AGENDA

CANBY CITY COUNCIL REGULAR MEETING
October 16, 2013
7:30 PM
Council Chambers
155 NW 2nd Avenue

Mayor Brian Hodson

Council President Tim Dale
Councilor Clint Coleman
Councilor Traci Hensley
Councilor Greg Parker
Councilor Ken Rider
Councilor Todd Rocha

WORK SESSION
6:30 PM
City Hall Conference Room
182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss a proposed telecommunications ordinance. Pg. 1

CITY COUNCIL REGULAR MEETING

1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence
B. National Magic Week Proclamation Pg. 18

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

(This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Each citizen will be given 3 minutes to give testimony. Citizens are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

(This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.)

A. Approval of Minutes of the October 2, 2013 City Council Work Session and Regular Meeting

7. PUBLIC HEARING

A. Secondhand Dealer Application and Annual Permit Fees Pg.19

8. RESOLUTIONS & ORDINANCES

A. Res. 1176, Setting Fees for Secondhand Dealers Under CMC Chapter 5.06 Pg.19

B. Ord. 1385, Amending CMC Chapter 12.32 Regarding Tree Regulations; Adopting a Street Tree Planting and Maintenance Policy; and Adopting an Official Street Tree List **(2nd Reading)** Pg.20

C. Ord. 1386, Adding CMC Chapter 5.06 Regarding the Regulation of Secondhand Dealers Pg.45

9. NEW BUSINESS

A. Amendment to Employment Contract with City Attorney Pg.64

10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

11. CITIZEN INPUT

12. ACTION REVIEW

13. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation

14. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer, MMC, City Recorder at 503.266.0733. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5. For a schedule of the playback times, please call 503.263.6287.

CHAPTER 12.36: TELECOMMUNICATIONS FACILITIES

Section

12.36.010 Jurisdiction and management of the public rights-of-way.

12.36.020 Regulatory fees and compensation not a tax.

12.36.030 Definitions.

12.36.040 Registration of Telecommunication ~~Carriers~~ Providers.

12.36.050 Construction standards.

12.36.060 Location of facilities.

12.36.070 Telecommunications franchise.

12.36.080 General franchise terms.

12.36.090 General provisions.

§ 12.36.010 Jurisdiction and management of the public rights-of-way.

A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law.

B. Public rights-of-way include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and airspace over these areas.

C. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

D. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.

E. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

F. The city retains the right and privilege to cut or move any telecommunications facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency.

(Ord. 1036, passed 11-3-1999)

§ 12.36.020 Regulatory fees and compensation not a tax.

A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from and in addition to any and all federal, state, local and city charges as may be levied, imposed or due from a telecommunications ~~carrier~~ provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

(Ord. 1036, passed 11-3-1999)

§ 12.36.030 Definitions.

A. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein.

1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

2. The words “shall” and “will” are mandatory and “may” is permissive.

B. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, being 47 USC §§ 201 and 521 *et seq.* as amended, the Cable Communications Policy Act of 1984, being 47 USC § 521 *et seq.*, the Cable Television Consumer Protection and Competition Act of 1992, being 47 USC §§ 201 and 521 *et seq.*, and the Telecommunications Act of 1996, being 47 USC § 151 et seq. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities, see overhead facilities.

Affiliated Interest shall have the same meaning as O.R.S. 759.010.

Cable Act shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 *et seq.*, as now and hereafter amended.

Cable Service is to be defined consistent with federal laws and means the 1-way transmission to subscribers of video programming or other programming service; and subscriber interaction, if

any, which is required for the selection or use of the video programming or other programming service.

City means the City of Canby, an Oregon municipal corporation, and individuals authorized to act on the city's behalf.

City Council means the elected governing body of the city.

City Property means and includes all real property owned by the city, other than public rights-of-way and utility easements as those are defined herein, and all property held in a proprietary capacity by the city, which are not subject to right-of-way franchising as provided in this chapter.

Conduit means any structure, or portion thereof, containing 1 or more ducts, conduits, manholes, handholes, bolts or other facilities used for any telegraph, telephone, cable television, electrical or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by 1 or more public utilities.

Construction means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

Control or Controlling Interest means actual working control in whatever manner exercised.

Days means calendar days unless otherwise specified.

Duct means a single enclosed raceway for conductors or cable.

Emergency has the meaning provided for in O.R.S. 401.025.

Federal Communications Commission or FCC means the federal administrative agency or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

Franchise means an agreement between the city and a grantee which grants a privilege to use public right-of-way and utility easements within the city for a dedicated purpose and for specific compensation.

Grantee means the person to whom or which a franchise is granted by the city.

Oregon Public Utilities Commission or OPUC means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in state law, or its lawful successor.

Overhead or Aboveground Facilities means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for the facilities.

Person means an individual, corporation, company, association, joint stock company or association, firm, partnership or limited liability company.

Private Telecommunications Network means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for his, her or its use and not for resale, directly or indirectly. Private Tele- communications Network includes services provided by the state pursuant to O.R.S. 190.240 and 283.140.

Public Rights-of-Way include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and airspace over these areas. This definition applies only to the extent of the city's right, title, interest or authority to grant a franchise to occupy and use the areas for telecommunications facilities. Public Rights- of-Way shall also include utility easements as defined below.

State means the State of Oregon.

Telecommunications Act means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C. 151 *et seq.*) and as hereafter amended.

Telecommunications ~~Carrier~~ Provider means any provider of telecommunications services and includes, but is not limited to, every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

Telecommunications Facilities means the plant and equipment, other than customer premises equipment, used by a telecommunications ~~carrier~~ provider to provide telecommunications services.

Telecommunications Service means any service provided for the purpose of the transmission of information, including, but not limited to voice, video or data, ~~regardless of the transmission medium and whether or not the transmission medium is owned by the provider itself~~ without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline.
Telecommunication service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.

Telecommunications System, see telecommunications facilities above.

Telecommunications Utility has the same meaning as O.R.S. 759.005(1).

Underground Facilities means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

Usable Space means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that 6 feet of a pole is buried below ground level.

Utility Easement means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

Utility Facilities means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1336, passed 11-3-2010)

§ 12.36.040 Registration of Telecommunication Providers.

A. Purpose. The purpose of registration is:

1. To assure that all telecommunications ~~carriers~~ providers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;

2. To provide the city with accurate and current information concerning the telecommunications ~~carriers~~ providers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city; and

3. To assist the city in the enforcement of this code and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required.

~~Except as provided in division D. of this section, all telecommunications carriers having telecommunications facilities within the corporate limits of the city and all telecommunications carriers that offer or provide telecommunications service to customer premises within the city shall register.~~

Except as provided in division D of this section, all telecommunications providers having telecommunications facilities within the corporate limits of the City, and all telecommunications providers that offer or provide telecommunications services to any customer within the City, shall register within forty-five (45) days of the effective date of this Ordinance. Any telecommunications provider that desires to have telecommunications facilities within the corporate limits of the City or to provide telecommunications services to any customer within the City after the effective date of this Ordinance shall register prior to such installation or provision of service.

