

CHAPTER XI. PROCEDURE FOR LAYING OUT, EXTENDING OR WIDENING STREETS.

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*162. General Powers Of Council:

The Council shall have the power, and has the authority whenever it deems it expedient to improve the public grounds within any such City, to establish and open streets and alleys therein, in addition those now or hereafter laid out established within the limits of the City; the power and authority to improve streets includes the power and authority to construct, improve, pave, repair and keep in repair sidewalks and pavements and to determine and provide everything convenient and necessary concerning such improvements and repairs; and the City shall not in any event be liable for any damages to any person for injury caused by any defect or dangerous place, at or in any sidewalk, crosswalk, street, alley, bridge, public ground, public building, or ditch, unless such city shall have had actual notice of such defect or dangerous place, and a reasonable time thereafter in which to repair or remove such defect or dangerous place before the happening of such accident or injury, and in no case shall more than one hundred dollars (\$100.00) be recovered as damages from the City for such accident or injury.

*163. Report From Engineer—Contents:

Whenever the Council shall deem it expedient to lay out, establish and open any new street or streets, or to change any existing street or streets by extending, widening or altering the same, it shall by resolution direct the City Engineer to make a survey and plan of such proposed street or streets, or change thereof and a written report. The City Engineer shall make such survey, plan and report and file such plan and report with the Recorder within sixty days from the date of such resolution, unless the Council shall grant an extension of time. Such report shall contain a full description of such proposed street or streets, or change of an existing street or streets, a description of each lot, tract, or parcel of land or portion thereof, to be appropriated, the amount of damages which, in his judgement, should be awarded for such appropriation, with the name of the owner or owners and other persons whom he may find 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, and a description of each lot, tract, or parcel of land (other than land taken) in such district with a just assessment of benefits thereto. The City Engineer shall include in such report a summary showing the excess of benefits and excess of damages relative to lots, tracts or parcels of land a part of which is embraced within such proposed street or streets or change, which damages and benefits may be offset pro tanto. The Engineer's report shall be deemed a proposed award of damages and assessment of benefits.

*164. Notice Of Report, Hearing, Objections And Claims:

Within thirty days after the filing of such report the Recorder shall cause a notice to be published for a period of ten successive publications in the city official newspaper stating that such report is on file in his office, subject to examination, giving the date when the same was filed, the probable cost of such proposed street or streets or change, a statement of the district embracing the property proposed to be assessed therefor and notifying all persons interested to present in writing their objections to said report, if any they have, and by the Council on a date specified in such notice, not less than ten (10) days after the date of the first publication of said notice. It shall also be the duty of the Recorder forthwith to send by mail postpaid to each of those designated in the Engineer's report a notice stating the probable cost of such street or streets, or change, brief description of the property in which such person is interested, a statement of the amount proposed to be assessed against such property, the time within which written objections may be filed against such proposed appropriation and assessment, and the date when the Council will hear such report and objections, and, if such person be named as owner or party interested in land to be taken, the amount of damages proposed to be awarded for such property. If the address of any such person be unknown to the Recorder and if such person have an agent whose name and address is known to the Recorder, he shall mail such notice to such agent otherwise he shall mail it to the owner addressed at Beaverton, Oregon.

*165. Power Of Council To Act Upon Hearing:

If the Council, after hearing the objections, if any there be, find such report to be reasonable and just, it may adopt the same by ordinance, embodying such report. If it appear to the Council that the damages allowed or benefits assessed are unreasonable, unjust or improper in any respect, it shall make what it may deem to be a reasonable, just and proper award of damages and assessments of benefits and for that purpose it may require a supplementary or further report from and for that purpose it may require a proper award of damages and assessment of benefits, it may pass an ordinance specifying in detail such award and assessment which ordinance may be passed at any time after the hearing hereinbefore specified. But if the Council deem it just and proper to reduce the amount of any award embraced in the Engineer's report or increase the amount of any proposed assessment against any parcel of land embraced in said Engineer's report, it shall fix a time for further hearing and shall cause the Recorder to mail a notice to the owner of each parcel of land so affected, stating what is proposed in the way of an award of damages or an assessment with respect to the property in which such person is interested, the time within which objections may be filed in writing with the Recorder and the time when such objections will be heard by the Council. After holding such hearing the Council may pass an ordinance making an award of damages and assessment benefits. No findings or conclusions need be entered relative to objections.

*166. Right Of Owners To Appeal:

The owner or owners of any lot, tract or parcel of land, all or part of which is to be appropriated for a street, streets or change, the owner of the improvements thereon, any person having an interest in such land or improvements, and any person against whom an assessment of benefits is made by such ordinance, shall have a right of appeal, within the same time, in the same manner and with the same force and effect as is provided by the laws of the State of Oregon as contained in the Code of 1930.

