

Regular Meeting-City Council
August 3-1953

The regular monthly meeting of the Council was held on Monday, August 3, 1953 and Called to order at 8.25 P.M.

Present: Mayor Eversole, Atty. Zimmerman, City Engineer Tatone, The Recorder, Fire Chief Yoder and Councilmen Anderson, Girod, Hill, Hulbert and Kraft.

The minutes of the meeting of July 29 were read and approved.

The Mayor then stated that the regular order of business would be suspended in order to listen to Mr. W.E. Trommershausen of the B.P.A., who had been invited to meet with the Council on this date.

Mr. Trommershausen reviewed the various matters he had set out in his letter of July 1, thought the City should prepare for a much larger increase of electric power in the next eight or ten years and recommended that a consulting engineer be employed in the near future to make a study of Canby's system and furnish a comprehensive report. He estimated the cost of this at from \$ 2000 to \$3000 .

Communications

From State Highway Department in answer to our request for State aid for paving certain streets in Canby under their 1954 program and enclosing copies of resolution to be adopted in connection therewith.

From the Department of Finance and Administration of Oregon, asking for requirements for Oregon State Flags. (no action).

Reports

The Police Dept. submitted its usual monthly report of activities, which was accepted and placed on file.

Chief Yoder for the Fire Dept. reported one City call and three Rural District calls, with no damage resulting.

The Recorder reported 18 cases in Court during July, resulting in fines of \$ 152.50-costs \$ 35.50-net \$ 117.00.

City Engineer Tatone reported that citizens on South Elm did not seem particularly interested in sidewalks and curbs, as no one was anxious to circulate a petition. Also stated that water situation was much improved at a cost of \$ 112.00 plus labor.

Councilman Girod then bro't up the idea of setting up a definite procedure as to purchases ; thought estimates should be made in advance as much as possible and the proper commissioner be consulted.

Whereupon on motion by Girod, seconded by Kraft and carried, it was voted that all purchases in excess of \$ 100.00 have the O.K. of the Council or be put in form of a requisition, or O.K. by commissioner of department involved.

Water Commissioner Hill then stated that it seemed advisable to extend the 4" main on So. Ivy street 500 feet, by replacing 200 feet of the old and adding 300 feet of new 4".

On motion by Girod, seconded by Hulbert and carried, authorization was given Councilman Hill and the City Engineer to act in this matter.

Councilman Girod then stated that, in his opinion, a check-up of the electric system should be made by a competent electric engineer for the purpose of finding out, what changes or improvements, if any, are advisable.

In this connection the Recorder was asked to invite James C. Howland of the firm of Cornell, Howland, Hayes and Merryfield to attend the regular meeting of the Council to be held on Sept. 8.

The matter of the claim of former Supt. Carl Raines in the sum of \$ 654.41 was then bro't up for consideration and on motion by Hill, seconded by Kraft and carried, the claim was rejected and the written opinion submitted by Don G. Swink, Atty. at Law ordered entered on these minutes. (see below).

Floyd Galbraith, Cemetery Supt. then asked for a month's vacation, two weeks without pay and for a half month's pay in advance. Granted, providing he would make satisfactory arrangements with some one to carry on in his absence.

ORDINANCES

The following ordinances then came up for final action and on motion, seconded and carried, declared adopted. On roll call-Yeas 4-nays 0 .

Ordinance No. 372

An Ordinance for the purpose of levying a tax on all taxable property, both real and personal within the corporate limits of Canby, amounting to \$ 6878.00

Ordinance No. 373

An ordinance providing for the paving of North Ivy street between 6th. Avenue and Virginia Avenue.

Ordinance No. 374

An Ordinance granting a franchise to the Canby Telephone Association for a period of 25 years from the date hereof.

Ordinance No. 375

An ordinance providing for the paving of Juniper street from Fifth street to the North end of said Juniper street.

Ordinance No. 376

An Ordinance providing for the paving of Wait Avenue from Locust St. to Ferry Road.

Ordinance No. 377

An Ordinance providing for the paving of Virginia Avenue from Ferry Road to Locust Street.