After registering with the City pursuant to the above section, the registrant shall, by December 31st of each subsequent year, file with the City a new registration form if it intends to provide telecommunications services at any time in the following calendar year. Registrants that file an initial registration after September 30th shall not be required to file an annual registration until December 31st of the following year.

The appropriate application and license from either the Oregon Public Utility Commission (PUC) or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

1. The identity and legal status of the registrant, including the name, address and telephone number of the duly authorized officer, agent or employee responsible for the accuracy of the registration information;

2. The name, address and telephone number for the duly authorized officer, agent or employee to be contacted in case of an emergency;

3. A description of the registrant's existing or proposed telecommunications facilities within the city, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses or institutions within the city; and

4. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business license requirements. A copy of the business license or the license number must be provided.

C. Registration Application Fee. Each application for registration as a telecommunications ~~carrier~~ provider shall be accompanied by a nonrefundable registration application fee in the amount ~~of $35, or as otherwise~~ established by resolution of the City Council.

D. Annual Registration Fee. Every telecommunications provider shall pay an annual registration fee in an amount to be determined by resolution of the City Council. Unless otherwise agreed to in writing by the City, the fee shall be paid within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The telecommunications provider shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date. The annual registration fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

E. Exceptions to Registration. The following telecommunications ~~carriers~~ providers are excepted from registration:

1. Telecommunications ~~carriers~~ providers that are owned and operated exclusively for its own use by the state or a political subdivision of this state; and

2. A private telecommunications network, provided that the network does not occupy any public rights-of-way of the city.

(Ord. 1036, passed 11-3-1999)

F. Deductions. A registrant may deduct from the annual registration fee required herein the amount of any payments made or accrued to the City for the same respective period upon which the annual registration fee is computed, under any provision of franchise, permit, or ordinance in lieu of franchise granted by the City Council. A registrant may not deduct amounts paid to the City for application fees, interest charges, or penalties. This subsection shall not relieve any registrant from paying in accordance with the provisions of a franchise, temporary revocable permit, Charter provision or ordinance when the amount to be paid thereunder exceeds the amount of the annual registration fee under this Chapter. A registrant may not deduct from the annual registration fee the value of any right given to the City to use poles, conduits, or ducts to other facilities in common with the registrant. A registrant may not deduct from the annual registration fee any permit or inspection fee imposed under any Code provision or ordinance of the City.

§ 12.36.050 Construction standards.

A. General. No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right-of-way except as provided in this code and in compliance with all applicable codes, rules and regulations.

B. Construction Codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

C. Construction Permits. No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit and paying the construction permit fee. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

1. Unless the telecommunications ~~carrier~~ provider has first filed a registration statement with the city pursuant to § 12.36.040B. of this code; and, if applicable,

2. Unless the telecommunications ~~carrier~~ provider has first applied for and been granted a franchise pursuant to § 12.36.070 of this code.

(Ord. 1036, passed 11-3-1999)

§ 12.36.060 Location of facilities.

A. Location of Facilities. All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

C. Relocation or Removal of Facilities. Except in the case of an emergency, within 90 days following written notice from the city a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights- of-way whenever the city shall have determined that the removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

2. The operations of the city or other governmental entity in or upon the public rights-of-way; and/or

3. The public interest.

D. Removal of Unauthorized Facilities. Within 30 days following written notice from the city, any grantee, telecommunications ~~carrier~~ provider or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove the facilities or appurtenances from the public rights-of-way of the city. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

1. One year after the expiration or termination of the grantee's telecommunications franchise;

2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced;

3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation; or

4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

E. Coordination of Construction Activities. All grantees are required to make a good-faith effort to cooperate with the city.

1. By January 1 of each year, grantees shall provide the city with a schedule of their proposed construction activities in, around or that may affect the public rights-of-way.

2. If requested by the city, each grantee shall meet with the city annually or as determined by the city, to schedule and coordinate construction in the public rights-of-way. At that time, city will provide available information on plans for local, state and/or federal construction projects.

3. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer or designee, to minimize public inconvenience, disruption or damages.

(Ord. 1036, passed 11-3-1999)

§ 12.36.070 Telecommunications franchise.

A. Required. A telecommunications franchise shall be required of any telecommunications ~~carrier~~ provider who desires to occupy public rights-of-way of the city.

B. Application. Any person that desires a telecommunications franchise must register as a telecommunications ~~carrier~~ provider and shall file an application with the city which includes the following information:

1. The identity of the applicant;

2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;

3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities;

4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;

5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed; and

6. An accurate map showing the location of any existing telecommunications facilities in the city that applicant intends to use or lease.

C. Franchise Application and Review Fee.

1. Subject to applicable state law, franchise applicant shall reimburse the city for such reasonable costs as the city incurs in entering into the franchise agreement.

2. A franchise application and review fee of $2,000 shall be deposited with the city as part of the application filed pursuant to division B. above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

D. Determination by the City. The city shall issue a written determination granting or denying the application, in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

E. Rights Granted. No franchise granted pursuant to this chapter shall convey any right, title or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of- way for the limited purposes and term stated in the franchise agreement.

F. Term of Grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of 5 years.

G. Franchise Territory. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the city to be served by the franchise grantee and the public rights- of-way necessary to serve the areas, and may include the entire city.

H. Franchise Fee.

~~Each franchise granted by the city is subject to the city's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this code shall prohibit the city and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable state and federal laws.~~

1. A telecommunications franchise granted hereunder shall require the grantee to pay the franchise fee in an amount determined by resolution of the City Council.

2. Every telecommunications provider that uses the public rights-of-way in the City to provide telecommunications services without a franchise, whether or not the provider owns the telecommunications facilities used to provide its services or whether or not the provider is required to obtain a franchise pursuant to this Chapter, shall pay a right-of-way use fee in the amount determined by resolution of the City Council. The duty to provide information set forth in this Chapter shall apply to information of telecommunications providers subject to the right-of-way use fee in this subsection sufficient to demonstrate compliance with this subsection.

3. Unless otherwise agreed to in writing by the City, the fee shall be paid within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The communications provider shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

4. The franchise fee and/or the right-of-way use fee required by this Section shall be subject to all applicable limitations imposed by federal or state law.

I. Amendment of Grant. Conditions for amending a franchise:

1. A new application and grant shall be required of any telecommunications ~~carrier~~ provider that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter.

2. If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application.

3. A new application and grant shall be required of any telecommunications ~~carrier~~ provider that desires to provide a service which was not included in a franchise previously granted under this chapter.

J. Renewal Applications. A grantee that desires to renew its franchise under this chapter shall, not less than 180 days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:

1. The information required pursuant to § 12.36.040.B of this code; and

2. Any information required pursuant to the franchise agreement between the city and the grantee.

K. Renewal Determinations. Within 90 days after receiving a complete application, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

1. The financial and technical ability of the applicant;

2. The legal ability of the applicant;

3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;

4. The applicant's compliance with the requirements of this code and the franchise agreement;

5. Applicable federal, state and local telecommunications laws, rules and policies; and

6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.

