

*Amended by Ord No 34*

AN ORDINANCE PROVIDING PROCEDURE FOR LEVY AND COLLECTION TO SPECIAL ASSESSMENTS FOR IMPROVEMENTS CONSTRUCTED WITHIN THE CITY OF GARIBALDI AT THE EXPENSE OF PROPERTY SPECIALLY BENEFITED THEREBY AND DECLARING AN EMERGENCY

THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

Section 1. DEFINITIONS

a. The term "street" as used in this ordinance shall be construed to mean any street, avenue, boulevard, alley or lane or any public road which is now or may hereafter be opened or dedicated to public use.

b. The terms "improve" and "improvement" as used in this ordinance shall be construed to include all grading and re-grading, paving or repaving, planking or replanking, macadamizing or remacadamizing, graveling or regravelling, and all manner of constructing, altering and repairing of sidewalks, crosswalks, gutter curbs, manholes, culverts, sewers, drains, and tunnels within any of the streets of the City of Garibaldi, or any part of such street.

Section 2. That special assessments for the construction of local improvements within the City of Garibaldi at either the partial or complete expense of property specially benefited thereby shall be levied and collected as provided for in this ordinance; provided, however, that nothing in this ordinance shall be construed to prevent the alternative levy and collection of such special assessments under applicable provisions of the laws of the State of Oregon.

Section 3. The common council shall have power, and is authorized whenever it deems it expedient, to improve any part of the streets of the city; to establish or alter the grade of any street or part thereof within the limits of the City of Garibaldi; to determine the character, kind, and extent of any street improvement; to levy and collect assessments 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 within the limits specified by this charter what lands are specially benefited by such improvement, and the amount of such benefits as to each parcel or tract.

Section 4. In providing for any street improvement the council shall have the power to provide, as a part thereof, for placing in the street where said improvement is to be made, all necessary pipes and conduits for water, gas, heat, power, sewerage, electrical and any other purposes for which such street may properly be used, and which may be deemed necessary, and it shall have power to prescribe and enforce such rules as may be deemed necessary, regulating the opening and repair of any street surfaces in order to insure the replacing of the streets in proper condition, and in providing for any street improvement the council shall have the power to require the contractor for any street improvement to maintain and keep the same in repair for such period of time (not to exceed 10 years) as the common council may determine, any such requirements however to be included in the plans and specifications of the engineer therefor.

Section 5. Whenever the common council shall deem it expedient to improve any street or streets or any part thereof within the City of Garibaldi, it shall require from the city engineer plans, specifications and estimates therefor, and where the proposed improvement is one for the paving of a street the plans, specifications and estimates shall be for two or more kinds of appropriate improvement, at least one of which must be on a nonpatentable kind, and the engineer shall furnish as a part of said estimates a statement of the probable total cost of each class of improvement, and such plans, specifications and estimates shall be filed by the city engineer in the office of the city recorder. 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 declare its purpose or intention of making said improvement, and determine the portion of the street to be improved, and the assessment district established shall be designated as Local Improvement District No. \_\_\_\_\_. The action of the common council in declaring its intention to improve any street, or any part thereof, approving and adopting the plans, specifications and estimates of the city engineer, determining the boundaries of the improvement district and of the portion of street or streets to be improved, may all be done at the same meeting of the common council and by one and the same resolution. Upon the passage of such resolution by the common council the recorder shall give notice by publication for not less than ten days from date of the first publication, by publishing for not less than two issues in a weekly newspaper published in the City of Garibaldi, inviting bids for making said improvement. Each bid submitted must be accompanied by certified check equal to 10 per cent of the amount of the bid. When such bids are received, and the amount of the lowest responsible bid for each kind of improvement has been ascertained, the council shall, by resolution, determine the kind of improvement to be made, and the lowest responsible bid. When the common council shall have determined the kind of improvement to be made and the lowest responsible bid submitted therefor, the recorder shall return to the respective bidders whose bids have been rejected the checks submitted with their bids, and shall retain the check accompanying the bid accepted and adopted for the improvement by the common council. Such check shall be held until such time as a remonstrance is filed sufficient to defeat said improvement, the contract and bond executed as required by the provisions of the charter of the City of Garibaldi, or other applicable law, or ordered returned by the common council, and shall be forfeited to the City of Garibaldi if the successful bidder shall fail to enter into contract with approved bond for the carrying out of his bid if required so to do; provided that no bids shall be called for, for the establishment or change of a street grade, and the expense of any such establishment or change of grade shall be paid out of the general fund of the city, but such establishment or change of grade shall be made after notice as prescribed for other improvements.