*167. Power Of Council To Proceed Or Discontinue:

When the Council, after the expiration of the time limited for an appeal to the Circuit Court, if no appeal be taken, or after the filing of a certified copy of a final judgement on appeal if an appeal be taken shall, if it deem it advisable to lay out, establish, open or change such street or streets, adopt a resolution directing the Recorder to enter in the docket of city liens a statement of the respective amounts of benefits assessed upon each particular lot or parcel of land and the names of the owners, in like manner as assessments for street improvements are entered in said lien docket. In cases where a part of a lot or tract of land is taken for such street, streets or change and an award made for the part taken and an assessment made against the residue, credit shall be made so that, if the award exceed the assessment, the assessment shall be cancelled and the balance of the award paid to the owner and, if the assessment exceed the award, the amount of the award shall be applied on the assessment and the balance of the assessment entered upon the lien docket. Upon such entry in the lien docket, the amounts 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 have the same force and effect as other liens entered in such docket. Notice of such entry shall be given and such liens enforced and collected in the same manner as is or may be provided for assessments for street improvements and sewers, except that if any property be not sold when offered for sale to collect such assessment the sale shall be continued from week to week or month to month, in the discretion of the treasurer, not exceeding six months until such sale be made or assessment paid. The provisions which are or may be applicable to bonding assessments for sewer and street improvements shall be applicable to assessments for laying out and establishing or changing any street or streets. All moneys arising from such assessment of benefits shall be kept in a separate fund and be applicable to a satisfaction of the amount to be paid for damages including the amount due for advertising, court costs and other expenses.

*168. Condemnation Completed:

Whenever the full amount assessed as entered in the docket of city liens shall have been paid into the city treasury, the designated property shall be deemed to be appropriated for the purpose of such street or streets or changes, and thereupon the Recorder shall notify the persons who are supposed to be entitled to or interested in any portion of such fund that such fund has been provided and is ready for distribution and that a warrant will, upon demand, be drawn in favor of each person entitled thereto. Before drawing any such warrant the Recorder shall inquire into the matter of city liens, and other liens, incumbrances and claims with reference to such property to the end that the title be cleared before or upon the payment of the award, and, in case he be in doubt or uncertain as to the right of any person, he shall lay the matter before the Council which shall inquire into and determine the same, subject to the right of appeal to the Circuit Court of the State of Oregon for Washington County as from an appeal from a judgement in the District Court, and for the purpose or such inquiry, the Council may summon parties and subpoena witnesses and grant a hearing and the Council's determination shall be final if not reversed on appeal, or the Council may direct that a suit of interpleader or other proceeding be instituted.

*169. Failure Of Proceeding If Fund For Damages Not Collected:

If such fund for the payment of damages be not collected and ready for the drawing of warrants within nine (9) months from the termination of the time limited for appeal, if no appeal be taken, or within nine (9) months from the date of the rendition of final judgement on appeal, if an appeal be taken, all acts and proceedings for the laying out, establishing, opening or changing of such street or streets shall be null and void. But in case of two or more appeals being taken the time shall start to run from the date of the final judgement which is last.

The amount of interest collected by the City from those assessed shall be apportioned and allowed to those to whom damages are paid.

*170. Street To Be Declared Open—When:

When the property required for laying out, establishing or changing such street or streets, has been appropriated as above provided, the Council shall, by resolution, declare such street or streets to be opened, laid out, established, or changed, and within ninety (90) days after the adoption of such resolution the City Engineer shall file for record with the County Clerk of Washington County, a copy of said resolution and an accurate plat of such street or streets and of the property so appropriated for public use.

*171. Deficit Assessment:

If, upon the determination of an appeal, it be found that the amount assessed is insufficient to defray the damages awarded and the cost of advertising, court proceedings and other expenses and that the amount charged upon the property assessed therefor is less than the benefits accruing thereto, the Council may by resolution declare such deficit and direct the City Engineer to prepare a proposed deficit assessment. The Engineer shall thereupon prepare and file with the Recorder a proposed deficit assessment, and the Recorder shall give notice thereof and of the hearing of objections thereto as above prescribed with reference to the Engineer's report, except that the period of publication shall be five days, and the Council upon such hearing shall make a just and equitable deficit assessment. Such deficit assessment shall be made before the entry of the assessment in the lien docket and shall be consolidated therewith.

