successive weeks, in the Canby Herald, or in any other newspaper of general circulation printed and published in Canby, Oregon, a notice stat-

ing:

1. That the report or amended report of the City Engineer as approved by the Council is on file in the City Recorder's office, subject to examination giving the date no earlier than 10 days immediately following the first publication of notice when any objections thereto will be considered by the Council at a public hearing;

2. That written remonstrances may be filed against the proposed improvement at the office of the City Recorder not later than the scheduled time for the Council hearing of objections to the proposed improvement;

3. That the improvement will be abandoned for at least six months if there is presented a valid remonstrance of the persons owning two-thirds of the front footage of the property to be subject to the assessments and as a result of such proposed public improvement;

4. A description of the boundaries of the district to be specially benefited by the improvement giving the names of the record owners thereof and when readily available then the names of other owners thereof as defined herein;

5. The estimated total cost of the improvement which is to be paid for by special assessment of benefited property;

6. The City Engineer's estimated unit cost of the improvement to the specially benefited property clearly indicating that this is an estimate and not an assessment;

(b) It shall also direct the City Recorder to send forthwith, by first class mail, the same notice and addressed to each record owner at Canby, Oregon, and when readily known to each owner as defined herein, of the property to be specially benefited by the proposed improvement;

(c) It may in its discretion direct the City Recorder, upon the basis of the Council approved engineer's report, to advertise for bids and designate the time at which such bids shall be opened, which time may be the time of the aforesaid hearing; provided however, that if bids for the construction of such public improvement have been previously received by the Council and the contract let as a result thereof, no work shall be commenced on such improvement and the payment for which is to be assessed against the properties especially benefited thereby

until after the aforesaid public hearing is held and any objections to the Council approved engineer's report are heard by the Council.

Section 5: Hearing. At the aforesaid hearing the Council shall hear oral objections to the proposed improvement and shall consider any written remonstrances thereto. If either oral or written remonstrances of the owners of two-thirds of the front footage of the property to be subject to the assessments and as a result of such proposed public improvement are received by the Council at such public hearing then such remonstrances shall have the effect of defeating the proposed improvement in which event no further action to effect the improvement shall be taken for six months. For the purposes of receiving and considering remonstrances, the owners of the property shall be those persons defined as "owner" herein. If the Council, after hearing the oral and/or written remonstrances finds that there is not a sufficient remonstrance it may proceed with the improvement.

Section 6: Manner of doing work: Contracts, bids, bonds. The Council shall provide by resolution, the time and manner of doing the work of such improvement and may provide for the city to do the work 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 any and 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 Canby. If the city has, prior to the public hearing as herein provided and for the purpose of determining the cost of such proposed public improvement, previously advertised for and received bids for such construction and as a result thereof has determined the lowest, best qualified and most responsible bidder, then the Council may at its discretion, and after such public hearing and provided there are not sufficient remonstrances to defeat such proposed improvement, award a contract to such low bidder, whose bid for the construction of such improvement was previously received, or otherwise direct commencement of construction under a contract which may have been previously awarded.

Section 7: Special hearing when low bid substantially exceeds engineer's

estimate. If bids for the construction of the proposed improvement are not advertised for or received prior to the filing of the engineer's report and estimate as provided herein and the Council finds upon opening bids for the work of such improvement that the lowest, responsible bid substantially exceeds the engineer's estimate, it may in its discretion, hold a special hearing for the purpose of receiving objections to proceeding with the improvement on the basis of such bid and may direct the City Recorder to publish reasonable notice thereof in a newspaper of general circulation, printed and published in Canby.

Section 8: Assessment ordinance. When the Council after the aforesaid hearing or hearings shall determine to proceed with the improvement it shall pass an ordinance assessing the various lots, parcels, tracts of properties specially benefited thereby with their apportioned share of the cost of the improvement; provided however that the passage of such an assessment ordinance may be delayed until the contract for the work is let or the improvement is completed and the total cost thereof determined.

Section 9: Method of assessment and alternative methods of financing. The Council in adopting a method of assessment of the costs of the improvement may:

- (a) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;
- (b) Use any method of apportioning the sum to be assessed that is just and reasonable between the properties to be specially benefited;
- (c) Authorize payment by the city of all, or any part of the cost of any such improvement, when in the opinion of the Council on account of topographical or physical conditions, unusual or excessive public travel or other character of the work involved or when the Council otherwise believes the situation warrants it, provided the method selected creates a reasonable relation between the benefits derived by the properties specially assessed and the benefits derived by the city as a whole.

Nothing herein contained shall preclude the Council from using other available means of financing improvements, including Federal or State Grants-in-Aid, sewer service or other types of service charges, revenue bonds, general obligation bonds or other legal means of finance. In the event any of such other means of finance are used, the Council may in its discretion, levy special assessments hereunder

according to benefits to cover any part of the costs of the improvement not covered by such means.

Section 10: Appeal. Any person feeling aggrieved by assessments made as herein provided, may within 20 days from the passage of the ordinance levying the assessment, appeal therefrom to the Circuit Court of the State of Oregon for Clackamas 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 is practical in the manner provided for appeals for re-assessments contained in Section 223.465 Oregon Revised Statutes as now or hereafter amended. The result of such an appeal shall be a final and conclusive determination of the matter of such assessment except with respect to the city's right of re-assessment as provided herein.

