

ORDINANCE NO. 472

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CANBY LIONS CLUB AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definitions of Terms.

1. As used in this Ordinance:

a. "City" means the City of Canby, a municipal corporation of Clackamas County, State of Oregon.

b. "Council" means the legislative body of the City.

c. "Grantee" means the Canby Lions Club, a non-profit corporation of Canby, Clackamas County, State of Oregon.

d. "Person" includes an individual, corporation, association, firm, partnership and joint venturers.

e. "Wait Park" means the public park of the City of Canby located between N. W. Third Avenue and N. W. Fourth Avenue, and North Holly Street and North Grant Street in the City of Canby.

f. As used in this Ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2: Rights Granted: Subject to the conditions and reservations contained in this Ordinance, the City hereby grants to Canby Lions Club, a non-profit corporation, a non-exclusive right, privilege and franchise to:

1. Construct, maintain and operate in Wait Park, athletic facilities, including, though not exclusively, a baseball and softball diamond.

2. Operate concession stands and refreshment booths for profit at or in Wait Park; and charge and collect admissions and entrance fees for games or other activities sponsored by the Grantee at Wait Park.

3. Construct, re-construct, repair, improve and maintain all existing athletic facilities at Wait Park.

Section 3: Duration: This franchise is granted for a period of time which shall relate back to and commence June 1, 1964, and continue thereafter for a period of five (5) years to and including May 31, 1969; providing, however, that the franchise hereby granted shall not become effective until the adoption of this Ordinance by the Council.

Section 4: Franchise Not Exclusive: This franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges and authority to other persons similar to or different from those granted by this Ordinance; or in constructing, installing, maintaining or operating any City owned public utility or public facility.

Section 5: Public Works and Improvements Not Affected by Franchise: The City reserves the right to construct, install, maintain and operate any public improvement, work or facility; do any work that the City may find desirable on, in or over Wait Park; and to vacate, divide, sub-divide, convey or further develop all or any part of Wait Park.

Whenever the City shall undertake to do any work or make any improvements in, on or over Wait Park or exercise any of the City's rights reserved

herein, and with regards to said Park and which would be inconsistent with the rights granted by this franchise to the Grantee, the City shall first serve notice in writing on the Grantee, notifying it sufficiently in advance of such contemplated work and afford the Grantee adequate time for said Grantee to take such measures as may be deemed necessary to protect and/or relocate any of the Grantee's installations, improvements or facilities in Wait Park.

Section 6: Permanent Improvements to Remain: All work, improvements, installations and other facilities of a permanent nature constructed by either the City or the Grantee on, in or about Wait Park, during the term of this franchise, shall remain the property of the City and shall not be removed from Wait Park without the prior consent of the City; and all work, improvements, installations and other facilities which are not of a permanent nature and which are installed, constructed or furnished by the Grantee, and which may be removed without damage to the real property, shall remain the property of the Grantee and shall be removed upon the expiration of the franchise term or upon any prior termination of the franchise, if such be terminated for cause as provided in this Ordinance.

Section 7: Safety Precautions Required: The facilities at Wait Park which are to be operated and maintained by the Grantee under the provisions of this Ordinance and franchise, shall at all times be maintained in a safe, substantial and workman-like manner; and for the purpose of carrying out the provisions of this Section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety.

Section 8: Location and Re-Location of Facilities: All facilities of Grantee in Wait Park shall be placed and operated so that they do not interfere unreasonably with the use by the City and the public of the streets and sidewalks, and public rest rooms, and other playground facilities; and the City may require in the public interest the removal or relocation of facilities maintained by the Grantee which unreasonably affect or interfere with the City's or the public's use of other facilities in Wait Park, or which may constitute a hazard or menace to public health and safety, and the costs of such removal or relocation of its facility shall be paid by the Grantee.

Section 9: Compensation: As compensation for the franchise granted by this Ordinance, the Grantee shall pay to the City the annual sum of \$130.41. The first four annual payments shall be made on or before October 1st of each year, commencing October 1, 1964; and the fifth and last annual payment shall be made on or before April 1, 1969.

Section 10: Assumption of Liability: The Grantee shall assume all liability and shall indemnify and save harmless, the City, its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to persons, including deaths, due to any wrongful or negligent act or omission of the grantee, its agents or employees arising out of any use of the athletic facilities in Wait Park which is sponsored or supervised by the Grantee under the franchise hereby granted, but not otherwise.

Section 11: Assignment of Franchise: This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; providing, however, that no assignment by the Grantee of this franchise shall be valid unless approved by the Council.

Section 12: Termination of Franchise for Cause: Upon the willful failure of the Grantee, after thirty days notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this Ordinance, the City may terminate this franchise; but failure by the City to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Ordinance shall not be a waiver of any other or subsequent or future breach of the same, or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 13: Acceptance: The Grantee shall, within thirty days from the date this Ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails to do so, the franchise granted by this Ordinance shall automatically terminate and this Ordinance shall be null and void.

Section 14: Emergency Clause: It being deemed by the Canby City Council that an emergency exists, this Ordinance shall take effect immediately upon its final passage by the Canby City Council and approval by the Mayor.

Passed on first reading at a regular meeting of the Canby City Council this 20th day of July, 1964; ordered posted in three public and conspicuous places in the City of Canby for a period of two (2) full calendar weeks as required by the Canby City Charter, and to come up for final reading and action of the Canby City Council at a regular meeting thereof, to be held on the 17th day of August, 1964, at 8:00 o'clock p.m. Oregon Daylight Saving Time, at the Canby City Hall.


FRED STEFANI - MAYOR

ATTEST:

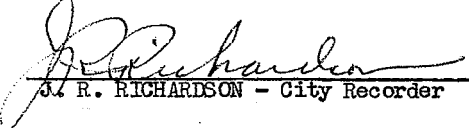

J. R. RICHARDSON - City Recorder

Passed on final reading by the Canby City Council this 17th day of August, 1964, by the following vote: Yeas 6, Nays 0.

Approved by the Mayor for the City of Canby this 17th day of August, 1964.


FRED STEFANI - MAYOR

ATTEST:


J. R. RICHARDSON - City Recorder