Section 6. When the common council shall have determined the kind of improvement to be made and the lowest responsible bid submitted therefor, it shall direct the recorder to give notice by publication in not less than two successive weekly issues of a newspaper published in the City of Garibaldi, notifying all persons concerned that the council has determined to make the improvement in question. Such notice must specify with convenient certainty the street or part thereof proposed to be improved, or of which the grade is proposed to be established or altered, and the kind of improvement which is proposed to be made, the boundaries of the improvement district established and the cost of the improvement as fixed by the accepted bid therefor.

Section 7. Within ten days from the first publication of such notice the owners of two-thirds or more of the area of the property within such improvement district may make and file with the recorder a written remonstrance against the proposed improvement, grade, or alteration thereof, and thereupon the same shall not be then further proceeded with or made, except in the case of a proposed improvement for the construction or repair of a sidewalk or sidewalks, and the particular improvement so defeated by remonstrance shall not be again proposed for six months, except on petition of the owners of one-half or more of the property to be affected thereby, but notice may at once be given of a different kind or character of improvement from the one first proposed. The common council shall have full power to proceed with the proposed construction or repair of any sidewalk or sidewalks notwithstanding the filing of a remonstrance against the same, but it shall, at its first regular meeting after the time for filing remonstrance has expired, or at such other time as the hearing may be continued to by it, hear and determine any remonstrance which may be presented against such proposed sidewalk construction or repair. As to any other character of street improvement, if no remonstrance such as is hereinbefore mentioned be filed within the time limited, the common council, at its earliest convenience thereafter and within one year from the final publication of such notice, may establish the proposed grade or alteration thereof, or commence to make the proposed improvement as herein provided by letting contract therefor as hereinafter provided for; provided, however, that whenever the owner of any property has petitioned the council to make any street improvement, he or his successor in ownership of said property shall not be permitted to remonstrate against the making of such improvement if notice of intention to make the same is published within three months from the time such petition is presented to the council, but in every such case the signature of any such person to any remonstrance to such improvement shall not be considered as in any way impairing the authority or power of the council to proceed with the making of such improvement.

Section 8. Whenever the common council shall have acquired authority to make any improvement as provided for herein, it shall direct the mayor and recorder of the city to enter into a contract with the person, or persons, or corporation submitting the lowest bid as herein provided for making said improvement, and shall require such contractor to execute a good and sufficient bond and undertaking in a sum not less than the amount of the contract price, conditioned to make said improvement according to the plans and specifications and according to the terms and conditions of such contract, and complete the same within a reasonable time to be determined by the common council, such contract to be for the amount bid for the making of said improvement by such lowest bidder; in case of an establishment or change of grade the proposed change or establishment shall be effected either by ordinance or resolution.

Section 9. The common council may, for good cause, extend the time for the completion for any contract for a street improvement. It shall have power to make all contracts necessary for carrying out the street improvement work; to provide for the proper inspection and supervision of all street improvement work; and to do any other act necessary to secure the completion of the improvement.

Section 10. After the contract and bond are executed for the making of any street improvement as herein provided, and the common council has thereby ascertained and determined the actual cost of such improvement including a sum not to exceed 10 per cent of such construction price for engineering expenses, acquiring descriptions of property, publishing of notices, superintendence and other special expenses connected with the making of such improvement, the council

shall apportion the cost of such improvement upon each tract, lot or part thereof liable therefor. Such apportionment for any improvement, except the construction or repair of a sidewalk or of a drain or sewer, shall be made in the following manner: Each lot or part thereof, or tract where the property is not divided into lots, within the limits of the improvement district abutting or adjacent to any street improved, shall be liable for the full cost, in the proportion thereof hereinafter mentioned, of making said improvement upon half of the street in front of any abutting upon or adjacent to said lot, tract, or part thereof, and for a proportionate part of the cost of improving the street intersections in the improvement district, to be determined by dividing the improvement district on each side of the street improved into zones. Each zone to contain one-third in depth of the improvement district on that side of the street being improved. The property lying in the first zone next to the street being improved shall be assessed with 55 per cent of the cost of said improvement, the property lying in the second zone with 30 per cent of the cost, and the property lying in the third zone, or zone farthest from the street improved with 15 per cent of the cost.

