Chapter 373

1957 REPLACEMENT PART

Roads and Highways Through Cities

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STATE HIGHWAYS THROUGH CITIES

373.010 Routing and marking state highways through cities. Whenever the route of any state highway passes through the corporate limits of any city of this state, the State Highway Commission:

(1) Shall select and designate the streets of the city over which the state highway shall be routed.

(2) Shall erect and maintain such road and other signs on and along such streets at such places and of such material and design as it may select.

(3) May alter or change such routing when in its opinion the interests of the motoring public will be better served. [Amended by 1957 c.663 §2]

373.015 Notice and hearing before location, relocation or abandonment of state highway through cities. Before the State Highway Commission acquires within any incorporated city any new rights of way, or relocates or abandons any existing state highway within any incorporated city, the secretary of the commission shall by letter notify the mayor of such city of the action contemplated by the commission, and, if any remonstrances or objections thereto are made by the mayor or the council of such city within 10 days after receipt of such letter, the commission, or its designated representative, shall hold a public hearing at the city hall in such city, after having first given written notice thereof to the mayor at least 10 days prior thereto, and, at such public hearing, persons who favor or oppose the contemplated action shall be given an opportunity to be heard. [1955 c.447 §1]

373.020 Jurisdiction over streets taken over for state highway routing through cities; effect on public utility duties. (1) Complete jurisdiction and control of streets taken over by the State Highway Commission as provided in this Act, as defined in subsection (10) of ORS 366.005, is vested in the commission and extends from curb to curb, or, if there is no regular established curb, then such control extends over such portion of the right of way as may be utilized by the commission for highway purposes. Responsibility for and jurisdiction over all other portions of the street or road remains in the city.

(2) All cities retain the right to grant the privilege to open the surface of any such street or road, but all damage occasioned thereby shall promptly be repaired by the city, either itself or at its direction, and the responsibility for the cost thereof shall be upon the city permitting the opening.

(3) Cities retain the exclusive right to grant franchises over, beneath and upon any such street or road, and to control and regulate such franchises and the utilization thereof, but the State Highway Commission may utilize any storm sewers thereon or thereunder without cost or charge therefor by the city.

(4) Nothing contained in this Act, as defined in subsection (10) of ORS 366.005, relieves any public utility from the maintenance and repair of any street or portion thereof or the performance of any other obligation required under any franchise granted to it by any city.

373.030 Construction and maintenance of streets; consent of city for grade change. (1) The State Highway Commission may construct, reconstruct, pave and improve and shall repair and maintain streets and roads through cities where such streets or roads, or both:

(a) Form a link in the highway system of the state or constitute a connection between two such highways; and

(b) Have been designated by the commission as the streets or roads over which there is routed state highway traffic.

(2) The State Highway Commission, however, shall not change or establish any grade of any such street or road without the consent of the governing body of the city.

373.040 State or county liable for change of grade damages; proceedings on cause of action. (1) If consent is given by the governing body of any city to change any grade of any street as such grade has been established or maintained by the consenting city and pursuant thereto the State Highway Commission or a county changes the grade, the state or the county, whichever makes such change of grade, shall be liable for and shall pay just and reasonable compensation for any damage or injury to any real property abutting upon the road or street affected by the grade change.

(2) Any person having any right, title or interest in any such real property has a cause of action against the state or against the county to enforce payment of the compensation. Any such action may be commenced and maintained in the circuit court for the county in which the real property

is situated. Any party to any such action has the right to appeal from the final judgment of any circuit court to the Supreme Court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving the real property in which the interest is claimed.

(3) The trial circuit court shall, in its final judgment, apportion such just compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(4) The liability of the state or the liability of the county, as the case may be, terminates wholly when it pays into court the sums determined by the circuit court to be just compensation. Any cause of action granted by this section is barred unless such action is commenced within six months after the change of grade is physically completed and accepted by the State Highway Commission or the county. [Amended by 1955 c.490 §1]

373.050 Closing streets which intersect with state highways routed through city. (1) Whenever the State Highway Commission has located a highway in, into or through the corporate limits of a city upon or over an alignment or route not theretofore comprising a city street and has acquired the necessary rights of way therefor and constructed a highway thereover, or whenever the commission, pursuant to ORS 373.010 has selected and designated streets over which to route a state highway within an incorporated city, the commission may close any street at the point where it intersects or is intersected by the state highway or by the streets selected and designated as the route of a state highway, by a formal agreement with the municipal authorities of a city set out in a resolution or ordinance of the city, designating the particular streets to be closed by name and intersection.

(2) Before any municipal authorities enter into any such formal agreement with the State Highway Commission, such municipal authorities shall comply with all city ordinances or charter provisions pertaining to the closing of streets in the city.

(3) Before the street can be closed or dead-ended, the State Highway Commission shall, after investigation, find and declare by resolution that the closing of the street at the point of intersection is necessary in order to provide safety for the general public or will contribute to a more expeditious and orderly movement of traffic, or both.