*172. Refunding Surplus:

If upon the determination of any appeal, it be found that the assessment exceeds the sufficient discharge the damages and cost of advertising, court proceedings and other expenses, the Council shall by resolution declare such surplus and make a suitable provision for refunding the same.

*173. Additional Powers Of Council:

The Council, in its discretion, may provide in the preliminary resolution that two or more streets or proposed streets or disconnected portions of one street be embraced in one proceeding. In cases where it may be proposed to widen or extend street area which has previously been donated or dedicated and it appears just and proper that account be taken of such donation or dedication and suitable credit or allowance made in favor of the person making the same, or his successors, such credit or allowance may be made. In case any city lien or liens exist against property, a part of which is taken or to be taken for street purposes, the Council may provide for segregating the same so that the portion against the land taken may be paid.

*174. Proceeding May Be Abandoned—When:

The Council shall have full power and authority to abandon and rescind proceedings for the establishing or changing streets at any time prior to drawing of warrants for property taken or the final consummation of such proceedings.

*175. Curative Provisions:

No such assessment shall be held invalid by reason of a failure to give, in the Engineer's report, in the proposed assessment and proposed award of damages, in the ordinance making the assessment and award, 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 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 hereinbefore specified, unless it appear that reasonable notice has not been given of the hearing upon the proposed award of damages and assessment and that the award of damages or assessment as made, in so far 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.

*175½. Taxation Saving Clause:

All taxes and assessments levied by the Town of Beaverton under the Charter of 1893 and its subsequent amendments, or ordinances enacted thereunder, are hereby ratified and the continuing powers to collect said taxes and assessments are hereby granted to the City of Beaverton.

*175¾. Proceeding Heretofore Regular:

In any action, suit or proceeding in any court concerning any assessment of property or levy of taxes authorized by the Charter of 1893 or subsequent amendments, or ordinances enacted thereunder, or the collection of such tax 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.

CHAPTER XII. SIDEWALKS

- *176. No Liability For Defective Condition Of Sidewalks.
- *177. Authority To Lay Sidewalk Along County Road In City.
- *178. Owners To Repair And Construct Sidewalks—Notice Thereof.
- *179. Permit For Sidewalk Repairs Or Construction.
- *180. Council Authority Over Sidewalks. Assessment.
- *181. Advance For General Fund.
- *182. Damage For Negligence.
- *183. How Authorized.

*176. No Liability For Defective Condition Of Sidewalks:

No recourse shall be had against the city for damage or loss to person or property suffered or sustained by reason of the defective condition of any sidewalk, street, avenue, lane, alley, court or place, or by reason of the defective condition of any sewer, or by reason of any defective drainage, whether any said defects originally existed, or whether they were occasioned by construction, excavation or embankment; nor shall there be any recourse against the city for want of repair of any sidewalk, street, avenue, lane, alley, court or place, or by want of repair of any sewer; nor shall there be any recourse against the city for damage to person or property suffered or sustained by reason of accident on sidewalk, street, avenue, lane, alley, court or place, or by falling from any embankment thereon or into any excavation therein.

*177. Authority To Lay Sidewalk Along County Road In City:

The Council shall have authority to lay sidewalks along county roads within the corporate limits of the City of Beaverton and assess the cost thereof to property benefited thereby, which cost shall be a lien against said property.

*178. Owners To Repair And Construct Sidewalks—Notice Thereof:

It is hereby made the duty of all owners of land adjoining any street in the City of Beaverton to construct, reconstruct and maintain in good repair the sidewalks in front of said lands. The 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 in said City. 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 City Engineer to post a notice on the adjacent property, headed "Notice To Repair Sidewalk", in letters not less than one inch in length, and said notice shall in legible character direct the owner, agent or occupant of said property immediately to repair the same in a good substantial manner, and the City Engineer shall file with the Recorder an affidavit of the posting of such notice, stating the date when and the place where the same was posted. The Recorder shall upon receiving the affidavits of the City Engineer send by mail notice to repair or construct 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 is known to the Recorder, and if such postoffice address be unknown to the Recorder, such notice shall be directed to such owner or agent at Beaverton, 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.

*179. Permit For Sidewalk Repairs Or Construction:

The owner, agent or occupant before making said repairs or construction shall obtain from the City Engineer a permit so to do, which shall prescribe the kind of repair to be made, the material to be used and 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 time designated, the City Engineer shall make the same, 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 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.

*180. Council Authority Over Sidewalks—Assessment:

The Council shall exercise the same general authority and supervision over sidewalks 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 City Engineer, 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 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 is provided for special assessments for street improvements.