Ordinance No. 378

An ordinance providing for the paving of S.W. 6th. Avenue from South Ivy to South Fir Street.

ORDINANCE NO. 379

So called "Dog Ordinance"

Ordinance No. 379, relating to Ordinance No. 124 and amending that ordinance by adding Section 6 was then introduced, read for the first time, passed and to come up for final action at the next regular meeting of the City Council to be held on Tuesday, Sept. 8-1953, after being posted in three public and conspicuous places in Canby. Yeas 4-nays 0 . *Not introduced*

Council Girod for the Finance Committee then recommended that on the various paving jobs, assessments should be paid as follows: one third on completion of the work and balance in two yearly payments, plus interest.

RESOLUTION

In connection with Canby's application to the State Highway for paving certain streets receiving excessive wear and tear on account of heavy industrial traffic, the following Resolution was introduced and on motion, seconded and carried, declared adopted: On roll call, Yeas 4-nays 0 .

R E S O L U T I O N

WHEREAS, Section 2 of Chapter 149, Oregon Laws 1949, provides:

"Beginning with the year 1949 and annually thereafter there shall be and hereby is appropriated out of the state highway fund such sums of money as will equal 10 per cent of all moneys credited to the state highway fund by the state treasurer between January 1 and December 31 of each year and which have accrued from funds transferred to the state highway fund by the state treasurer under the provisions of section 115-135, O.C.L.A.; section 15, chapter 413, Oregon Laws 1945, as amended by section 4, chapter 114, Oregon Laws 1947; and section 29, chapter 467, Oregon Laws 1947; and from fines and penalties collected for violations of the motor vehicle and transportation laws. Such appropriation shall be distributed among the several cities as provided in this act."

and

WHEREAS, Section 3 of said act provides that:

"Such appropriation shall be allocated to the cities as follows: The sum of two hundred fifty thousand dollars (\$250,000) shall be withdrawn from such appropriation each year and set up in a separate account to be administered by the state highway commission. Such account shall be spent each year by such commission upon streets not a part of the state highway system within cities which are receiving excessive wear through sudden increases in population in the area or heavy and unusual industrial traffic. Such commission shall determine the distribution of such expenditures after considering applications made to it therefor from the cities. The balance remaining in such appropriation after the withdrawal of said two hundred fifty thousand dollars (\$250,000) shall be distributed to all of the cities. Each city shall receive such share of the balance as its population bears to the total population of the cities."

and

WHEREAS, the City of Canby is an incorporated city of the State of Oregon, and has a population of 1673, as given by the latest official census, and

WHEREAS, the following streets of said city, ~~Beginning at the~~
intersection of 99E and South Grant St. thence south on So. Grant st. to
to S.W. 2nd Avenue-thence east on So. 2nd Avenue to So. Ivy st.
Thence beginning at the intersection of S.E. 2nd. Avenue and So. Ivy St.

running east along S.E. 2nd. Avenue to its intersection with So. Juniper,
thence North on So. Juniper to 99E

are not a part or parts of the state highway system, but are streets of said city which are "receiving excessive wear through sudden increase in population in the area, or heavy industrial traffic," and

WHEREAS, said streets are and each of them is in need of repair, reconditioning and other major improvement, and such city is without necessary funds with which to do said work,

NOW, THEREFORE, the members of the City Council, in regular or special session assembled, do hereby find, declare and resolve:

1. That the following named streets of said city, to wit,

Beginning at the intersection of 99E and So. Grant st., thence south on So. Grant
st. to SW 2nd Avenue-thence east on SW 2nd. Avenue to So. Ivy st- Thence
beginning at the intersection of SE 2nd. Avenue and So. Ivy St. running east
along SE 2nd. Avenue to its intersection with So. Juniper st., thence north
on So. Juniper to 99E .

are in need of repair, reconditioning, and other major improvement.

2. That said streets are in their present state and condition of disrepair by reason of a sudden increase in population in the area, or because of excessive and unusual industrial traffic, and the city is without the funds necessary to put said streets in proper condition for the traffic to which they are being subjected.