The entire cost of construction or repair of sidewalks shall be charged against the lot or tract lying immediately adjacent to the line of the street where such sidewalk is being constructed or repaired.

The cost of construction of sewers and drains shall be assessed upon the property directly benefited thereby in proportion to the benefits derived by said property therefrom, and each lot or part thereof, or tract of land benefited by such drain or sewer, shall be assessed separately with its proportionate part of such cost. Provided, further, that in making any of the assessments herein provided for, there shall be added as a part of the cost of such improvement such sum as found necessary to defray the cost of advertising engineering, superintendence, and other incidental expenses connected with the carrying out and construction of said improvement, but such incidental expenses shall not in any case exceed ten per cent of the contract price for the making of said improvements. Provided, further, that the council may order such part of the cost of any street improvement paid out of the general fund of the city as the council may deem just and proper.

Section 11. After such apportionment shall have been made of the cost of such improvement, the council shall cause notice to be given by the city recorder of the time and place which it shall set for hearing objections thereto. Such notice shall be given by publication for two consecutive issues in a weekly newspaper published in the City of Garibaldi, and the time set shall not be less than 10 days nor more than 30 days from the date of the first publication of such notice. At the time and place set in said notice, or at such other time as the matter may be adjourned to, the council shall hear and determine all objections to the apportionment of such costs, and upon hearing may make such changes therein as shall be necessary to make such apportionment equitable and just and in conformity to the provisions of this Ordinance of the City of Garibaldi.

Section 12. After the hearing provided for in the foregoing section, and after making such changes in the apportionment as are therein provided for and when the same have been fully determined, the common council shall declare and assess the costs as so determined by resolution upon the property benefited, which shall be described therein, and each lot or part thereof or separate tract of land shall be assessed with its proportionate share of such cost so determined, and such assessment shall be final and conclusive, and said resolution shall further direct the recorder to enter a statement

of the assessed costs in the docket of the city liens as provided for by this ordinance of the City of Garibaldi.

Section 13. Payments may be made from time to time to the contractor for any improvement work as may be provided in the contract therefor, but such payments shall not exceed seventy-five per cent of the amount owing for work then done and material actually consumed and embraced in the work under said contract, as computed and estimated by the city engineer, until the completion of the contract and the acceptance and approval of the work covered thereby by the city as herein provided. Payments either partial or complete shall be made by warrants drawn on the fund which shall be established for the purpose of paying for said improvements, except as to such portion of the cost as the council shall order paid out of the general funds of the city, and all moneys received on account of assessments levied as herein provided shall be placed to the credit of such fund and used for no other purpose than paying the cost of such improvements together with any interest which may accrue on account thereof. Whenever any street improvement is completed to the satisfaction of the city engineer, he shall file a certificate to that effect with the city recorder, who shall thereupon publish notice thereof for not less than two publications in some newspaper published in the City of Garibaldi, stating therein the time when the acceptance of such work will be considered by the common council which time shall not be less than ten days from the date of the first publication of said notice, and which shall be at the first regular meeting of the common council occurring after the expiration of said ten day period, unless the council shall fix an earlier time than such regular meeting therefor. At the time so fixed any person affected by such improvement may appear and make objections to the acceptance of said work, or may file such objections prior to said time, and any such objections shall be considered and the merits thereof determined by the common council, and if it appears that said work has not been completed in accordance with the contract therefor, the council shall require the same to be completed before it shall be accepted. When any such work is accepted, the recorder shall endorse the approval of the council thereof on the certificate of the city engineer and the same shall remain on file as a part of the records of the city.