L. Obligation to Cure As a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this code, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.

M. Assignments or Transfers of System or Franchise. Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on reasonable conditions as may be prescribed in the consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this code.

3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a request to transfer or assign a telecommunications franchise.

4. Any transfer or assignment of a telecommunications franchise, system or integral part of a system without prior approval of the city under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

N. Revocation or Termination of Franchise. A franchise to use or occupy public rights-of-way of the city may be revoked for the following reasons:

1. Construction or operation in the city or in the public rights-of-way of the city without a construction permit;

2. Construction or operation at an unauthorized location;

3. Failure to comply with division M. above with respect to sale, transfer or assignment of a telecommunications system or franchise;

4. Misrepresentation by or on behalf of a grantee in any application to the city;

5. Abandonment of telecommunications facilities in the public rights-of-way;

6. Failure to relocate or remove facilities as required in this code;

7. Failure to pay taxes, compensation, fees or costs when and as due the city under this code;

8. Insolvency or bankruptcy of the grantee;

9. Violation of material provisions of this code; and

10. Violation of the material terms of a franchise agreement.

O. Notice and Duty to Cure. In the event that the city believes that grounds exist for revocation of a franchise, the city shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding 30 days, to furnish evidence that:

1. Corrective action has been or is being actively and expeditiously pursued, to remedy the violation or noncompliance;

2. Rebuts the alleged violation or noncompliance; and/or

3. It would be in the public interest to impose some penalty or sanction less than revocation.

P. Public Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the city of its compliance with the franchise or with this code, the city staff shall refer the apparent violation or noncompliance to the City Council. The Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Q. Standards for Revocation or Lesser Sanctions. If persuaded that the grantee has violated or failed to comply with material provisions of this code, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by 1 or more of the following factors; whether:

1. The misconduct was egregious;

2. Substantial harm resulted;

3. The violation was intentional;

4. There is a history of prior violations of the same or other requirements;

5. There is a history of overall compliance; or

6. The violation was voluntarily disclosed, admitted or cured.

R. Other City Costs. All grantees shall, within 30 days after written demand therefor, reimburse the city for all reasonable direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement consistent with applicable state and federal laws.

(Ord. 1036, passed 11-3-1999)

§ 12.36.080 General franchise terms.

A. Facilities. Upon request, each grantee shall provide the city with an accurate map or maps certifying the location of all of its telecommunications facilities within the public rights-of-way. Each grantee shall provide updated maps annually.

B. Damage to Grantee's Facilities. Unless directly and proximately caused by wilful, intentional or malicious acts by the city, the city shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of- way of the city as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.

C. Duty to Provide Information. Within 10 business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this code; and

2. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way, shall be made available for inspection by the city at reasonable times and intervals.

D. Service to the City. If the city contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of the services may be specified in a separate agreement between the city and grantee.

E. Compensation for City Property. If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for the right and use shall be fixed by the city.

F. Cable Franchise. Telecommunication ~~carrier~~ providers providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.

G. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the city that the lease or agreement has been granted to a customer or lessee.

H. Grantee Insurance. Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:

   a. Three million dollars for bodily injury or death to each person;

   b. Three million dollars for property damage resulting from any 1 accident; and

   c. Three million dollars for all other types of liability.

2. Automobile liability for owned, non- owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident;

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000;

4. Comprehensive form premises; operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000;

5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city of the intent to cancel or not to renew."

6. Within 60 days after receipt by the city of the notice, and in no event later than 30 days prior to the cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section; and

7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

I. General Indemnification. Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications

services over the facilities or network, whether the acts or omissions are authorized, allowed or prohibited by this code or by a franchise agreement made or entered into pursuant to this code.

J. Performance Surety. Before a franchise granted pursuant to this code is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the city, as security for the full and complete performance of a franchise granted under this code, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city. This obligation is in addition to the performance surety required for construction of facilities.

(Ord. 1036, passed 11-3-1999)

§ 12.36.090 General provisions.

A. Governing Law. Any franchise granted under this code is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City.

B. Written Agreement. No franchise shall be granted hereunder unless the agreement is in writing.

C. Nonexclusive Grant. No franchise granted under this code shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights-of-way of the city for delivery of telecommunications services or any other purposes.

D. Severability and Preemption. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this code is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the code shall not be affected thereby but shall be deemed as a separate, distinct and independent provision; and the holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this code, then the provision shall be read to be preempted to the extent and/or the time required by law. In the event the federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, the provision shall thereupon return to full force and effect and shall thereafter be binding, without the requirement of further action on the part of the city, and any amendments hereto.

E. Penalties. Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter shall be fined not less than $100 nor more than $1,000 for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this code regulating code enforcement.

F. Other Remedies. Nothing in this code shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this code.

G. Captions. The captions to sections throughout this code are intended solely to facilitate reading and reference to the sections and provisions contained herein. These captions shall not affect the meaning or interpretation of this code.

H. Compliance with Laws. Any grantee under this code shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the city heretofore or hereafter adopted or established during the entire term any franchise granted under this code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

I. Consent. Wherever the consent of either the city or of the grantee is specifically required by this code or in a franchise granted, the consent will not be unreasonably withheld.

J. Application to Existing Agreements. To the extent that this code is not in conflict with and can be implemented with existing franchise agreements, this code shall apply to all existing franchise agreements for use of the public right-of-way for telecommunications.

K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.

(Ord. 1036, passed 11-3-1999)

Office of the Mayor

Proclamation

National Magic Week

WHEREAS, the Society of American Magicians was formed in 1902, with magicians in every state of the union; and

WHEREAS, members of The Society of American Magicians, both amateur and professional, generously offer their time and talent for charitable purposes, providing entertainment for children and adults; and

WHEREAS, magic is an ancient and delightful form of entertainment which continues to give much pleasure to people young and old; and

WHEREAS, The Society of American Magicians encourages youngsters to develop self-esteem through performance of magic; and

WHEREAS, The Society of American Magicians is dedicated to elevating the art of magic with its endowment fund providing educational and humanitarian assistance to its members.

NOW, THEREFORE, I, Brian Hodson, by virtue of the authority vested in me as the Mayor of the City of Canby, do hereby proclaim October 25 - 31, 2013 as National Magic Week in Canby and further encourage all citizens to join in this observance.

Given unto my hand this 16th day of October 2013 in the City of Canby, Oregon.

Brian Hodson
Mayor

RESOLUTION 1176

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR SECONDHAND DEALERS UNDER CANBY MUNICIPAL CODE CHAPTER 5.06

The Council of the City of Canby, Clackamas County, does hereby resolve that:

WHEREAS, the proposed application fees are meant to cover costs of administering and processing applications; and

WHEREAS, the proposed annual permit fees are meant to cover costs of obtaining and maintaining a secondhand dealer database of items; and

WHEREAS, the newly added Chapter 5.06 requires both application and annual renewal processes to be conducted by the Chief of Police; and

WHEREAS, the Canby City Council held a public hearing on October 16, 2013, to receive public testimony regarding the proposed fees.