3. That the Oregon State Highway Commission hereby is respectfully requested to consider and declare said streets as qualified for reconditioning,

repair, and other improvement out of funds allocated and made available by and through the said \$250,000 appropriation of state highway revenues.

4. That the City of Canby does hereby offer to the State Highway Commission, and does hereby pledge complete cooperation and assistance to the end that said city may share and participate in the use and benefit of said special fund and appropriation; and therefore does designate R. G. TATONE CITY ENGINEER as the official representative of the city in all negotiations resulting from this request.

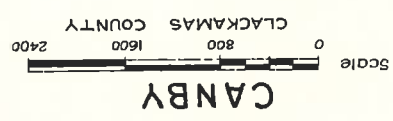
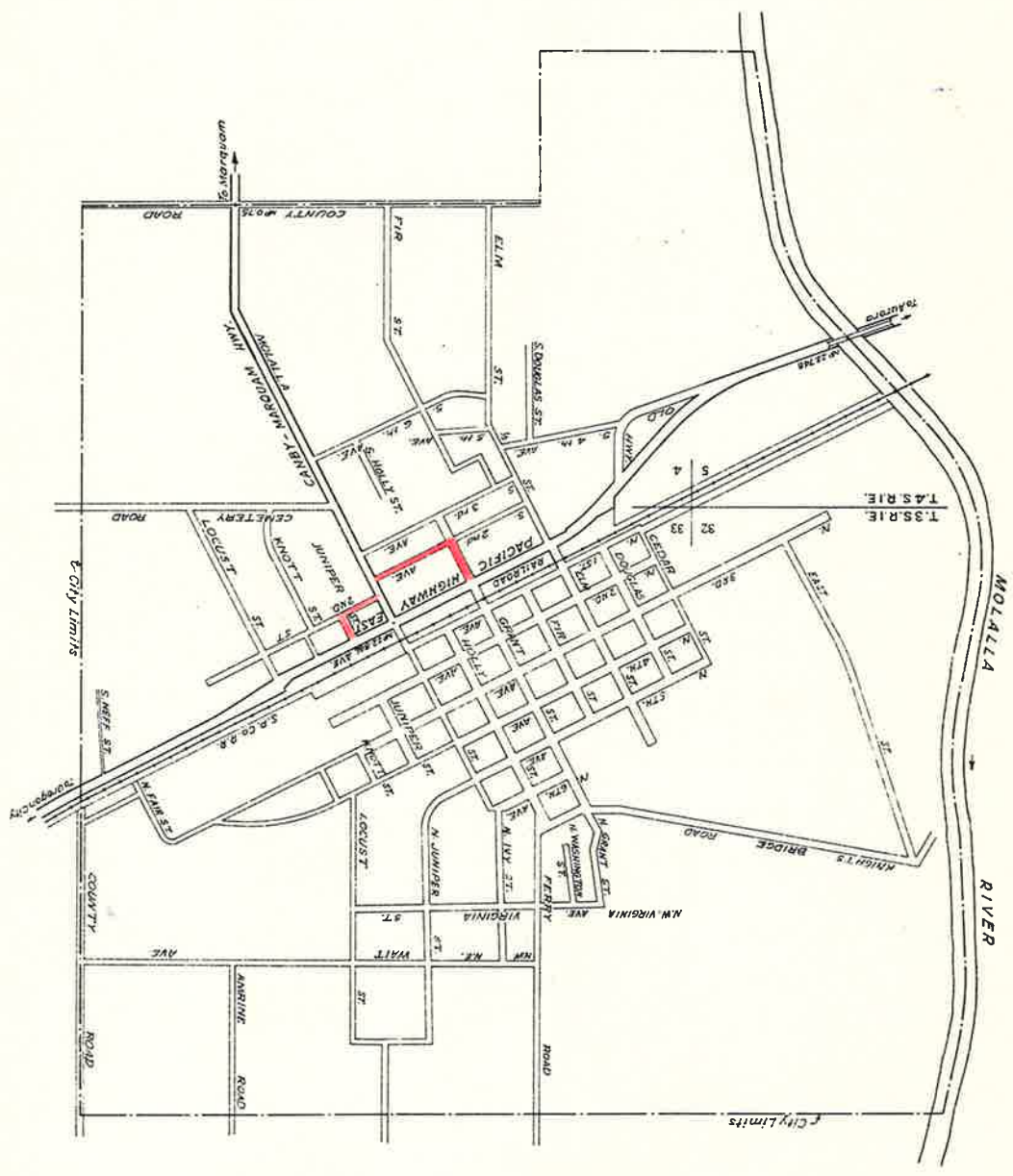
Passed and approved this 3rd day of August, 19 53.

