

ORDINANCE NO. 29

AN ORDINANCE PROVIDING FOR THE IMPROVEMENT OF STREETS, SIDEWALKS, AND THE CONSTRUCTION OR RECONSTRUCTION THEREOF; PROVIDING FOR ASSESSMENT OF THE COST THEREOF; THAT THE ASSESSMENT SHALL BE A LIEN ON THE PROPERTY OF THE ABUTTING OWNER; PROVIDING FOR ENFORCEMENT OF THE LIEN BY SALE OF PROPERTY.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF TROUTDALE:

SECTION 1. THE TERM STREET DEFINED. The term "Street", as used in this ordinance shall be construed to mean any street, avenue, boulevard, alley or lane which is now, or may be hereafter opened or dedicated to public use.

SECTION 2. POWER OVER STREETS. All streets, avenues, boulevards, lanes, alleys, and paths within the corporate limits of the Town of Troutdale now open or dedicated to public use, or which may hereafter be opened or dedicated to public use, or which have or may become such by prescription or user, shall be deemed and held to be open public streets, avenues, boulevards, lanes, alleys and paths for the purposes of this ordinance, and the Common Council is hereby empowered to fix the width thereof, and is hereby invested with jurisdiction to order to be done thereon any of the work mentioned in this ordinance.

SECTION 3. OWNERS TO REPAIR SIDEWALKS; NOTICE THEREOF. It is hereby made the duty of all owners of land adjoining any street in the Town of Troutdale to construct, reconstruct and maintain in good repair the sidewalks in front of said lands. The common council shall have power and authority to determine the grade and width of all sidewalks, the material to be used and the specifications for the construction thereof upon any street or part thereof or within any district within said town. If the owner of any lot or part thereof, or parcel of land, shall suffer any sidewalk along the same to become out of repair, it shall be the duty of the Common Council, or Street Commissioner to post a notice on the adjacent property, headed "NOTICE TO REPAIR SIDEWALK", said notice shall be in legible characters directing the owner, agent or occupant of said property immediately to repair the same in a good and substantial manner, and the Street Commissioner shall file with the Common Council a certificate of the posting of such notice, stating the date when, the place where the same was posted. The Common Council shall upon receiving the certificate of the Street Commissioner send by mail a notice to repair said sidewalk to the owner (if known) of such property, or to the agent (if known) of the owner, and directed to the postoffice address of such owner or agent; where such postoffice address be unknown to the council, such notice shall be directed to such owner or agent at Troutdale, Oregon. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of such property shall not render void said notice, but in such case the posted notice shall be sufficient.

SECTION 4. PERMIT FOR SIDEWALK REPAIRS. The owner, agent or occupant, before making said repairs shall obtain from the Street Commissioner a permit so to do, which shall prescribe the kind of repair to be made, and the material to be used and the specifications therefor, and the owner, agent or occupant shall make said repairs within twenty days from the date of posting said notice. If the owner, agent or occupant of any such lot or part thereof, or parcel of land shall fail, neglect or refuse to make the sidewalk repairs within the time designated, the Street Commissioner shall make the same, under the direction of the Common Council, and keep an accurate account of the cost of the labor and materials in making the repairs in front of each lot or parcel of land, and shall report monthly to the Common Council the cost of such repairs, and a description of the lot or part thereof or parcel of land fronting on the sidewalk upon which such repairs are made.

SECTION 5. COUNCIL AUTHORITY OVER SIDEWALK; ASSESSMENT FOR SIDEWALK REPAIRS. The Common Council shall exercise the same general authority and supervision over sidewalk repairs that it shall have in the matter of street improvements; it shall inspect the reports of sidewalk repairs, and the cost thereof made by the Street Commissioner and if it deems the same to be reasonable it shall approve the same. The Council shall at least once each year by ordinance assess upon each of the lots or parts thereof or parcels of land fronting upon

sidewalks which have been so repaired the cost of making such repairs as approved by the Common Council and ten per cent additional to defray the cost of notice, engineering and advertising. In each case all such assessments may be combined in one assessment roll and the same shall be entered on the Docket of City Liens and collected in the same manner as provided for special assessments for street improvements.