NOW, THEREFORE, BE IT RESOLVED by the Canby City Council as follows:

Section 1: City of Canby fees and charges are revised to include the following:

Secondhand Dealer Application Fee	$50
Secondhand Dealer Annual Permit Fee	$100

Section 2: The Canby City Council hereby classifies the fees imposed herein as not being subject to the limitations imposed by Section 11 (b), Article XI of the Oregon Constitution and that the City Recorder is hereby directed to publish notice in accordance with ORS 310.145.

This resolution shall take effect on November 6, 2013.

ADOPTED this 16th October, 2013 by the Canby City Council.

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

ORDINANCE NO. 1385

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE (CMC) CHAPTER 12.32 REGARDING TREE REGULATIONS; ADOPTING A STREET TREE PLANTING AND MAINTENANCE POLICY; AND ADOPTING AN OFFICIAL STREET TREE LIST.

WHEREAS, Chapter 12.32 of the Canby Municipal Code is outdated, and

WHEREAS, the City of Canby's Street Tree List is outdated, and

WHEREAS, the Council finds that the public welfare requires a clear statement of the City's policy as to responsibility for maintaining trees in the public right of way, and desires to implement a companion policy whereby the City will plant and establish such trees in areas of new development, and

WHEREAS. the Council finds it necessary and desirable to adopt standards for maintaining such trees according to accepted trade practices, to publish and distribute those standards to City residents and to enforce compliance with such standards, now, therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Chapter 12.32 of the Canby Municipal Code is amended to read as noted in Exhibit "A" attached hereto.

Section 2. The City of Canby Tree Planting and Maintenance Policy, which contains a Street Tree Fee for New Development, is attached hereto and marked as Exhibit "B" and by this reference incorporated herein.

Section 3. Exhibit "C", attached hereto is hereby adopted as the official street tree list for the City of Canby.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 2, 2013 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on October 16, 2013 commencing at the hour of 7:30 PM in the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

_____

Kimberly Scheafer, MMC
City Recorder

2nd Reading

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on October 16, 2013 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

2nd Reading

EXHIBIT "A"

Canby, OR Code of Ordinances

CHAPTER 12.32: TREE REGULATIONS

Section

12.32.010 Definitions.

12.32.020 Purpose and scope.

~~12.32.020 City Forester~~

12.32.030 City Forester.

~~12.32.030 Creation of a Tree Committee~~

~~12.32.040 Removal of trees~~

12.32.040 Creation of a Tree Committee.

~~12.32.050 Planting of trees~~

12.32.050 Planting and maintenance of trees.

~~12.32.060 Care of trees~~

12.32.060 Maintenance and removal of trees.

~~12.32.070 Duties of private property owners~~

12.32.070 City may act on notice.

12.32.080 Interference with the city.

12.32.090 Service of orders.

12.32.100 Compliance.

12.32.110 Appeal.

12.32.120 Failure to comply.

12.32.130 Special assessment.

12.32.140 Penalty.

§ 12.32.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bush means a low growing and densely branched woody plant.

City Forester means the Director of Public Works of the city or his or her authorized agent.

Drip Line means the outermost extension of the tree canopy

Immediate Danger means a situation that represents a hazard to life or property without interval of time.

Noxious Species means one that is physically harmful or destructive to living beings or public utilities and public investments.

Park Tree means a tree, shrub or bush located in public parks or other area owned by the city having an

individual name, and all other areas owned by the city, or to which the public has free access as a park.

Private Tree means a tree, shrub or bush located on private property other than a dedicated right-of-way, utility easement or public parks and grounds.

Pruning means cutting or removing less than 20 percent of the branching structure of a plant in either the crown, trunk or root zones.

Public Improvement means a change made with public money or by public employees. It can also happen with private money or private employees then be dedicated for public ownership or use.

Public Places means a location owned by the public, a dedicated right-of-way or public way and easement generally dedicated for utilities.

Public trees are defined as those trees which are located within the public right-of-way or on land under the jurisdiction of the City.

Removal means cutting or removing the crown, trunk and root system of a plant.

Shrub means a low-growing, usually several-stemmed woody plant.

Street Tree~~ means a tree, shrub or bush on land lying within a dedicated right-of-way along either side of a street, avenue or otherwise within a dedicated utility easement~~. ***A tree that is located within the public right-of-way for vehicular access, or associated public utility easement.***

Top or Topped means cutting or removing the terminal leaders in the crown of an ornamental shade or flowering tree or conifer to an extent that removes the normal canopy and disfigures the tree.

Tree means a woody perennial plant having a single elongated main stem ~~generally with few or no branches on its lower part~~ ***from which the branches extend***.

Utility means a service such as sewer, electricity, water, storm drainage, gas, telephone or television provided by either a publicly owned company or privately owned company. If publicly owned, it is a Public Utility and if privately owned, it is a Private Utility.

§ 12.32.020 Purpose and Scope.

The purpose of § 12.32 is to preserve trees in the public right-of-way or on public property as an important natural resource, to enhance the appearance of the City and private property values, to clearly define responsibility for the maintenance of trees in the public right-of-way and City property and to adopt professional standards for planting and maintenance for use by the City and by private property owners alike, all for purposes of the general public welfare.

§ 12.32.030 City Forester.

A. Established. There is established in the Department of Public Works of the city the Office of City Forester. The Director of Public Works, or his or her authorized agent, shall serve as City Forester in the administration and enforcement of this chapter.

B. Scope. The City Forester shall have exclusive jurisdiction and supervision over all trees and other plants planted or growing in public places and authority over all trees and other plants planted or growing in private places as hereinafter set forth.

C. Preserve or Remove. The City Forester shall have the authority to oversee the planting, trimming, spraying with general notice, preservation and removal of trees and other plants in public places to ensure safety or preserve the symmetry and beauty of the public places.

D. Order to Preserve or Remove. The City Forester shall have the authority to order the spraying with general notice, trimming, preservation or removal of trees or other plants upon private property when it is found that that action is necessary to protect the public safety or to prevent the spread of disease or insects to public trees and places.

E. Supervision. The City Forester shall have the authority to supervise all work done under the terms of this chapter.

§ 12.32.040 Creation of a Tree Committee.

A. Established. There is hereby established a Tree Committee and it is the same as the Site and Design Review Board established by Ord. 848.

B. Scope. The Committee shall study, investigate and develop, and/or update annually and administer a written plan for the care, preservation, pruning, replanting, removal or disposition of street trees and park trees. The plan shall be presented to the City Council, and upon its acceptance and approval, shall constitute the official comprehensive city tree program of the city. The Committee, when requested by the City Council or the City Forester shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

C. Tree List. The official Canby Tree List of acceptable species of trees, shrubs and bushes shall be maintained by the Committee and made available to the public as set forth by resolution. No person, without the written permission of the City, shall plant a street tree of a species other than those included on the list or approved by the City Forester. ~~As much as possible, street tree plantings for any 1 street will be restricted to a single species.~~

***§ 12.32.050* Planting and Maintenance of Trees.**

A. No person shall plant or remove any tree in the public right-of-way or on City property except as allowed by this ordinance.