Section 14. All assessments made for street improvements, and every part thereof, shall bear interest at the rate of six per cent per annum from the expiration of the time allowed the owner of the land to apply said assessments in installments until paid or collected.

Any street improvement which may be under way at the time of the adoption of this measure shall be carried to completion under the provisions of this measure, so far as the same are applicable, but in respects in which the provisions of this measure are not applicable the former charter provisions relating thereto shall be followed, and they are declared as kept in force for that purpose until such matters shall be fully completed.

Section 15. The docket of city liens is a book in which must be entered by the recorder the following matters in relation to assessments for the improvement and repair of streets, and the construction and repair of sewers and drains, and the benefits and damages assessed for opening, widening, straightening, and extending streets, and changing the grades thereof: first, the number or letter of the lot assessed, and the letter and number of block in which it is situated, and if a separate assessment is made, and upon a part of a lot, or tract of land, a particular description of such part of lot or tract; second, the name of the owner thereof, or that the owner is unknown if such be the case; third, the sum assessed upon each lot, tract or

part thereof and the date of the entry thereof; provided, however, that a failure to enter the name of the owner, or a mistake in the name of the owner in such entry, or the entry of a name other than the true owner shall not render void or vitiate such assessment or in any other way effect lien of the City of Garibaldi or the property described in such lien docket.

Section 16. The docket of city liens is a public writing, and from the date of entry therein of an assessment upon a lot, or part thereof, or a tract or parcel of land, or a part thereof the sum so entered is hereby declared to be a tax levied upon, and a lien upon and against said lot, or part thereof, or tract or parcel of land, which lien shall have priority over all other liens or incumbrances thereon, except taxes imposed under authority of the state or of the united States, and any sum or sums of money assessed for improvement or repair of a street, or benefit assessed for opening, widening, straightening, or extending any street, or for a change of the grade thereof, or for the construction or repair of a sewer or drain, entered upon such lien docket shall be collected in the manner hereinafter prescribed.

Section 17. Notice shall be given by the city recorder to the owner or owners of any such lot or part thereof, or tract or parcel of land, of the entry of such assessment in said lien docket, specifying the amount thereof, within five days after the entry thereof in said docket, which notice shall be given by mail if the post-office address of the owner or his agent is known, and if unknown, by addressing the same in the name of the owner at the City of Garibaldi, Oregon, and also by publishing the notice thereof in one issue of a weekly newspaper published in the City of Garibaldi.

Section 18. Whenever the owner of any such lot or part thereof, or tract or parcel of land upon which an assessment has been levied and docketed as herein provided, for, shall desire, he may within thirty days after notice of such assessment is first published apply to the city recorder of the City of Garibaldi to pay said assessment in installments as hereinafter provided, and thereafter no warrant to enforce the collection of such assessment shall issue or be enforced, except as provided by this article in such cases.

Section 19. If within 30 days from the date of the entry of such assessment in said lien docket the whole or any portion of the sum assessed upon a lot or part thereof, or tract or parcel of land, remains unpaid, and such owner shall not have applied for leave to make payment in installments as hereinafter provided, upon order of the common council a warrant for the collection of the same shall be issued by the recorder directed to the marshal of the City of Garibaldi. Whenever such assessment shall have been paid to the city treasurer, who is hereby authorized and designated as the person to receive the same, the treasurer shall issue a duplicate receipt for said payment and file one copy thereof with the city recorder, and the recorder shall upon receiving such duplicate receipt immediately cancel said lien upon said docket of city liens by entering upon the face thereof an entry of the satisfaction of such assessment signed by himself in his official capacity.