*181. Advances For General Fund:

Moneys to repair sidewalks when the repair shall be made by the City Engineer under the Charter may, at the discretion of the Council be advanced from the General Fund to be reimbursed by the special assessment when collected.

*182. Damage For Negligence:

It is not only the duty of all owners of land within the city to keep in repairs all sidewalks, constructed or existing in front of, along or abutting upon their respective lots or parts thereof and parcels of land, but such owners are hereby declared to be liable for all damages to whomsoever resulting, arising from their fault or negligence in failing to put any such sidewalk in repair, after the owner or agent thereof has been notified as provided in the charter so to do; and no action shall be maintained against the City of Beaverton by any person injured through or by means of any defect in any sidewalk.

*183. How Authorized:

The construction and repair of all sidewalks shall be authorized by ordinance and duty passed by the City Council.

CHAPTER XIII. SEWERS AND DRAINS.

- *184. Council May Order Construction Of Sewers.
- *185. City Engineer To Make Plans And Specifications—Districts—Assessments.
- *186. Publication Of Resolution—Notices.
- *187. Remonstrances.
- *188. Council To Make Contracts.

*184. Council May Order Construction Of Sewers:

The Council is hereby authorized and empowered whether it may deem that the public health, interest or convenience may require, to order to be constructed and laid all sewers and drains, with all necessary manholes, lamp-holes, catch basins and branches, and to repair or relay the same, and to levy and collect an assessment upon all lots and parcels of land specially benefited by such sewers and drains, to defray the whole or any portion of the cost and expense thereof, and to determine what lands are especially benefited by such sewer and the amounts to which each lot or parcel of land is benefited.

*185. City Engineer To Make Plans And Specifications—Districts—Assessments:

Whenever the Council shall deem it expedient or necessary to construct or relay any sewer or drain, it shall require from the City Engineer plans and specifications for an appropriate sewer or drain with all necessary catch basins, manholes, lamp-holes and branches; and pursuant thereto, the City Engineer shall prepare two or more sets of plans and specifications for an appropriate sewer or drain, each set of which shall specify a separate and distinct class or kind of sewer pipe, and estimates of the work to be done and the probable total cost of each style of construction and the City Engineer shall file such plans, specifications and estimates in the office of the Recorder; provided, however, that if there shall be specified in any portion of said sewer or drain a type of construction other than sewer pipe, the City Engineer may prepare only one or more sets of plans and specifications and estimates of separate and distinct styles of construction for such portion of said sewer or drain. If the Council shall find said sets of specifications, plans 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 sewer or drain and the action of the Council in the creation of such assessment district shall be final and conclusive. The Council shall, by resolution, declare its purpose to construct said sewer or drain, describe the location thereof and include therein the City Engineer's estimate of the probable cost thereof according to each of said plans and specifications, and define the boundaries of the assessment district to be benefited and assessed therefor. The action of the Council in declaring its intention to construct or relay a sewer or drain, directing the publication thereof, approving and adopting the sets of plans, specifications and estimates of the City Engineer and determining the district benefited thereby and to be assessed therefor, may be done in one and the same resolution.

Within twenty (20) days from the date of the first publication of the notice of the Council declaring its intention to construct said sewer or drain, the owner or owners of any property within the assessment district may file with the Recorder a written remonstrance against said proposed sewer or against the adoption of any particular sets of plans or specifications, and the Council, upon hearing said remonstrance may, in its discretion, discontinue proceedings in said matter, but the Council may overrule any and all remonstrances and shall have the power and authority to order the construction of said sewer or drain or for the repair or relaying of the same, and within three months from the date of the final publication of this previous resolution may, by ordinance, provide for the same, which shall substantially conform to the sets of plans and specifications previously adopted. Upon the passage of said ordinance, the Council without delay, shall give notice by publication of not less than five successive days in the city official newspaper, inviting proposals for the construction, repair or relaying of said sewer in accordance with the City Engineer's sets of specifications, plans and estimates. The Council shall have power and authority to specify the kind or class of sewer to be constructed and shall exercise the same power, authority and supervision in the advertising for bids, awarding of contracts, and the supervision and accepting of the work as is delegated to said Council in the matter of street improvements so far as consistent with the provisions of this article.

The provisions of this article shall not apply to proceedings for the laying of any sewer commenced prior to the adoption of this amendment, and all such proceedings shall be completed in accordance with the provisions of the Charter in force at the time of their commencement, and for such purpose all provisions of the Charter of the City of Beaverton repealed by this article shall be in force and effect.

All sections or parts of sections in conflict with the provisions of this article are hereby repealed in so far as they conflict therewith.