B. The owner or occupant, or an agent for the owner or occupant, of property abutting the right-of-way may plant, treat, prune or replace any tree in that portion of the right-of-way abutting the property only in accordance with current tree maintenance standards established by the National Arborist Association, International Society of Arboriculture, or under the supervision of a person having a current, valid certification as an arborist by the International Society of Arboriculture.

C. The owner of property abutting the public right-of-way shall be responsible for maintenance of all trees planted in the right-of-way between the edge of the roadway and the property line in accordance with the standards issued under this ordinance. As to trees planted in the right-of-way in conjunction with new development of property, the obligation imposed by this section shall commence after the City determines, and notifies the abutting owner, that the tree(s) is/are established.

D. The City shall be responsible for maintenance of trees located in the right-of-way along that portion of property which abuts a major arterial, minor arterial or major collector street as designated on the City's Transportation System Plan, if the abutting portion of such right-of-way:

1. ***Is separated from the property by a permanent barrier (such as a sound wall or fence) at least four feet in height; and,***

2. *Does not have direct pedestrian or vehicular access (such as a driveway) to the property; and,*

3. *Does not allow parking along the property allowing safe access for private maintenance; and,*

4. *Abuts property used for single-family residential purposes and not commercial, industrial, multi-family, and homeowner or unit owner common area uses.*

E. The obligation to maintain those trees as well as trees planted in the median of such roadway shall remain with the governmental unit which is obligated to maintain such roadway arterial or major collector.

F. Except as otherwise allowed under a tree preservation or landscape plan submitted as part of a development or subdivision application, any person desiring for any purpose to plant a tree in or upon any right-of-way shall perform such work according to the standards of the City's Tree Planting and Maintenance Policy.

§ 12.32.060 Standards for Maintenance and Removal of Trees.

A. Trees within the public right-of-way or on City property shall be pruned, damaging insects shall be controlled, disease shall be treated and the trees otherwise shall be maintained following the procedures and according to the standards of the City's Tree Planting and Maintenance Policy.
Trees within and without the public right-of-way shall be maintained so as not to obstruct the vision clearance area at intersections provided for in Title 16 of the Canby Municipal Code.

B. Trees within the public right-of-way shall be maintained so that no part of the tree occupies any portion of the area that is 14 feet or less above the surface of an arterial roadway as designated on the Transportation System Plan, or 12 feet or less above the surface of any roadway not designated on the Transportation System Plan as an arterial, or 8 feet or less above the surface of a sidewalk or bicycle or pedestrian path.

C. No tree within the public right-of-way or on City property shall be topped unless the tree interferes with overhead utility wires or street lights as determined by the owner of the utility or street lights, or unless topping is necessary to limit further damage to a tree already damaged by other causes as determined by the City Forester.

D. A tree within the public right-of-way or on City property that presents an imminent risk of bodily injury or property damage may be removed on order of any public official having authority to enforce motor vehicle laws or fire or life safety codes at the location of the risk. As to emergency removal by any other person, it is an affirmative defense that a person removed or caused to be removed a tree within the right-of-way without obtaining permit or direction to do so from an appropriate public official, because such removal was necessary as an emergency measure to avoid an imminent public or private injury; and the threatened injury was of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweighed the desirability of protecting the public's interest in the tree.

E. Except as provided by subsection D of this section, no person shall remove or destroy a tree within the public right-of-way without a permit issued by the City upon the person's application, on a form prescribed by the City, and payment of the required fee. Such permits shall obligate the person to replace the removed tree with a species approved by the City Forester and to plant and maintain same according to the City Tree Planting and Maintenance Policy, unless the City Forester upon request by the permittee determines it would not be in the public interest to do so. The City may require a person seeking a permit to remove or destroy a tree within the public right-of-way to give security for the cost of replacement and establishment.

F. No person shall excavate, place fill or compact the soil within the drip line of any tree in the public right-of-way except as expressly allowed by the City Forester.

G. No person or firm shall engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring permission from the city.–Before permission is granted, an arborculturist shall file evidence of possession of liability insurance in the minimum amounts of $100,000 for bodily injury and $300,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of city employees or utility employees in pursuit of similar services requested of them as employees of the city or the utility.

~~**§ 12.32.040 Removal of trees.**~~

~~A. Permission. No person shall remove trees from public places without first obtaining written permission from the City Forester. Permission to remove trees from private property is not required unless otherwise provided in this Municipal Code. It is, however, advisable and prudent in many cases.~~

~~B. Approval. The City Forester shall issue written permission provided he or she finds that the desired action or treatment is necessary and that the proposed method and workmanship is satisfactory.~~

~~C. Stumps. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground. The costs of removing stumps shall be borne by the abutting property owner, and the costs shall be a lien against the abutting property. In the event the city or utility removes the tree, the city or utility will also be responsible for removing the stump.~~

~~D. Dangerous or Nuisance Trees.~~

~~1. The city or utility may prune a private tree when it interferes with the proper spread of light along the street from a street light, interferes with the visibility of any traffic control device or sign, or interferes with the safe and continued function of overhead and underground utilities.~~

~~2. The city or utility may cause the removal of all or part of any dead, dangerous or diseased park, private or street tree when the tree constitutes a hazard to life, property or harbors insects or disease which constitutes a potential threat to other trees within the city.~~

~~3. The city or utility may remove or trim a tree described in this section or may require the property owner to remove or trim a tree on private property, or in a dedicated right-of-way or utility easement~~

~~abutting upon the owner's property. Failure of the property owner to remove or trim the tree within 30 days after receiving notice by the City Forester is a violation of this chapter, and the city or utility may then remove or trim the tree and assess the costs as a lien against the property.~~

~~§ 12.32.050 Planting of trees.~~

~~A. Replacement. The city may require the replacement by the abutting land owner, at the landowner's expense, of a new tree after permission has been granted for the removal of an existing street tree.~~

~~B. Permission.~~

~~1. No person shall plant or set out any tree in a public place without first obtaining written permission from the City Forester.~~

~~2. Before permission is granted to plant, the applicant shall state the number of trees to be planted or set out; the location, grade and variety of each tree; the method of planting, including the supplying of suitable soil; and other information as the City Forester shall find reasonably necessary to a fair determination of whether permission should be granted.~~

~~C. Spacing. The spacing of street trees shall be in accordance with the species, size, classes listed in the official Canby Street Tree List of this chapter, and no trees shall be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; large trees, 50 feet measured trunk to trunk, except in special plantings approved by the City Forester.~~

~~D. Distance from Curb and Sidewalk. The distance the trees may be planted from curbs, or curb lines and sidewalks, shall be in accordance with the official Canby Street Tree List.~~

~~B. Distance from Corners, Fireplugs, and Street Lights. No street trees shall be planted closer than 30 feet from any street corner, measured back from the point of the intersecting curbs or curb lines. No street trees shall be planted closer than 10 feet to any fireplug or 30 feet to any street light measured from the base of the street light. Vision clearance shall be provided as described in the city's Land Development and Planning Ordinance.~~