Section 20. Such warrant shall, for the purpose of making sale of such real property upon which assessments are delinquent and unpaid, be deemed and held as an execution against said real property for the amount of said assessment with interest and costs, and the marshal shall, within 60 days from the receipt of said warrant sell the property therein described. Such sale shall be at public auction to the highest bidder for cash in hand, and shall take place at the front door

of the building in which the common council holds its sessions, and the marshal shall give notice of such sale by publication thereof once a week for four consecutive and successive weeks in a weekly newspaper published in the City of Garibaldi, and by posting such notice for a like period of time in not less than three public places in said city. Such notice of sale shall contain a description of the lot or lots, or partsthereof, tracts or parts thereof, that the same is to be sold for said delinquent assessments, with the amount of said assessment, interest, and costs to date of sale, including cost of advertisement, due upon each lot or tract or part thereof together with the name of the owner or reputed owner, or that the owners are unknown as the same appears upon said docket of city liens, and shall also specify the time and place of sale, and that the lots, or parts thereof, or tracts of land described therein will be offered for sale to satisfy the assessments, interest, and costs due upon each tract, lot, or parcel of land, or part thereof, and each lot, tract, or parcel of land, or part thereof shall be sold separately; providing, however, that all delinquent assessments assessed in one ordinance may be included in one warrant and notice and all such sales shall be made between the hours of 9 o'clock a.m. and 4 o'clock p.m.; provided, further, that such sale may be postponed in like manner as now provided by the laws of Oregon for the adjournment of sales of real property upon execution.

Section 21. The marshal executing such warrant shall immediately issue a certificate of sale to the purchaser for the property sold, stating therein that the sale is made subject to redemption, and that a deed will be issued thereon at the expiration of the time for redemption if no redemption be made prior to that date. Within one year from the date of sale the owner, or his successor, or any person having a lien by judgment, decree, or mortgage upon the property sold, or any part thereof, may redeem the same by the payment of purchase money paid at said sale for the tract desired to be redeemed and twenty per cent thereon, with interest upon the purchase money from the date of the sale to the time of redemption at the rate of 6 per cent per annum, and the amount of any taxes which the purchaser, his heirs, or assigns may have paid upon said property, with interest thereon at the legal rate from the date of such payment, to be paid to the city recorder for the purchaser. Notice of redemption shall be given as now provided for by the laws of Oregon for the redemption of real property from the sale upon execution.

Section 22. A redemption as prescribed in the foregoing section discharges the property from the effect of sale upon such assessment and if made by the owner or his successor in interest, the ownership of said property is thereby restored to such owner or his successor in interest, but if made by a lien creditor the amount paid by the redemption shall thereafter be deemed to be a part of his judgment, decree, mortgage or other lien as the case may be, and shall bear interest and may be enforced and collected as a part thereof.

Section 23. After the expiration of one year from the date of the certificate of sale issued by the marshal if no redemption shall have been made, the then acting marshal shall execute and deliver to the purchaser, his heirs, or assigns upon application therefor and surrender of such certificate, a deed of conveyance of the property sold, reciting the description of the same as described in the docket of city liens, the amount paid, the name of the owner, or that the name of the owner is unknown, the date of docketing the lien, and that the property was sold for delinquent assessment for street improvements, or for opening, laying out, widening, straightening, extending, or changing grade of streets, or construction of sewers, or drains, as the case may be and that assessment was due and unpaid at the time of

sale, and that no redemption had been made. Such deed shall be executed conformably to the laws of Oregon so as to make it eligible for record, and the same shall operate to convey to the purchaser a fee simple title to the said property free and clear of all incumbrances, except for taxes as mentioned in section 16 of this ordinance. Upon the delivery of such deed the marshal shall file the certificate of sale with the recorder, and it shall be a public record. Upon delivery of such deed all of the proceedings required or directed by this ordinance in relation to the making, levying and docketing of such assessments and the sale of the property for the satisfaction thereof, shall be presumed to be regular, and such deed shall be prima facie evidence of the regularity of all proceedings required to be had under the provisions of this article and of title in the grantee.

Section 24. In any action, suit, or proceeding instituted in any court for the recovery of any lands sold for any assessment under the provisions of this act, the party claiming to be the owner as against the holder of the deed from the marshal, must with his complaint or answer as the case may be, pay into the court the amount of the purchase money for which the particular tract of land or lot sought to be recovered was sold, together with 20 per cent thereof additional, and also interest on said purchase money from the date of sale to the date of the institution of such suit at the rate of six per cent per annum, together with all the costs and expenses of sale and of recording the said deed, and also any and all taxes the purchaser may have paid on said property with the legal interest thereon from the date of payment thereof for the benefit of the holder of said deed, his heirs, or assigns, in case his or their title under such deed shall fail in said action, suit, or proceeding; provided, further, that the person claiming title under the deed of the marshal shall have judgment against the party claiming against such deed for such amount as the court may adjudge reasonable for the bringing or defendant of any such action, suit, or proceeding, or whether he be plaintiff or defendant therein.