SECTION 6. ADVANCES FROM GENERAL FUNDS. Moneys to repair sidewalks when the repair shall be made by the Common Council under the provisions of this Ordinance may at the discretion of the Council, be advanced from the General Fund to be reimbursed by the special assessment when collected.

SECTION 7. DEFINITION OF TERMS "IMPROVEMENT" AND "IMPROVE". The terms "Improve" and "Improvement" as used in this Ordinance in reference to streets and sidewalks shall be construed to include all grading, or regrading, paving or repaving, planking or replanking, macadamizing or remacadamizing, graveling or re-graveling, and all manner of bridge work and roadway improvement or repair and all manner of constructing sidewalks, crosswalks, gutters and curbs within any part of the streets in the Town of Troutdale, or any part thereof.

SECTION 8. PROCEDURE FOR IMPROVEMENTS. The Common Council, whenever it may deem it expedient is hereby authorized and empowered to order the whole or any part of the streets of the town to be improved, to determine the character, kind and extent of such improvement, to levy and collect an assessment upon all lots and parcels of land specially benefited by such improvement, to defray the whole or any portion of the cost and expense thereof and to determine what lands are specially benefited by such improvement and the amount to which each parcel or tract of land is benefited.

a. The Common Council, in improving any street or streets or any part or parts thereof, within a district that includes paving, shall require from the Street Commissioner plans, specifications and estimates of appropriate improvements, and the Street Commissioner shall file such plans, specifications and estimates with the Common Council. If the Common Council shall find such plans, specifications and estimates to be satisfactory, it shall approve the same and shall determine the boundaries of the district benefited and to be assessed for such improvement and the action of the Council in the creation of such assessment shall by resolution declare its purpose of making said improvement, describing the same and also defining the boundaries of the assessment district to be benefited and assessed therefor. The action of the Common Council in declaring its intention to improve any street, streets, or sidewalks, or any part or parts thereof, approving and adopting the plans, specifications and estimates furnished by the Street Commissioner, and determining the district benefited and to be assessed thereby, may all be done at one and the same meeting of the Council.

b. Upon the passage of said resolution by the Common Council, they shall without delay give notice by publication in an appropriate publication for not less than two successive publications inviting bids for making said improvements. When such bids are received and the amount of the lowest responsible bid for each kind or class of improvement has been ascertained the Council shall by resolution determine the character of the improvement to be made and the lowest responsible bid, and direct the City Recorder to publish a notice declaring the intention of making such improvement, describing the same, defining the boundaries of the district to be benefited and assessed therefor and the amount of the lowest responsible bid submitted for such improvement.

c. Within twenty days from the date of the publication of the notice of the determination of the Common Council of the character of the improvement and the lowest responsible bidder, the owners of three-fifths or more in area of the property within such assessment district may make and file with the City Recorder a written objection to or remonstrance against said proposed improvement, and said objection or remonstrance shall be a bar to any further proceedings in the making of such improvement for a period of six months unless the owners of one-half or more of the property affected as aforesaid shall subsequently petition therefor: Provided, that if any such objection, remonstrance or petition shall be signed by the agent or attorney or any property owner, there shall be filed with the City Recorder within the time provided for such remon-

strance or petition the written authority for such agent or attorney to sign any such remonstrance or petition, otherwise the signature shall be disregarded.

d. If no such objection or remonstrance be made and filed with the Recorder within the time designated, or if any remonstrance filed is not legally signed by the owners of three-fifths of the property affected, the Common Council shall be deemed to have acquired jurisdiction to order the improvement to be made and may thereafter within three months from the date of the final publication of its previous resolution by ordinance provide for making said improvement, which shall conform in all particulars to the plans and specifications previously adopted.

e. When the Common Council shall, by ordinance provide for making any improvement the Town shall be deemed to have appropriated and acquired ownership of all earth above grade and within street lines for said improvement and no private ownership shall thereafter be claimed in said earth.

f. Upon the passage of said ordinance, the Common Council shall without delay enter into a contract with the aforesaid lowest bidder.

g. The provisions of this ordinance shall not apply to street improvements or proceedings commenced prior to the adoption of this ordinance.

h. All sections or parts of sections of any Ordinance previously passed in conflict with the provisions of this section are hereby repealed insofar as they conflict therewith.