373.060 State liable for street closing damages; proceedings on cause of action. (1) If by the closing of any street as provided in ORS 373.050, real property abutting on the intersected street between the point of intersection and the next street, but in no event beyond a point 300 feet from the point of intersection, is damaged, any person having any right, title or interest in any such real property has a cause of action against the state to enforce payment of such compensation or damages.

(2) Any such action may be commenced and prosecuted in the circuit court for the county in which such real property is situated. Any party to any such action has the right to appeal from the final judgment of any circuit court to the Supreme Court. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving real property in which his interest is claimed.

(3) The trial circuit court shall, in its final judgment, apportion such compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(4) The liability of the state and of the municipality terminates wholly when the compensation thus determined is paid into court. Any cause of action granted by this section is barred unless it is commenced within six months after the street is closed and entrance from the street to the state highway or intersecting street is physically barred.

373.070 to 373.100 [Reserved for expansion]

USE OF CITY STREETS BY COUNTY

373.110 Connecting county road to state highway by road through city. (1) Whenever in its judgment it is necessary, for the

purpose of connecting an existing county road with an existing state highway, that the connecting road be located, established and designated over property within the boundaries of a city, the county court or board of county commissioners may designate, locate, establish, construct and maintain the connecting road over property within the corporate limits of the city as a county road.

(2) The procedure for the establishment of the connecting road may be by petition of freeholders or by a resolution of the county court or board of county commissioners as provided by law for the establishment of county roads.

(3) In addition to the authority provided by law for the acquisition of rights of way, in the event the connecting road is established by petition of freeholders or by its resolution, the county court or board of county commissioners may acquire private property within the corporate limits of the city for rights of way for the connecting road by exercise of the power of eminent domain, under the procedure provided by law for exercise of the power of eminent domain by counties for the acquisition of private property for rights of way for county roads.

373.120 Connecting county roads by roads through certain cities. The county court or board of county commissioners may construct and pave streets and roads through cities of less than 2,500 population, as shown by the last federal census, where such streets and roads are for the purpose of connecting county roads and highways. [Amended by 1957 c.71 §1]

373.130 County use of city streets as bridge approach. Whenever any county constructs across any stream any bridge which is wholly or in part within the limits of any city within the county, the county may use as approaches for the bridge such portions as may be necessary of any street of the city leading to the bridge. The power, dominion and right of control over and to improve and maintain the portions of any street so used belong exclusively to the county.

373.140 to 373.200 [Reserved for expansion]

POWERS OF CITIES RELATING TO ROADS AND HIGHWAYS

373.210 Improvement of through highways by certain cities. Any city having a population of less than 100,000 may provide for the improvement of any roads or streets within the limits of the city at the partial expense of the general fund of the city in the manner provided in ORS 373.220 and 373.230, where:

(1) Such roads or streets are parts of any general system of state or county roads or highways; or

(2) Such roads or streets directly connect with state or county roads or highways;

(3) Such roads or streets afford an outlet from the limits of the city to adjoining state or county roads or highways; or

(4) Such roads or streets provide the most accessible or generally traveled route from within the city to beyond the limits of the city.

373.220 Procedure to authorize improvement. Whenever, by majority vote of the legislative authorities of a city mentioned in ORS 373.210 or by initiative vote by the people thereof, it is deemed advisable to construct or improve such designated roads or streets at the partial expense of the general fund of the municipality, the governing body shall so declare by ordinance, stating what portion of the cost shall be paid out of the general fund of the municipality and what portion shall be paid by assessment against property in the manner provided by charter or ordinance provisions of the city, unless the amount or proportion has been fixed by the initiative measure.

373.230 Charter or ordinance provisions governing improvement. Except as to the provision that a portion of the cost of the improvement mentioned in ORS 373.220 may be paid out of the general fund of the city, all other charter or ordinance provisions govern in the matter of the construction and improvement of such roads and streets.

373.240 General road fund of city. The general road fund of any city shall consist of the road money set apart for the city as a road district or otherwise, under the laws of the state, out of the road tax levied by the county, which the county treasurer shall pay to the city, and any other money placed in the road fund of the city by the orders of the city governing body.

373.250 Use of city road fund. The road fund mentioned in ORS 373.240:

(1) Shall be used by the city for the construction and repair of county roads and streets therein.

(2) May be used for the construction and repair of roads without a city having a population of less than 100,000 which lead directly to it.

(3) In carrying out such objects, may be used jointly with the county in which the city is located as provided in ORS 373.260.

373.260 Agreements between counties and cities as to acquisition of rights of way and road improvement. (1) The county court or the board of county commissioners of any county and the authorities of any city within the county may enter into an agreement for the construction, improvement or repair of, and the acquisition of right of way for:

(a) Any county road or city street within the corporate limits of the city.

(b) Any road without such city, if it has a population of less than 100,000, but leading directly to it.