Section 25. Whenever any lot or tract or part thereof sold for delinquent assessment as herein provided brings more than the amount of the assessment and all costs and charges of collection, the surplus shall be paid to the city treasurer, and the person executing such warrant shall take a separate receipt for such surplus and file the same with the recorder on return of the warrant, and the common council shall order such surplus paid to the person or persons entitled to the same, on demand, upon receiving satisfactory proof that such person is the one entitled to receive such surplus; provided, further, that whenever any property is offered for sale for delinquent assessments as herein provided, if a sufficient amount is not paid therefor to pay such assessment together with all the costs and expenses of sale in connection therewith, the may of the City of Garibaldi is hereby empowered and authorized to bid for and in behalf of said city the amount of such assessment, together with said costs and expenses assessed thereon or charged against said property or each part or parcel thereof, and if there be no higher or better bidder such land, lot, or parcel of land, or part thereof shall be sold to and become the property of said city, subject to redemption as hereinbefore provided, to be paid for by warrant of the city upon the general fund thereof. Whenever the city shall acquire title to any such property the same may be sold by order of the common council at such price, and on such terms as it may deem proper.

Title 95, Chap.21, O.C.L.A.

Section 26. All of the provisions of sections 3245 to 3253, both inclusive, of Lord's Oregon Laws, are hereby made expressly applicable to all assessments for street improvements under the provisions of this ordinance; provided, however, that in all such cases the application to pay by installment provided for in Section 95-2101, O.C.L.A., may be made within 10 days as in said section provided; and pro-

vided, further, that interest on all unpaid installments shall be paid semiannually by the property owners, or other persons required to make such payments, instead of annually as provided in section 95-2105 of said O.C.L.A.

Section 27. For all of the purposes of this ordinance the surveyor of the City of Garibaldi shall be deemed to be the city engineer, and the common council is authorized to employ such assistants for the surveyor as may be necessary to enable him to properly perform any and all of his duties arising under this ordinance or otherwise.

Section 28. The common council of the City of Garibaldi is hereby authorized and empowered to establish by ordinance the grade of any street within the City of Garibaldi when such grade has not been established and may require from the city engineer all maps and data it may deem necessary in relation thereto. After the grade of any street has been established by the common council the same may be by the common council thereafter changed pursuant to the following provisions.

Whenever it shall be deemed expedient to change the grade of any street within the city, the common council shall pass a resolution declaring its intention to make such change of grade and describing the same. Said resolution shall be kept of record in the office of the city recorder, and shall be published for not less than two consecutive weekly publications in some newspaper published in the City of Garibaldi, together with a notice to all persons concerned, giving the time and place, which shall not be less than 20 days after the date of the first publication of said notice and resolution, when and where the common council will hear and determine all objections and remonstrances to said change of grade, and provide for the assessments of benefits or damages on account of said change of grade. The city engineer within three days after the first publication of said notice and resolution, shall cause to be posted in at least two places on the street or streets at points affected by such change of grade, a notice headed "Notice of Change of Grade" in letters not less than one inch stating that such a resolution has been passed by the common council, the date thereof, and the change of grade proposed, and the time within which written objections or remonstrances against the same may be made. An affidavit shall be filed with the city recorder of the posting of said notice, stating therein the date when, and the places where the same had been posted, and the publication of said notice shall be proved in the same manner provided by law for the proof of publication of matters received to be published.

Section 29. At any time within 20 days after the first publication of the resolution provided for in the preceding section, the owners of more than one-half of the property affected by such change of grade may make and file with the city recorder a written objection or remonstrance against the same, and said objection or remonstrance shall be a bar to any further proceedings thereto for a period of six months, after which, if the common council proposes to change the grade the same proceedings shall be had as in the first instance.