SECTION 9. NOTICE OF COMPLETION; ACCEPTANCE. Whenever any street improvement or sidewalk improvement is completed in whole or in part to the satisfaction of the Street Commissioner, he shall file a notice of completion with the Common Council and his approval of such work so completed. The Common Council, at its next regular meeting or at a special meeting called for the purpose shall consider any objections to the acceptance and determine the merits thereof and if it appear that said work or improvement has not been completed in accordance with the specifications and the contract, the council shall require the same to be so completed before accepting it. Whenever any work or improvement is accepted, the council shall accept by resolution, and after the assessment therefor is made and docketed, the Mayor and Recorder shall draw warrants on the fund created for said improvement and in favor of the parties entitled thereto.

SECTION 10. ESTIMATE OF COST AND APPORTIONMENT; NOTICE. Whenever any street or sidewalk improvement, any part of the cost of which is to be assessed upon the property benefited thereby, is completed in whole, or in such part that the cost of the whole can be determined, the Street Commissioner shall certify to the Common Council the accuracy of the original estimate of the work to be done, or if, in progress the work it has been found necessary to make any alteration in said estimated work for any cause whatsoever, the Street Commissioner shall file a corrected estimate in detail of such work with the Council, and the Common Council shall apportion the cost thereof upon the lots, parts of lots, and parcels of land benefited thereby and within the assessment district. The contract price based upon the estimate of the street commissioner, the costs of rights of way, and expenses of condemning land, and a sum not to exceed five per cent of the contract price as cost of advertising, engineering, and superintendence, shall be deemed to be the cost of every sidewalk or street improvement.

a. When the Common Council has ascertained what they deem a just apportionment of said cost, in accordance with the special and peculiar benefits derived by each lot, or part thereof, and parcel of land, the same shall be a proposed assessment, and the City Recorder shall give notice of the same by publication for not less than three successive insertions in a newspaper of local circulation, therein specifying the improvement for which said proposed assessment is apportioned, the whole cost of such improvement, the boundaries of the district to be assessed therefor, that said proposed assessment has been apportioned and is on file in the office of the City Recorder and subject to examination, and also that any objection to such apportionment that may be made in writing to the Common Council and filed with the City Recorder within ten days of the last publication of such notice will be heard and determined by the council before the passage of any ordinance assessing the cost of said improvement.

b. It shall also be the duty of the City Recorder forthwith to send by mail, postpaid, a notice of the share so apportioned to each lot or part there-

of, or parcel of land, stating the time within which objection to such apportionment may be made in writing to the Council and filed with the City Recorder to the owner (if known) of each lot, or part thereof, or parcel of land, or to the agent of such owner, directed to such postoffice addresses or such owner or agent, when such postoffice address is known to him and if such postoffice address be unknown to him, then such notice shall be directed to such owner or agent at Troutdale, Oregon.

SECTION 11. ASSESSMENT OF BENEFITS. After the time specified in said notice has elapsed, the Common Council shall consider said proposed assessment and all objections made thereto, and shall have the power, at its discretion and without further notice, to consider, ascertain, and determine the amount of the special and peculiar benefits accruing to each lot, or part thereof, or parcel of land so assessed, by reason of the construction, reconstruction, or repair of said street or sidewalk, or the improvement of said street, sidewalk, or part thereof, and if the amount apportioned by the Common Council to any lot or part thereof, or parcel of land shall be so reduced or increased by the Common Council that it shall be in just proportion to such benefits; but in no case shall any assessment exceed such benefits. The assessment roll shall then be numbered and the Common Council shall declare said assessment by ordinance, which shall designate the improvement for which the assessment is levied, the number of the assessment roll, and the whole cost of said improvement, but such assessment need not be set out at large in said ordinance.