~~F. Distance from Utilities. No street trees other than those species listed as small trees in the list of acceptable species may be planted under or within 10 lateral feet of any overhead utility wire, and no street tree may be planted over or within 6 lateral feet of any underground water line, sewer line, transmission line or other private utility. All digging, even for planting trees, must be preceded by underground locates.~~

~~G. Soil. No tree shall be planted where the soil is too poor to ensure the growth of the tree unless the owner excavates a suitable hole of not less than 36 inches and replaces the material removed with suitable loam or soil.~~

~~H. Noxious Species. In no case shall any tree which is deemed to be a noxious species be permitted to be planted anywhere in the city or grow in a manner which damages utilities or creates any hazard to life or property.~~

~~§ 12.32.060 Care of trees.~~

~~A. Authority. The city may plant, prune, maintain and remove park and street trees as may be necessary to ensure public safety, or to preserve or enhance the appearance of public lands. The city may remove or cause to be removed, at the expense of the abutting landowner, a tree or part of a tree which is in~~

~~an unsafe condition, which by reason of its nature is injurious to public improvements, or is affected with any injurious fungus, insect or pest. This section does not prohibit the planting of street trees by abutting property owners, provided that the selection, location and planting of the trees is in accordance with the list of acceptable species and the other sections of this chapter.~~

~~B. Topping. Except as provided by this section, it shall be unlawful as a normal practice of any person, firm or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs or stubs larger than 3 inches in diameter within the tree crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or obstructions where other pruning practices are impractical may be exempted from this chapter, by the determination of the city.~~

~~C. Clearance. The property owner adjacent to a tree overhanging a street right-of-way within the city shall prune the branches so that the branches do not obstruct the light from a street lamp or constrict the view of any street intersection. The owner shall maintain a clear space of 12 feet above the surface of the street, and 10 feet above the surface of any sidewalk. The owner shall remove all dead, diseased, dangerous or broken or decayed limbs which constitute a threat to the public safety.~~

~~D. Cuts. All cuts above 1 inch in diameter must be waterproofed if current arborist practice calls for it to protect the viability of the particular tree.~~

~~E. Disturbance. It is a violation of this chapter to dig in or otherwise injure or impair the natural beauty or usefulness of any public area.~~

~~F. Abuse. It is a violation of this chapter to damage, cut, carve, injure the bark, transplant or remove any tree or plants in any public place, unless otherwise allowed in this chapter.~~

~~G. Mutilation. No person shall abuse, destroy, or mutilate any street tree in a dedicated public right-of-way or any other public place, or attach or place any rope or wire (other than one used to support the tree itself), sign, poster, handbill or other thing to or on any tree growing in a public place, or to allow any gaseous liquid or solid substance which is harmful to the trees to come into contact with their roots or leaves unless otherwise allowed in this chapter.~~

I. Arborist. No person or firm shall engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring permission from the city.–Before permission is granted, an arborculturist shall file evidence of possession of liability insurance in the minimum amounts of $100,000 for bodily injury and $300,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of city employees or utility employees in pursuit of similar services requested of them as employees of the city or the utility. (This section moved to Section 12.32.060 (G)

~~§ 12.32.070 Duties of private property owners.~~

~~A. In consideration of the value and benefits derived from the beauty and enjoyment of the street trees, the property owners abutting dedicated rights- of-way and utility easements, shall have the responsibility, control and shall bear the cost of maintenance and care of the street trees abutting their property, and shall regularly inspect and remove defective conditions as necessary.~~

~~B. For example, it shall be their duty to:~~

~~1. Trim and maintain the trees consistent with this chapter;~~

~~2. Treat any trees or plant so diseased or insect-ridden as to constitute a hazard to other trees or plant materials; and/or~~

~~3. Refrain from planting or be compelled to remove any kind or type of street trees or plants which do not appear on the official Street Tree List.~~

§ 12.32.070 City may act on notice

A. Upon notice to the City Forester that any tree within the public right-of-way or on City property is infected with disease or infested with damaging insects or otherwise presents an imminent risk of personal injury or property damage or threatens the health of other trees, the City shall inform the abutting property owner responsible for maintenance of the tree(s), if any, of the person's obligation to take appropriate measures under the City's Tree Planting and Maintenance Policy to limit or remove the risk, including but not limited to destruction or removal of the tree under the terms of a permit to be issued by the City upon the measures under the same Policy with regards to trees that it maintains as provided by this ordinance.

B. Public or private trees that present a risk of personal injury or property damage or that threaten the health of other trees, as described in subsection A of this section, and that are not maintained, or the risk or threat is not remedied, according to the Tree Planting and Maintenance Policy are declared to be a public nuisance and are subject to the provisions of Sections 12.32.080 through 12.32.140 of this Chapter. Trees that present an unreasonable risk of such injury or damage or an immediate threat to the health of other trees may be summarily abated without prior notice to the abutting property owner.

C. No permit fee shall be charged for permits to remove trees as required by subsection A of this section.

D. The City in its discretion may, from time to time, cause the maintenance, destruction, removal or replanting of trees within the public right-of way that are a nuisance partially or wholly at the City's, not the abutting property owner's, initiative and expense when it deems that the public interest so requires.

§ 12.32.080 Interference with the city.

No person shall prevent, delay or interfere with the city, a utility or any of their agents, while engaging in the planting, cultivating, mulching, pruning, spraying or removal of any street trees, park trees or private trees as authorized by this chapter.

§ 12.32.090 Service of orders.

A. When the City Forester shall find it necessary to order the spraying with general notice, trimming, preservation or removal of trees or plants upon ***public*** or private property, as authorized in this chapter, he or she shall serve a written order to the owner, operator, occupant or other person responsible for its existence to correct the dangerous condition.

B. The order required in this section shall be served in 1 of the following ways:

1. By making personal delivery of the order to the person responsible;

2. By leaving the order with some persons of suitable age and discretion upon the premises;

3. By affixing a copy of the order to the door of the entrance of the premises in violation;

4. By mailing a copy of the order to the last known address of the owner of the premises by certified mail; or

5. By publishing a copy of the order in the Canby Herald once a week for 2 successive weeks.

§ 12.32.100 Compliance.

The order required in this chapter shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In case of immediate danger to persons or public property, the City Forester shall have the authority to require compliance upon service of the order.

§ 12.32.110 Appeal.

A person to whom an order under this chapter is directed shall have the right within 14 days of the service of the order to appeal to the City Council, which shall review the order at its next regular meeting or special meeting called for that purpose. Unless the order is revoked or modified by the City Council, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with the order within 30 days after an appeal shall have been determined.

§ 12.32.120 Failure to comply.

When a person to whom an order is directed fails to comply within the specified time, the City Forester shall remedy the condition or contract with others for that purpose and charge the cost thereof to the person to whom the order is directed. The person remedying the condition under a contract made under this chapter shall be authorized to enter premises for that purpose.

§ 12.32.130 Special assessment.