*186. Publication Of Resolution—Notices:

The resolution of the Council declaring its purpose to construct or relay such sewer or drain shall be kept of record in the office of the Recorder and shall be published for four consecutive publications in the official newspaper. The City Engineer within five days from the first publication of said resolution shall cause to be posted conspicuously on the street or streets along the line of the contemplated sewer or drain, at least two notices headed "Notice of Sewer Work", in letters not less than one inch in length, and said notices shall contain in legible characters a copy of the resolution of the Council and the date of its passage, and the City Engineer shall file with the Recorder an affidavit of the posting of such notices, stating therein the date when, and places where, the same have been posted.

*187. Remonstrances:

Within twenty days from the date of the first publication of the notice required to be published in the preceding section, the owner or owners of any property within the assessment district may file with the Recorder a written remonstrance against said proposed sewer, and the Council upon hearing said remonstrance, may, at its discretion, discontinue proceedings in said matter, but the Council may overrule any and all remonstrances, and shall have power and authority to order the construction of said sewer or drain, or the repair or relaying of the same, and within three months from the date of the final publication of its previous resolution, may by ordinance provide for the same, which shall substantially conform to the plans and specifications previously adopted.

*188. Council To Make Contracts:

Upon the passage of said ordinance the Council shall exercise the same power, authority and supervision in the advertisement for bids, awarding contracts, the requiring of bonds, supervising and accepting the work as is granted in the matter of street improvements.

CHAPTER XIV. FIRE DEPARTMENT.

*189.

Section 1. It shall be the duty of the Council to provide for the prevention and extinguishing of fires for the preservation of property endangered thereby and for the appointment of officers required for that purpose.

Section 2. The Council shall supervise and control the Beaverton Fire Department and may, by ordinance declare what companies compose the same, and the maximum and minimum membership thereof.

Section 3. All officers of the fire department, at a meeting duly and regularly called by the members thereof, shall be in attendance.

Section 4. The chief of the fire department shall in all cases of fire, have absolute control and command of all the engines, hose, hooks, ladders and apparatus belonging to the fire department; he shall at all times, in conjunction with the committee on fire and water, have control and keep in repair all engines, hose, hooks and ladders belonging to the department and public systems and fire plugs; it shall be the duty of the Council to prescribe by ordinance or resolution all rules and regulations governing said fire department and relation to repairs and improvements as may seem best.

Section 5. The Chief of the department shall have the power to suspend any company, member or members thereof for disobedience of orders or neglect of duty until a meeting of the members of the fire department whose action upon the matter shall be subject to an appeal to the Council. The Chief shall report to the Council all fires that shall take place in the City with the cause thereof, as well as can be ascertained and the number and description of the building destroyed or injured together with the name of the owner or occupants thereof; and also all the estimated costs and such other information as the Council may deem necessary and he shall make reports at such times as the Council may appoint, of the conditions of the department and property belonging thereto. The Chief of the department shall also act as fire warden and perform such other duties as the Council may by ordinance or resolution prescribe.

Section 6. It shall be the duty of the assistant chief, to assist the chief in the performance of his duties and whenever the chief shall be absent from the City or prevented from attending to the duties of his office, he shall perform all the duties and possess all the rights and powers of the chief during such absence or disability.

Section 7. It shall be the duty of the Council to appropriate from time to time such sums of money as may be necessary to keep the present apparatus of the department in perfect order and add engines and hose and may add a system of fire alarms and other necessary apparatus whenever the same may be deemed necessary. It may also, as soon as it may be necessary, build and furnish engine houses for the use of the department.

Section 8. The Council shall have power to cooperate with fire districts, to assist in their organization and to permit the department and its apparatuses to make runs into said districts and to cause a charge to be made for any and such runs and assistance and to enter into any and all contracts with fire districts pertaining to the preservation of property, runs of the apparatus and assistance of the department.

*190. Council To Have Charge Of Public Improvements:

The Council shall have the exclusive management of the construction, reconstruction, maintenance and removal of all public and local improvements, including the grading, paving, curbing, or otherwise improving the streets, alleys, park, boulevards and other public places of the City; all public, district and private sewers; of all sidewalks, crosswalks, railways, viaducts and like structures; of all buildings to be constructed for or belonging to the City and the grounds surrounding the same; all excavations of streets, alleys or other public places; the erection of poles and stringing of wires, whether done by the city, corporation or individuals.

*191. Advertisement Of Municipality—Appropriations:

The Council is hereby authorized and empowered to appropriate out of the general fund of the City of Beaverton a reasonable amount of money not exceeding five thousand dollars (\$5000.00) annually, as to such