SECTION 12. ASSESSMENTS CONFIRMED. Each lot or part thereof or parcel of land shall be deemed to be benefited by the construction, reconstruction, repair or street improvement, as the case may be, to the full amount of the assessment levied thereon.

SECTION 13. MISTAKES IN PROCEEDINGS. No such assessment shall be held invalid by reason or failure to enter the name of the owner of any lot or part of a lot or parcel of land so assessed by a mistake in the name of the owner, or the entry of a name other than the name of the owner, in said assessment, and no delays, mistakes, errors, or irregularities in any act or proceeding in the improvement of a street or sidewalk, or the construction or reconstruction thereof, shall prejudice or invalidate any final assessment, but the same may be remedied by subsequent and amended acts or proceedings.

SECTION 14. DOCKETING AND PUBLICATION OF ASSESSMENT. When an assessment has been declared by ordinance it shall be the duty of the City Recorder to enter a statement of said assessment in the Docket of City Liens, to furnish a copy of said Assessment to the City Treasurer, and to give notice of said assessment by publication for three consecutive insertions in a newspaper of local circulation, a notice which shall specify the improvement or construction or reconstruction, the boundaries of the district assessed, the number and title of the ordinance declaring the said assessment, that the same is due and payable, the time when said assessment shall bear interest, and the time when the same shall be delinquent, and to send by mail to each person whose property is assessed, or to his agent, a notice of said assessment, when the postoffice address of such person or his agent is known to the City Recorder; and if such postoffice address be unknown, such notice shall be directed to such person or agent at Troutdale, Oregon.

SECTION 15. DOCKET OF CITY LIENS. The Docket of City Liens is a book in which must be entered the following matter in relation to special assessment for local improvements: The date of the entry, the number or letter of each lot assessed and the number or letter of the block of which it is a part, and a description of each unplatted tract or parcel of land, the sum assessed upon each lot or part thereof, or tract of land, and the name of the owner, or that the owner is unknown, provided, that failing to enter the name of the owner or mistake in the name of the owner, or entry of a name other than that of the true owner in such lien docket, shall not render void any assessment, nor in any way affect the lien of the Town of Troutdale on the property described in such lien docket.

SECTION 16. LIEN OF ASSESSMENT; PAYMENT. The Docket of City Liens is a

public writing, and from the date of the entry therein of an assessment the sum as entered is hereby declared to be an assessment levied and a lien upon such lot, part thereof, or tract of land, which liens shall have priority over all other liens and incumbrances whatsoever thereon, and the sum or sums of money assessed for any local improvement, entered upon such lien docket, shall be due and payable from the date of such entry, and if not paid, or bonded as provided by law, within ten days from the date of such entry, thereafter the same shall be delinquent, and shall bear interest at the legal rate.

SECTION 17. PAYMENT BY LIEN CREDITOR. When an assessment upon any lot or part becomes delinquent, any person having a lien thereon by judgment, decree or mortgage, or having purchased the same for any delinquent tax or assessment, may at any time before the sale of such lot or part thereof, pay the same, and such payment discharges the property from the effect of the assessment, and the amount of such delinquent taxes and all accruing costs and charges, if any, when so paid, is thereafter to be deemed a part of such lien creditor's judgment, decree mortgage or tax lien, as the case may be, and shall bear interest and may be enforced and collected as a part thereof.

a. If the holder of any tax lien or claim pays off such assessment he may thereafter present the receipt to the officer who shall have charge of the tax roll or docket containing the record of the tax sale at which he purchased such property, and thereupon such officer shall make a note of the amount of such assessment so paid by such purchaser, and shall exact repayment thereof, together with interest as above prescribed, from any person making redemption from such sale, and no redemption shall discharge the property from the effect of such sale which shall not include the amount of such assessment paid by the purchaser after the purchaser shall have presented the receipt as above prescribed.