If the cost of remedying a condition is not paid within 90 days after receipt of a statement therefor from the City Recorder, the costs shall be levied against the property upon which the hazard exists as a special assessment. The levying of the assessment shall not affect the liability of the person to whom the order is directed to fine and imprisonment as provided in this chapter. This special assessment shall be certified by the City Forester to the City Recorder, and shall thereupon become and be a lien upon the property, and shall be recorded in the city lien docket by the City Recorder.

§ 12.32.140 Penalty.

Any person convicted of violating any provision of this chapter shall be punished by a fine of not more than $500.

EXHIBIT "B"

CITY OF CANBY TREE PLANTING & MAINTENANCE POLICY

GOAL:

To establish a set of workable specification standards for activities affecting our Urban Forest resources. By developing these standards and guidelines for working around public trees, the City will be able to assist responsible parties in maintaining this valuable resource, and to help those parties minimize public safety hazards presented by trees. City staff will work with others to achieve the purposes stated below, while making every effort to require responsible parties to maintain the integrity of our existing trees.

PURPOSE:

- To contribute to the livability of the Canby community, and to enhance the appearance and overall attractiveness of Canby for continued prosperity and growth.
- To improve air quality, reduce noise pollution, reduce surface runoff, and to reduce surface and ground water contamination.
- To continually strive to identify all suitable locations for tree planting throughout Canby, and selection of suitable trees for those sites, with an emphasis on species diversity.
- To identify what services the City can supply to assist persons responsible for maintaining public trees.
- To provide an equitable distribution of resources and services based on priority needs and to ensure the maintenance of public safety when the public interest requires that the City intervene in tree maintenance.
- To address the public's request for assistance with this policy in a timely fashion.
- To outline how the City and public will participate in the maintenance of public trees.

Public trees are defined as those trees which are located within the public right-of-way or on land under the jurisdiction of the City.

City Forester means the Director of Public Works of the city or his or her authorized agent.

I. HAZARDOUS CONDITIONS

PURPOSE:

The City of Canby has limited resources to assist property owners with the maintenance demands of trees planted within and extending into the public rights-of -way and other public properties. The City limits its maintenance to work on trees within the public rights-of-way, public properties and private trees that pose an immediate threat to the life/safety of the public.

1. When the City receives notice that a tree or part thereof constitutes or creates a hazardous condition to public health or safety, the City will either remedy the hazard or will permit the adjacent property owner to effect a remedy approved by the City.

2. Hazards to public health or safety may include, but are not limited to obstruction of traffic

control devices and obstructions to illumination by street lights by limbs and foliage.

3. Use of City forces to remedy such hazards will be done on a priority basis as determined by the City relative to the hazard posted to the public and the City's available funds. Nothing in this policy is intended to nor shall relieve the adjacent property owner from the owner's primary obligation to maintain trees in the adjacent right-of-way.

4. Public requests for service shall be recorded by the City Forester. The City Forester. will report back to the requester the nature of the inspection, the intended action, and whether the City will perform the necessary work relative to maintenance

II. ARBORIST CERTIFICATION

Arborist Certification. To be qualified to prune, treat, and remove street or public trees maintained by the City, a contractor retained by the City shall have on staff an Arborist certified by the International Society of Arboriculture. The certified Arborist must oversee all pruning, treatment and tree removal work and certify that all the work meets the City's standards and conditions placed on permits. Before permission is granted, an arborculturist shall file evidence of possession of liability insurance in the minimum amounts of $100,000 for bodily injury and $300,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of city employees or utility employees in pursuit of similar services requested of them as employees of the city or the utility.

Nothing in this section shall prevent the employees of public agencies who are not certified Arborists from removing trees on the grounds of those public agencies. Nothing in this section shall prevent an owner or property or an agent for the owner from pruning, treating or removing trees with someone who is not a certified Arborist. However, the City encourages all property owners to use contractors who have this certification.

III. RESPONSIBILITY OF INDIVIDUAL PROPERTY OWNERS

All resource material for maintenance standards referenced in this section are available at the Public Works Department and the Planning Department upon request.

A. Maintenance Responsibilities

1. The City will assume the responsibility of the maintenance of trees located in the right-of-way along that portion of property which abuts an arterial, or collector street as designated on the City's Transportation System Plan, if the abutting portion of such right-of-way: 1) is separated from the property by a permanent barrier (such as a sound wall or fence) at least four feet in height; 2) does not have direct pedestrian or vehicular access (such as a driveway) to the property; 3) does not allow parking along the property allowing safe access for private maintenance; 4) abuts property used for single family residential purposes and not commercial, industrial, multi-family, and home owner or unit owner common area uses. The streets which have been identified for maintenance by subject to the above criteria are as follows:

1. N Territorial Rd east of N Holly to OR99E
2. S. Ivy south of OR 99E to City Limits
3. N Grant south of Knights Bridge Rd to OR 99E

4. N Redwood Street north of OR 99E to N Territorial Rd.
5. NE 4th Avenue east of Locust Street to OR 99E
6. S Pine south of OR 99E to S Redwood Street
7. SE 4th Avenue east of S Redwood Street to S Sequoia Parkway
8. S Sequoia Parkway south of OR 99E to City Limits
9. Hazel Dell east of S Sequoia Parkway to NE 1st Avenue

The Obligation to maintain those trees as well as trees planted in the median of such roadway shall remain with the governmental unit which is obligated to maintain such roadway arterial or collector.

2. Where individual properties are responsible for maintaining street trees, the following requirements shall apply:
   a) Inspect the tree for damaging insects, disease, defect or hazard yearly.
   b) In the event of infestation by damaging insects which threaten the tree's health, or disease or evidence of defect or hazard, treat or repair the tree.
   c) Trim or prune the tree so that no branch of the tree is less than fourteen feet (14') above any roadway or less than eight feet (8') above any sidewalk or bicycle path along an arterial roadway as designated on the Transportation System Plan. Trees along a roadway not designated as an arterial in the Transportation System Plan be pruned so that no branch of the tree is less than twelve feet (12') above the surface of the roadway or eight feet (8') or less above the surface of a sidewalk or bicycle or pedestrian path.
   d) Except for trees which have been severely damaged by storms or other causes, or where trees are located under utility wires or other obstructions where other pruning practices are impractical as determined by the City, trees in the right-of-way shall not be topped.
   e) If appropriate, and after a permit has been obtained from the City, remove and dispose of the tree.
   f) Except in cases where the planting strip between the roadway and the improved sidewalk is narrower than recommended for the health of a tree listed on the City's street tree plan, or where otherwise excused by the City Forester, replace a tree that has been removed or severely damaged with an approved variety and sized tree.

B. Permit Requirements & Conditions

1. Any property owner desiring for any purpose to remove or destroy any tree in or upon any abutting right-of-way or other public lands maintained by the City, shall make application to the City on forms furnished by the City for a Public Tree Removal permit. Such application must state the number and kind of tree to be removed or destroyed, the name of the permittee and contractor, if any, the time by which the proposed work is to be done and such other information as may be required by the City. Any work done under such written permit must be performed in strict accordance with the terms and provisions of this Policy. In issuing or denying a permit,. the City shall apply all the standards as set forth in this Tree Maintenance and Planting Policy.