There is attached hereto and made a part hereof, a city map on which is indicated the street, streets, road, or roads described in this resolution.

I hereby certify that the foregoing resolution was passed and approved by the City Council of the City of Canby at a regular ~~or special~~ meeting of said Council, held on the 3rd day of August, 19 53, and the above copy is a true and correct copy of the original and of the whole thereof.

Dated this 4th day of August, 19 53.

H. B. Evans
City Recorder



HARRY GEORGE, JR.
ATTORNEY AT LAW
504 HENRY BUILDING
PORTLAND 4, OREGON

July 21, 1953

Mr. Ralph Zimmerman
Attorney at Law
Masonic Building
Canby, Oregon

Re: Carl L. Raines
Claim No. A60373

Dear Mr. Zimmerman:

In accordance with your request a review has been made of the file in the matter of the claim of Mr. Carl L. Raines against the City of Canby which arose out of a dispute as to the amount of compensation and wages he was to be paid during the period he was disabled following an accident on October 24, 1947.

In order to clarify the analysis of this matter it is necessary to restate herein the portion of the facts which are familiar to all of us again. We have received a breakdown of the payment made by the State Industrial Accident Commission from Mr. Roy G. Green, the actuary for that department of the State.

Mr. Raines was initially paid temporary total disability benefits by the State Industrial Accident Commission under the provisions of Section 102-1758 OCLA for a period from the date he was injured on October 24, 1947 through to November 1, 1948. Those temporary total disability benefits were established at the rate of \$113.00 per month. The section of the law under which those benefits were paid by the State provides for such payment only during the period an injured workman is unable to follow any gainful employment and prior to the time he reaches what is considered a stationary condition.

Under the provisions of Section 102-1759 OCLA if an injured workman is able to return to work but he is capable of doing only part of that work and is further not paid his full salary or wage by his employer then he is entitled to receive what is known as compensation for temporary partial disability. This is computed by paying to him that portion of payments provided for temporary total disability (\$113.00) which his earning power bears (that which you were paying him from March 1, 1948 to November 1, 1948) to that existing at the time of the injury (\$350.00 a month). In this instance the State Industrial Accident Commission erroneously allowed temporary total disability to Mr. Raines from March 1, 1948 through to November 1, 1948 apparently on the assumption that he was still unable to perform any of his duties incident to his employment.

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When the Commission discovered its error it retraced its steps and re-computed the benefits due Mr. Raines between March 1, 1948 and November 1, 1948 on the basis of temporary partial disability by taking the wages which the City of Canby had been paying during that period and treating it as the total amount Mr. Raines was capable of earning and then applied the formula cited above to determine what he should have received from the fund. This recomputation resulted in the finding of overpayments totaling \$654.41 had been made. This sum was recovered by merely deducting the same from the award for permanent partial disability as allowed under the provisions of Section 102-1760 OCLA and is a portion of the matter which requires no further consideration here as the permanent partial disability award in itself was not affected except that Mr. Raines was deprived of \$654.41 which he should have had under that award.

According to the information which was contained in the file you handed this office Mr. Raines received payments in the original instance from March 1st to November 1st, of 1948, as follows for the months worked as indicated:

Month	W.H.Tax	SIAC	City of Canby	Total Recd. Raines	Reg. Salary Raines
March	31.30	113.00	205.70	350.00	350.00
April	22.30	113.00	214.70	350.00	350.00
May	22.30	113.00	214.70	350.00	350.00
June	22.30	113.00	214.70	350.00	350.00
July	22.30	113.00	327.70	463.00	350.00
August	22.30	113.00	266.85	402.15	350.00
September	22.30	113.00	214.70	350.00	350.00
October	22.30	113.00	327.70	463.00	350.00
	187.40	990.00	1,986.75	3,078.15	2,800.00