SECTION 18. ASSESSMENT - WHERE PAID. All such assessments shall be paid to the Treasurer, who shall file duplicate receipts therefor with the City Recorder, and the Treasurer shall keep all money collected upon each assessment in a separate fund, and the same shall not be used for any purpose other than that for which it is levied and collected.

SECTION 19. DELINQUENTS. If within thirty days from the date of the entry of an assessment in the Docket of City Liens, the sum assessed upon any lot or part thereof or tract of land is not wholly paid to the treasurer, and a duplicate receipt filed therefor with the City Recorder, or bonded as provided by law, the City Recorder shall thereafter prepare and transmit to the Treasurer a list in tabular form, made up from the Docket of City Liens, describing each assessment which is delinquent, the name of the person to whom assessed and a particular description of the property, the amount of the assessment due, and other facts necessary to be given.

SECTION 20. SALE FOR UNPAID ASSESSMENTS. The Treasurer shall thereupon proceed to collect the unpaid assessments named in such list by advertising and selling such lots or parts thereof in the manner now provided by law for the sale of real property on execution except as herein otherwise provided. Each piece or tract of land shall be sold separately and for a sum equal to but not exceeding the unpaid assessment thereon and the interest and cost of advertising and sale. A sale of real property under the provisions of this ordinance conveys to the purchaser subject to redemption as herein provided, all estates, interests, liens or claims therein or thereto of any person or persons whomsoever, together with all rights and appurtenances thereunto belonging. No levy upon such lots or parcels of land shall be required except that a notice shall be posted four weeks before said sale upon every lot or parcel assessed to an unknown owner.

SECTION 21. RECEIPTS OF TREASURER. The treasurer shall enter in columns provided for that purpose in the list transmitted to him by the City Recorder the date of the sale, the name of the purchaser, the amount paid for each parcel of property sold. The treasurer shall give a receipt to each person paying an assessment on said delinquent list prior to the sale thereof, and such receipt must state separately the assessment, interest and costs collected, and a duplicate of said receipt shall be filed with the City Recorder.

SECTION 22. CERTIFICATE OF SALE. The treasurer shall immediately after having sold any real property upon such list, make and deliver to the purchaser a certificate of sale of the property so sold, setting forth therein the object for which the sale was made, a description of the property sold, a statement of the amount it sold for, the improvement for which the assessment was made, the year in which the assessment was levied and the amount of such assessment, the name of the purchaser, and that the sale is made subject to redemption within three years from the date of the certificate, and then deliver such certificate to the purchaser.

SECTION 23. TREASURER'S RETURN; UNSOLD PROPERTY. The treasurer shall within three days after sale return to the City Recorder the said delinquent list with all collections and sales noted thereon, and the City Recorder shall thereupon make proper entries thereof in the Docket of City Liens. Thereafter no transfer or assignment of any certificate or purchase of real property sold under the provisions of this Ordinance shall be deemed valid unless an entry of such transfer or assignment shall have been noted by the City Recorder in said Lien Docket. In case any property shall remain unsold upon such sale, the same may be again, at the discretion of the Common Council, offered for sale in like manner, but not sooner than three months after the expiration of any sale, except that in the matter of an assessment for the opening, widening, laying out or establishing of a street, proceedings for such sale may be taken immediately.

SECTION 24. REDEMPTION. The owner, or his legal representatives, or his successor in interest, or any person having a lien by judgment, decree or mortgage, or owner of a tax lien, upon any property so sold may redeem the same upon the conditions provided as follows:

a. Redemption of any real property sold for a delinquent assessment under the provisions of the Charter, this Ordinance, or the Laws of the State of Oregon may be made by paying to the treasurer at any time within three years from the date of the certificate of sale the purchase price and ten per cent thereof as penalty, and interest on the purchase price at the rate of ten per cent per annum, from the date of such certificate. Where redemption shall be made by the holder of a tax lien he shall have the right to have such redemption noted upon the record of his lien in manner and with like effect as herein-after prescribed. Provided, however, that if redemption be made within three months from the date of sale, the penalty to be paid shall be five per cent. Such redemption shall discharge the property so sold from the effect of such sale and, if made by a lien creditor, the amount paid for the redemption shall thereafter be deemed a part of his judgment, decree, mortgage or tax lien, as the case may be, and shall bear like interest, and may be enforced and collected as a part thereof.