Section 30. If no such written objection or remonstrance be filed within the time designated, or if the common council finds that such objection or remonstrance is not legally signed by the owners of more than one-half of the property affected by the proposed change of grade, the common council shall be deemed to have acquired jurisdiction to change by ordinance the grade as described in the resolution previously adopted.

Section 31. When the grade of any street has once been estab-

lished, and any permanent building or improvement has been constructed on any lot abutting said street, or affected by said change of grade, the owner or owners of any such permanent building or improvements during the time designated for filing objections or remonstrances, may file with the city recorder a claim of damages by reason of such proposed change of grade, and such claim shall describe the land upon which buildings or improvements stand, and an estimate of the value of said buildings or improvements, and of the damages which said change of grade will cause thereto, and said claims, and all statements contained therein, shall be sworn to by a party or parties owning said buildings or improvements and the land, or by their agents or local representatives. Thereafter the common council shall appoint three disinterested freeholders of the City of Garibaldi, Oregon, having the same qualifications as viewers for the opening, laying out, and establishing of streets, to estimate and determine the damages that will be sustained by the owners of buildings or improvements affected by such change of grade, and to assess the benefits accruing to the property benefited by such change of grade. The viewers shall be appointed and they shall qualify, and notice of their meeting, and of the filing of their report, shall all be done in the same manner as similar acts and proceedings are done in the opening and laying out and establishing of streets. The said viewers shall include as a part of the benefits assessed the amount of their compensations for services, which shall be the sum of \$3.00 each for each day actually engaged in said service, but in no case shall the amount of such assessment of benefits exceed the actual benefit to the lot or parcel of land, or other real property so assessed, deducting therefrom any damages or injuries to the same which are less than said benefits. Nor shall any damages be awarded for any building erected prior to the establishment of the grade which is proposed to be changed, and no award of damages to any person shall be greater than the amount claimed and sworn to by said person as hereinafter provided, and if in the judgment of said viewers the whole amount of said damages and compensation of viewers shall exceed the actual benefits to the specific property subject to assessment, they shall so indicate in their report. The said viewers shall make a report of their findings of benefits and damages to the common council, and the same shall be heard, considered, and adopted and the assessments of benefits shall be levied, docketed, and collected, and kept in a separate fund. An appeal from said report may be taken and the findings of the jury in such cases shall be final and conclusive in the same manner, to the same extent, and with the same effect as provided in the opening, laying out, establishing, and changing of street. When such assessment is fully collected the common council may change the grade of the street, and warrants shall be drawn upon the special fund so provided in favor of the persons entitled to damages, but if after the collection of any assessment as herein provided the common council shall not change the grade of any street, the amounts of any assessment so collected shall be refunded to the person or persons paying the same or to their legal representatives or successors in interest as to said matter; provided, the common council may pay from the general fund of the city the whole or any part of the damages so assessed.

Section 32. Whenever it shall appear to the common council that street improvement bonds issued under the provisions hereof will not for any reason sell at par, and the common council shall deem it expedient, on the faith and credit of the City of Garibaldi as a whole, to guarantee payment of such street improvement bonds, it may in the ordinance authorizing the issuance of said bonds, based upon assessments of benefits to property benefited thereby, provide that the payment of such street improvement bonds shall be guaranteed by the City of Garibaldi, and any deficit in any special fund to redeem said bonds shall in such event be paid out of the general fund of the City of Garibaldi at maturity of said bonds. The common council may cause such guarantee to be inserted in such improvement bonds; provided, however, that any ordinance authorizing such guarantee shall be subject to the referendum, and no emergency clause shall be attached to any ordinance providing for such guarantee.

Section 33. No obligation incurred by the City of Garibaldi on account of the issuance of street improvement bonds as herein provided for shall be deemed or taken to be within or any part of the limitations imposed by this ordinance or by law upon the amount of indebtedness which may be incurred by the City of Garibaldi either by warrants or general bonds.