As you have previously indicated Mr. Raines is seeking to recover from the City of Canby the total \$654.41 whereas if he had received \$350.00 per month during the entire period from March 1st through November 1st, of 1948, he would be entitled to be reimbursed in the amount of \$376.26 for the difference between the regular salary as shown in the right hand column and the amount which he actually received before the State deducted the \$654.41. In other words, prior to the time of the deduction from his permanent disability award he had been overpaid in the amount of \$278.15, and, of course, deducting that amount from the \$654.41 leaves \$376.26.

The next question is whether the City of Canby actually owes Mr. Raines any part of the amounts listed above. In the first instance it would appear the State Industrial Accident Commission having taken the amounts

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which the City of Canby paid to Mr. Raines during the period in question adopted that as his capable wage scale or in other words what he was actually able to earn and then using the formula as stated earlier in this discussion arrived at a temporary partial disability figure of approximately \$31.18 per month as being due Mr. Raines. If the City of Canby were to pay Mr. Raines the difference between what he received after the deduction of \$654.41 was made by the State and the amount necessary to bring him up to an average of \$350.00 per month the State of Oregon would then be entitled to come in and recompute his temporary partial disability since the City would have paid him a greater salary rate and the computation should be made all over again. If this were done by the State, which I frankly doubt they would do, the matter could go on ad infinitum with the ultimate result coming to the City paying the total of \$350.00 per month during the entire period of March to November. Each time the City paid more then the State would be entitled to recompute the earnings and demand redetermination of his temporary partial benefits. On the other hand if the City of Canby intended to reimburse this man so that he would receive a total of \$350.00 per month then from the moral standpoint it now owes him \$376.26.

There appears to be no legal obligation on the part of the City to reimburse the claimant in any amount and as a matter of fact it appears highly questionable whether the City Council had power to disburse the taxpayers money to pay Mr. Raines anything in addition to his compensation which was due him from the State Industrial Accident Fund. From the time of his accident on October 24th on it would further appear any taxpayer choosing to do so might be in a position to cause a recovery to be effected either from the Council disbursing the funds without authority or from Mr. Raines who received payments to which he was not entitled in the first place. However, this is beyond the scope of this investigation.

In summary there appears to be no legal obligation upon the City of Canby to pay any amount to Mr. Raines at this time. However, if the original plan was to be followed he would be due \$376.26 and no more.

We will retain the material in the file until advised by you whether any further inquiry is to be made.

Respectfully submitted,

GEORGE AND SWINK



Don G. Swink

DGS/cst

Bills and Claims

The following bills and claims were then presented and on motion, seconded and carried, ordered paid and warrants drawn: Roll call Yeas 5-nays 0

General Fund

F.J.Fieger	\$ 290.00	
Fed tax	47.30	
State "	2.90	
S.S.	4.35	\$235.45
Joe McCormick	290.00	
Fed tax	2.80	
State "	2.90	
S.S.	4.35	\$279.95
Loyd Younce		75.00
Don Stajgr		6.00
Harold Ott		6.00
Loyal Crawford		5.25
Kenneth McNamee		19.25
H.B.Evans	85.00	
State tax	.85	
SS	1.28	82.87
Ralph Zimmerman		20.00
Clayton Yoder	40.00	
State tax	.40	39.60
D.E.McArthur		51.00
Rupp's Shell Service		144.29
Brewer's Pest Control		10.00
Frank Williams		5.70
Petty cash		9.17
H.B.Evans, Agt.		10.00
Anderson T & Impl. Co.		5.30
Light Fund		11.27
Canby Herald		21.00
Whitman's Service St.		2.00
Munnell & Sherrill, Inc.		44.45
State Civil Defense Agency		112.90
Canby Hdw. & Impl. Co.		2.91
Volunteer Fire Dept.		40.00
Public Emp. Ret. Bd.		19.96
Canby Telph. Assn.		5.15
Canby Union Bank		50.10
S.I.A.C.		51.68
	\$	1366.25