SECTION 25. DEED; EFFECT THEREOF. After the expiration of three years from the date of such certificate, if no redemption shall have been made, the Treasurer shall execute to the purchaser, his heirs or assigns, a deed of conveyance, containing a description of the property sold, the date of the sale, a statement of the amount bid, of the improvement for which the assessment was made, of the year in which the assessment was levied, that the assessment or tax was unpaid at the time of the sale, and that no redemption has been made, and need contain no further recital of the proceedings prior to the sale. And the effect of such deed shall be to convey to the grantee therein named the legal and equitable title in fee simple to the real property in such deed described. And such deed shall be prima facie evidence of title in such grantee, and that all proceedings and acts necessary to make such deed in all respects good and valid have been had and done, and such prima facie evidence shall not be disputed, overcome or rebutted, or the effect thereof avoided, except by satisfactory proof of either:

- a. Fraud in making the assessment, or in the assessment or the collection thereof.
- b. Payment of the assessment or tax before sale, or redemption after sale.
- c. That payment or redemption was prevented by fraud of the purchaser.
- d. Or that the property was sold for an assessment or tax for which neither property nor the owner thereof, at the time of sale, was liable,

and that no part of the assessment or tax was assessed or levied upon the property sold.

SECTION 26. NOTICES - FAILURE IN, NOT FATAL. No record need be kept of the mailing of any notice in this ordinance prescribed, and the failure to mail or a mistake in the mailing of, or a mistake in, any such notice shall not be fatal when notice is posted or published as herein required.

SECTION 27. ASSESSMENT FOR DEFICIT. If upon completion of any improvement of a street, sidewalk provided for in this Ordinance, it is found that the sum assessed therefor is insufficient to defray the cost thereof and the amount charged to any lot or part thereof or tract of land is less than the benefits accruing thereto, the Common Council must ascertain the deficit and by ordinance reassess the land so benefited in excess of the original assessment. When the assessment for said deficit is so levied the City Recorder must enter the same in the Docket of City Liens in a column reserved for that purpose in the original entry, with the date thereof, and such deficit shall thereafter be a lien upon such lot or part thereof, or parcel of land, in like manner and with like effect as in case of the sum originally assessed, and shall also be payable and may be collected in like manner and with like effect as the original assessment.

SECTION 28. SURPLUS. If, upon the completion of any improvement of a street or construction of a street or sidewalk, it is found that the sum assessed upon any lot or part thereof, or parcel of land, is more than the amount properly chargeable thereto, the Council must ascertain and declare the surplus in like manner as in the case of a deficit; when so declared it must be entered as in case of a deficit in the Docket of City Liens. Thereafter the person who paid such surplus, or his legal representative, heirs or assigns, is entitled to repayment of the same by warrant on the City Treasury, payable out of the fund raised for such improvement.

SECTION 29. PROCEEDINGS PRESUMED REGULAR. In any action, suit or proceeding in any court concerning any assessment of property or levy of assessment authorized by this Ordinance, or the collection of such assessment, or proceeding consequent thereon, such assessment, levy, consequent proceeding, and all proceedings connected therewith shall be presumed to be regular and to have been duly done or taken until the contrary is shown.

SECTION 30. BONDED ASSESSMENTS ON TRACTS OF LAND; SUBDIVISION OF ASSESSMENTS. In case a tract or parcel of land is bonded for any public improvement, the Common Council is authorized upon a written application when such tract is afterwards subdivided to apportion the lien of indebtedness standing against the whole tract, upon the different lots and is authorized to release a lot or lots upon the payment or rebonding from all liens except the amount apportioned against each lot or lots.

Passed this 11th day of August, 1953.

APPROVED:

Date: August 11, 1953.

/s/ Richard Knarr
Mayor

ATTEST:

/s/ Jessie Overstad
Recorder.