Section 11: Lien recording, interest, foreclosure. After the ordinance levying assessments has been passed, the City Recorder shall enter in the docket of City Liens, a statement of the respective amounts assessed upon each particular lot, tract or parcel of land, with the names of record owners thereof and so far as readily known the names of the owners thereof as defined herein. Upon such entry in the 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. Such liens shall be first and prior to all other liens or encumbrances thereon and in so far as the laws of the State of Oregon allow. Interest shall be charged at the rate of 6% per annum until paid on all amounts not paid within 30 days from the date of such entry or entry corrected, pursuant to Section 13 herein. The city may proceed to foreclose or enforce any lien to which it shall be entitled pursuant to the provisions of this ordinance at any time after 30 days from the date on which the assessment or corrected assessment was entered in the Lien Docket and the same shall be done in the manner provided for the foreclosure or enforcement of liens by the general laws of the State of Oregon.

Section 12: Notice of assessment, bonding. Within 10 days after the ordinance levying assessments has been passed, the City Recorder shall cause to be published once in a newspaper of general circulation, published and printed in Canby, Oregon, a Notice of Assessment, which said Notice shall contain the names of the owners, as defined herein, of each lot, tract, or parcel of land assessed and together with the amount of their respective assessments. This notice shall also state the time within which such assessments must be paid or bonded and that assessments which are not

paid or bonded within the time stated in the notice shall bear interest at 6% per annum and that the property so assessed is subject to foreclosure if such assessments are not paid or bonded within the time stated in the notice. Such record owner or other owner as herein defined, may make application to bond such assessment pursuant to the provisions of Sections 223.205 to 223.300 inclusive of Oregon Revised Statutes which is known as the "Bancroft Bonding Act" or any amendments thereof.

Section 13. Errors in assessment calculations. Calculation of assessments shall be called to the attention of the City Recorder prior to any payment on such account. The City Recorder shall determine whether there is an error in fact. If he shall find that there is an error in fact, he shall recommend to the Council an amendment to the assessment ordinance to correct the error. Upon the enactment of such an amendment by the Council, the City Recorder shall make the necessary correction in the docket of City Liens and send by first class mail to the last known address of the owner a corrected notice of the assessment.

Section 14. Deficit assessment. If assessment is made before the total costs of improvement are known and it be found that the amount assessed is insufficient to defray the expense of the improvement, the Council may, by motion, declare such deficit and prepare a proposed deficit assessment. The Council shall set a time for hearing of objections to such deficit assessment and shall direct the City Recorder to publish reasonable notice thereof in a newspaper of general circulation, printed and published in Canby, Oregon. The Council upon such hearing shall make a just and equitable deficit assessment by ordinance. Such deficit assessment shall be consolidated with the assessment in the Lien Docket in accordance with the provisions of the foregoing Section 11. Thereafter the provisions of Section 12 and 13 herein shall be applicable with regard to such deficit assessment.

Section 15: Rebate. If upon completion of the project it is found that any sum theretofore assessed upon any property is more than sufficient to pay the cost for the public improvement completed, the Council shall ascertain and declare the same by ordinance and when so declared it must be entered in the Docket of City Liens as a credit upon the appropriate assessed owner's account. If any such assessment has been paid, the person who paid the same or his legal representative

shall be entitled to a rebate and to the amount of the credit as ascertained and declared.

Section 16. Abandonment of proceedings. The Council shall have full power and authority to abandon and rescind proceedings for improvements hereunder at any time prior to the final consummation of such proceedings and if liens have been assessed upon any property under this ordinance or pursuant to the provisions hereof they shall be cancelled and any payments made thereon shall be refunded to the payor, his assigns or legal representatives.

Section 17. Curative provisions. No improvement assessment shall be invalid by reason of a failure to give in any report pertaining to the proposed public improvement or the proposed assessment or by reason of a failure to insert in the assessment ordinance or ordinances or in the Lien Docket or elsewhere in the proceedings the name of the owner of any lot, tract or parcel of land or part thereof, or the name of any person having a lien upon or interest in such property or by reason of any error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps herein above specified, unless it appears that the assessment as made in so far as it effects the person complaining, is unfair and unjust and in such event the Council shall have power and authority to remedy and correct all such matters by suitable action and proceedings.

Section 18. Re-assessment. Whenever an assessment, deficit assessment or re-assessment for any improvement which has been or may be hereafter made by the city, has been or shall be hereafter set aside, annulled, declared or rendered void or its enforcement refuted by any court of this state or any federal court having jurisdiction thereof, whether directly or by virtue of any decision of such court or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or re-assessment or any part thereof, the Council may make a new assessment or re-assessment. Such re-assessment shall be made in the manner provided by Section 223.405 to Section 223.490 of Oregon Revised Statutes or as the same may be amended.

Section 19. Repeal. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 20. Declaring an emergency. That it being deemed by the City

Council for the City of Canby than an emergency exists, this ordinance shall go into effect immediately upon its final passage by the City Council and approval by the Mayor.

Passed on its first reading of the Council, held on the 5th day of December, 1955; ordered posted in three public and conspicuous places in the City of Canby for a period of two full calendar weeks and as provided by City Charter and to come up for final action at a regular meeting of the Council to be held on the 3rd day of January, 1956, at 8:00 o'clock P. M., Standard Oregon Time in the Canby City Hall.

Chris Kraft
Mayor (Acting)

ATTEST:

A B Evans
City Recorder

Passed on final reading this 3rd day of January, 1956, by the following vote:

YEAS 5

NAYS 0

Submitted to the Mayor this 3rd day of January, 1956,

Approved by the Mayor this 3rd day of January, 1956.

A B Evans
Mayor

ATTEST:

A B Evans
City Recorder