Section 34. Whenever an assessment for opening, altering, or improving a street, or construction, reconstruction, or repair of a sewer or for any local improvement which has been or may hereafter be made by the City of Garibaldi, Oregon, is or shall be defective, insufficient, or inadequate, or has been or shall be hereafter set aside, annulled, declared or rendered void or its enforcement refused by any court of this state or any federal court having jurisdiction thereof, whether directly or by virtue of and decision of such court or when the common council shall be in doubt as to the validity of such assessment or any part thereof, the common council may by resolution make a new assessment or re-assessment upon the lots or blocks or parcels of land which have been benefited to the extent of their respective and proportionate shares of the full value thereof. Such reassessment shall be based upon the special and peculiar benefit of such improvement to the respective parcels of land assessed at the time of its original making. Interest thereon from the date of delinquency of the original assessment may be added at the discretion of the common council. Such re-assessment shall be made in an equitable manner as nearly as may be in accordance with the law in force at the time it is made, but the common council may adopt a different plan of apportionment of benefits when in its judgment essential to secure an equitable assessment. The proceeding required by the ordinance of the City of Garibaldi, Oregon, to be had prior to the making of the original assessment shall not be required to be done again in case of re-assessment. Such re-assessment shall be made and shall become a charge upon the property upon which the same is laid, notwithstanding the omission, failure, or neglect of any officer, body, or person to comply with the provisions of the ordinances of the City of Garibaldi, Oregon, or connected with or relating to such improvement and assessment and notwithstanding the proceedings of the common council or any officer, contractor, or other person connected with such work may have been irregular or defective, whether such irregularity be jurisdictional or otherwise. The common council shall appoint a time and place not less than twenty days distant when it will meet for the purpose of making such re-assessment. The city recorder shall give ten days' notice by one publication in a newspaper published in the City of Garibaldi, Oregon, of the time and place fixed by the common council for making such re-assessment. At the time appointed therefor, unless at some time the common council shall adjourn until a future time or day for such purpose, or appoint another time therefor, and in such event at such adjourned or further meeting, the common council shall proceed to make such re-assessment in the manner prescribed. At the time of making such re-assessment the common council shall give an opportunity to any property owner to appear in person or by council and be heard in reference thereto. After having made such re-assessment, the common council shall declare the same by resolution and the same shall be a final determination of the regularity, validity, and correctness of the re-assessment except as herein otherwise provided. Such re-assessment shall be entered in the docket of city liens and shall be enforced and collected in like manner as ordinary assessments for improvements are enforced and collected under the ordinance of the City of Garibaldi, Oregon. All sums paid upon the former assessment shall be credited to the property on account of which the same were paid as of the date of such payment.

Section 35. If upon the completion of any improvements or repairs it is found that the sum assessed therefor upon the lots or

parts thereof or tracts of land is insufficient to defray the cost thereof, the Council must ascertain the deficit and declare the same by resolution. When so declared the city recorder must enter the sum of the deficit 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 said lot or part thereof or tract of land in like manner and with like effect as in the case of the sum originally assessed, and shall also be payable and be collected in like manner and effect as in case of such sum so assessed, and shall be deemed a part of the original assessment or tax.

Section 36. If any section, sentence, clause or work of this ordinance shall be held to be invalid such invalidity shall not affect the validity of any other portion of this ordinance, it being the intent of the common council to enact the remainder of this ordinance, notwithstanding such part so declared invalid should or may be so declared.

Section 37. That Ordinance #12 adopted by the common council of Garibaldi on March 24, 1947 by and the same hereby is repealed.

Section 38. WHEREAS, the sanitary conditions within the corporate limits of the City of Garibaldi are such that vital improvements must be undertaken without further delay; this Ordinance is necessary for the immediate preservation of the public peace, health and safety,

THEREFORE, an emergency is hereby declared to exist and it is hereby declared to be necessary for the immediate preservation of the peace, health and safety of the City of Garibaldi that this ordinance shall take effect immediately upon its passage by the common council and approval by the Mayor.

Passed by the Common Council  
this 23rd. day of August, 1948

Approved by the Mayor this  
23rd. day of August, 1948

Attest:

B. K. Smith  
City Recorder

Ernest J. Fisher  
Mayor