Road Fund

Don Stajgr	73.00
Harold Ott	60.00
Loyal Crawford	162.75
Kenneth McNamee	51.62
D.E.McArthur	108.00
Clarence Eid, Sr.	1.50
Friden Calculating Mch. Co.	100.00
Rupp's Shell Service	10.80
Portland Rd. & Dr. Co.	60.00
Dave & Bev Moberly	2.02
Stefani Lbr. Co.	4.07
Davis Service St.	21.55
Kilham Stat. & Ptg. Co.	24.60
Light Fund	91.24
Canby Herald	72.87
Mitchell Farm Impl. Co.	56.70
Whitman's Service St.	8.15
J.H.Rigdon	26.25
Canby Telph. Assn.	.55
	\$ 935.67

Light Fund

Don Stajgr	\$282.00
Fed tax	48.70
State "	4.16
SS	6.24
Harold Ott	222.90
Fed tax	266.00
State "	48.70
SS	4.16
Loyal Crawford	6.24
Kenneth McNamee	206.90
R.G.Tatone	118.13
Fed tax	68.25
State	350.00
SS	24.30
Mabel E. Decker	2.00
Theresa M. Sledge	3.00
D.E.McArthur	320.70
Clarence Eid, Sr.	218.00
General Fund	106.00
Friden Calculating Mch. Co.	50.00
Rupp's Shell Service	22.50
So. Pacific Co.	494.32
Graybar Electric Co.	400.00
Gen. Elect. Supply Co.	4.25
Dave & Bev Mobley	50.00
Stefani Lbr. Co.	381.17
No. Coast Electric Co.	117.72
Petty cash	1.51
Davis Service St.	8.00
Westinghouse Elect. Supply	134.03
Eversole Motors	2.29
Kilham Stat. & Ptg. Co.	24.95
Canby -Aurora Truck Service	62.02
Canby Herald	2.90
O.K.Rubber Welders	12.00
Canby Iron Wks	7.32
Pub. Emp. Ret. Bd.	11.45
Canby Telph. Assn.	5.00
Treasurer of U.S.	3.50
Canby Union Bank	30.96
S.I.A.C.	1.70
	2091.43
	121.70
	26.55
	\$ 5328.15

Cemetery Fund

F.R.Galbraith	\$ 370.00
Fed tax	24.80
State	3.70
SS	5.55
Pub. Emp. Ret. Bd.	\$ 335.95
Canby Union Bank	11.10
S.I.A.C.	24.80
	4.00
	\$ 375.85

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Bills and Claims

Water Fund

Don Stajgr		\$ 55.00
Harold Ott		84.00
Loyal Crawford	\$ 77.87	
Fed tax	6.10	
State	3.64	
SS	5.46	62.67
Kenneth McNamee	219.63	
Fed tax	26.80	
State "	3.60	
SS	5.40	183.83
R.G. Tatone	50.00	
Fed. tax	24.30	
State "	2.00	
SS	3.00	20.70
Mabel E. Decker	66.00	
Fed. tax	23.50	
State	2.84	
SS	4.26	35.40
Theresa M. Sledge	50.00	
Fed. tax	20.50	
State "	1.56	
SS	2.34	25.60
D.E. McArthur	33.00	
Fed. tax	4.40	
State	2.42	
SS	3.63	22.55
Clarence Eid, Sr.	6.00	
State tax	.30	5.70
General Fund		55.00
Water Sinking Fund		208.33
Friden Cal. Mch. Co.		197.50
Dave & Bev Mobley		1.25
Stefani Lbr. Co.		4.00
Petty cash		19.08
Waterworks Supplies Co.		40.98
Davis Service St.		14.65
Neptune Meter Co.		51.04
Kilham Stat. & Ptg. Co.		12.00
Light Fund		197.11
Canby Herald		13.00
O.K. Rubber Welders		1.00
Canby Iron Wks		36.25
Canby P & H Co.		11.30
Pub. Emp. Ret. Bd.		48.18
Canby Union Bank		105.60
S.I.A.C.		9.73

		\$ 1521.45

Adjourned

Approved: _____

R B Eversole
Mayor

A J Evans
Recorder