(2) In the agreements the parties shall agree upon the proportion which each shall contribute toward such acquisition, construction, improvement or repair and upon the method and kind of acquisition, construction, improvement or repair to be made. [Amended by 1955 c.388 §1]

373.270 Surrendering jurisdiction over county roads within cities. (1) Whenever the county court or board of county commissioners deems it necessary, expedient or for the best interests of the county to surrender jurisdiction over any county road or portion thereof within the corporate limits of any city, and the governing body of the city deems it necessary or expedient and for the best interests of the city to acquire jurisdiction over the county road or part thereof to the same extent as it has over other public streets and alleys of the city, the county court or board of county commissioners, upon the request of the city by its governing body, shall give notice by posting in three public places in the county, one of which shall be within the limits of the city, or by publishing the notice once a week for four successive weeks in some newspaper of general circulation in the county. The notice shall give the time and place of hearing and a succinct statement of the proposed action requested and describing the road or portion thereof proposed to be surrendered by the county to the city with convenient certainty.

(2) At the time and place mentioned in the notice or at such adjournment as it may fix, the county court or board of county commissioners shall hear the matter, consider any objections or testimony offered by any person interested and determine whether it is necessary, expedient or for the best interests of the county to surrender jurisdiction over the county road or highway or portion thereof to the city.

(3) In the event it so determines, the county court or board of county commissioners shall make an order to that effect and offer to the city to surrender jurisdiction over the county road or highway or portion thereof, and may limit the time for the acceptance of the offer.

(4) The city by appropriate ordinance, resolution or other municipal legislation may within the time specified accept such order and offer.

(5) Upon the legal adoption of the ordinance, resolution or other appropriate municipal legislation, the jurisdiction of the county over such county road or portion thereof as a county road, or for its improvement, construction or repair shall cease and determine, and the full and absolute jurisdiction over it for all purposes of repair, construction, improvement and the levying and collection of assessments therefor shall vest in the city. The city shall then have the same control, power and jurisdiction over the road or portion thereof as by its charter and the laws of the state are given or granted it over any of the public streets and alleys of such city.

(6) This section is applicable to all county roads and highways, whether acquired by the county or the public by condemnation, defective condemnation and user, user or prescription or in any manner provided by law or in which the easement for highway purposes is in the public.

373.280 Assessments made by city under belief county road was city street. No assessment made by any city for the improvement of any county road or portion thereof under the bona fide belief of its governing body that it was a public street of the city is invalid where the property owner has permitted the city to make the improvement or where the county has surrendered jurisdiction to the city within the time when the assessment is otherwise

collectible by law, if within the time the assessment would be otherwise collectible the city acquires full jurisdiction over the county road or portion thereof as provided in ORS 373.270.

373.290 Amity given control of county roads and highways declared streets. The incorporated city of Amity, in Yamhill County, has exclusive control and jurisdiction over all county roads and highways within its corporate boundaries. Such county roads and highways are streets, subject to all the burdens and servitudes thereof. The control of such county roads and highways is excepted out of the jurisdiction of the County Court of Yamhill County.

373.300 Monmouth given control of certain highways declared streets. The city of Monmouth, in Polk County, has full and exclusive jurisdiction, power and control over all that part of the highway known as Monmouth Avenue from its intersection with Main Street north to the northeast corner of University Out Lot B located within the corporate limits of the city. Such highway is a street, subject to all the burdens and servitudes thereof. The control of such highway is excepted out of the jurisdiction of the County Court of Polk County.

373.310 Myrtle Point given jurisdiction over certain county roads declared streets. (1) The city of Myrtle Point, in Coos County, has absolute and complete jurisdiction over the following portions of the following county roads located within the corporate limits of the city:

(a) All that portion of any county roads within the corporate limits of the city, lying along First Street and the whole thereof, as such street is described upon the plat of the original town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(b) All that portion of the county roads within the corporate limits of the city, lying on or along Spruce Street and the whole thereof, as shown upon the plat of the original town (now city) of Myrtle Point and upon the plat of the first extension to the original town (now city) of Myrtle Point, now on file and of record in the office of the county clerk of Coos County.

(c) All that portion of the county roads within the corporate limits of the city, lying upon or along First Street, being Spruce Street extended, and the whole thereof, as shown upon the plats of Border & Bender's addition to the town (now city) of Myrtle Point, Border & Bender's extension to Border & Bender's addition to the town (now city) of Myrtle Point, Sengstacken's addition to the town (now city) of Myrtle Point and J. H. Roberts' addition to the town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(d) All that portion of any county roads within the corporate limits of the city, lying along Railroad Avenue and the whole thereof, as shown upon the plats of the first extension to the original town (now city) of Myrtle Point, Lehnherr's addition to the town (now city) of Myrtle Point, Brown's first addition to the town (now city) of Myrtle Point, Brown's second addition and Smith's addition to the town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(2) The city of Myrtle Point has jurisdiction over such portion of the roads in the same manner and to the same extent that it has jurisdiction over such streets, such portions to be streets of the city of Myrtle Point.

373.320 Salem given control of roads declared streets. All county roads or other roads under the jurisdiction of the county court of Marion or Polk County, within the corporate limits of the City of Salem, are streets of the city. The city has exclusive control and jurisdiction over all such roads. The county courts of Marion and Polk Counties have no jurisdiction thereof.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon, on December 2, 1957.

Sam R. Haley
Legislative Counsel