2. The Council may establish, by resolution, inspection and permit fees as part of the tree permit process.
3. This work shall be done in accordance with the City of Canby Tree Planting and Maintenance Policy and the current tree maintenance standards (A-300) established by the National Arborist Association (NAA), International Society of Arboriculture (I.S.A.) Tree Pruning Guidelines, and those found in (OAR 437, division 2, subdivision R, Ornamental Tree and Shrub Services) by the Oregon Occupational Safety and Health Administration (OR-OSHA). As indicated, copies of the NAA, I.S.A. and OR-OSHA standards are available from the Public Works Department. and the Planning Department.
4. Stumps from removed trees shall be removed from the right-of-way. Mechanical grinding or other methods may be used to accomplish this task.

IV. PUBLIC TREE PRUNING STANDARDS

All resource material for pruning standards referenced in this section are available at the Public Works Department and Planning Department upon request.

PURPOSE:

To develop and preserve tree structure and health. These guidelines are presented as working guidelines, recognizing that trees are individually unique in structure, form and growth response, not only between, but also within species and cultivars. Pruning activities should be chosen and/or modified depending on the species, the landscape site, intended function of the tree, the present age and condition of the tree, and the desired severity of pruning.

STANDARDS:

1. All pruning work shall be in accordance with the current tree maintenance standards, (A-300), I.S.A. Pruning Guidelines, and (ORA 437, division 2, subdivision R, Ornamental Tree and Shrub Services).
2. All pruning activities affecting any tree within the right-of-way, shall be done in accordance with City of Canby code and policies.
3. Pruning cuts should be clean and smooth with the bark at the edge of the cut firmly attached to the remaining limb.
4. Large or heavy branches that cannot be thrown clear should be lowered by ropes to prevent injury to the tree or other property.
5. Climbing and pruning practices should not injure the tree and therefore, the use of spurs or gaffs are not allowed.
6. Spurs may only be used to reach an injured climber.
7. Rope injury to thin barked trees from loading out heavy limbs should be avoided by installing a block in the tree to carry the load. This technique may also be used to reduce injury to a branch crotch from a climber's line.
8. All pruning work within ten feet of an overhead energized conductor shall be referred to the appropriate utility.

V. STREET TREE PLANTING SPECIFICATIONS

All resource material for planting standards and plant material referenced in this section are

available at the Public Works Department and Planning Department upon request.

PURPOSE:

1. To help assure that quality planting materials receive an acceptable establishment in their new environment in order to minimize potential maintenance problems and safety related issues in the future.
2. To contribute to the livability of the Canby community, and to enhance the appearance and overall attractiveness of Canby for continued prosperity and growth
3. To improve air quality, reduce noise pollution, reduce surface runoff, and to reduce surface and ground water contamination. To continually strive to identify all suitable locations for tree planting throughout Canby, as well as suitable trees for those sites, with an emphasis on species diversity.

SPECIFICATIONS:

A. Suitability Of Planting Sites:

1. Planting shall be restricted to appropriate areas within the public rights-of-way and to City owned and controlled property.
2. All planting shall meet the standards of the Canby Code including the Development Code relating to street trees.

B. Procedure For Handling Requests For Tree Planting Relative To Tree Replacement and Special Funded Projects

1. Requests for assistance with tree planting will be evaluated in the order in which they are received.
2. Requests for tree planting in unirrigated areas must be received by the City between November 1st, and the following March 1st, to be included in the work program for the current planting season. Requests received after March 1st will be considered for planting in the following season after November 1st.
3. If the site is considered appropriate for planting under this policy, the City Forester will make species recommendations chosen from the City recommended tree list and discuss them with the requester.
4. Planting and parking strips under three feet in width will not be approved for planting unless sufficient unpaved or pervious surface exists or may be established to allow the tree to grow.
5. Trees shall be planted according to City tree placement standards, which will be made available to the public by the Public Works Department and Planning Department.

C. Plant Materials

1. Plant materials shall conform to the latest version of the American Standard for Nursery Stock (ANSI Z60.1-1990). Plant materials shall be of standard quality or better, true to name and type of their species or cultivar.
2. Plants shall have normal, well-developed branches and root systems. They shall be healthy, vigorous plants free from decay, defects, sunscald injuries, abrasions of the bark, insect pests,

and all forms of infestations or objectionable disfigurements.

3. Balled and burlapped plants shall have solid balls of size at least meeting the American Standard, the balls securely wrapped with burlap or canvas, tightly bound with rope or twine. Plastic wrapping material or twine is not permitted.
4. A minimum of one and a half inch caliper plant required of all stock planted. The City has the authority to require larger trees to be planted if the planting is a result of a tree replacement due to a removal of an existing tree or destroyed through negligence or accidents.
5. The City Forester shall be notified and have the right to inspect any trees or shrubs before they are planted, or at any time during the term of a contract. The City reserves the right to reject any materials at any time for nonconformance to the specifications of this policy. The contractor will replace rejected materials with specified plants at the contractor's expense.
6. All street trees shall be of an approved species and variety from the recommended Street Tree Planting list, approved by the City.
7. Plant materials pruned at, or directly before, the time of planting will be rejected.
8. Tree material originating within the state shall have the Oregon inspection certificate attached. Nursery stock imported from other states shall be accompanied by a certificate of inspection from the place of origin as required by Oregon law. All certificates shall be given to and reviewed by the Director of Public Works or his or her designee prior to tree approval. The contractor shall be responsible for making all arrangements with the Oregon Department of Agriculture for inspection of tree materials shipped from out of state directly to the contractor of the project.

D. Planting Method

1. All planting work shall be performed using sound horticultural practices approved by the National Arborist Association and/or the International Society of Arboriculture.
2. Plants shall be set plumb. All plants shall be set so that, after settlement, they are at the same level as when growing in the nursery. Plants shall be watered in at the time of planting to eliminate air pockets. Excess soil shall be removed by the Contractor.
3. Balled and burlapped plants may be placed with the wrapping in place if all materials are untreated and biodegradable. When burlap is left around plants, any string shall be removed and the burlap folded down from the top half of the root ball.
4. No plant pit shall be dug or approved until all underground utilities have been marked.
5. Tree spacing must conform to the "Minimum Street Tree Planting Distances" of this Policy. The spacing will be approved by the City Forester before planting will proceed.
6. Every planting pit shall be at least 50% wider and at least the depth of the soil ball or the full extent of the root system of bare-rooted trees. In the process of digging the hole "glazing" the sides of the hole will not be accepted.
7. For all balled-and-burlapped, bare-rooted, and container grown plants, the backfill will be of desirable structure, texture, and pH to support vigorous plant growth. The City Forester will approve any proposed use of the existing soil as backfill.
8. A watering berm in unirrigated areas shall be constructed around every tree or shrub.
9. Planting sites will be mulched with an approved mulch material with four inches of wood chips, fibrous bark, or composted wood debris after planting is completed. The mulch will be extended

beyond the drip zone of the tree, and cover an area no less than the width of the planting hole.

10. All trees must be staked with materials as approved by the Director of Public Works or his or her designee. The tree will be secured to the stakes with an approved rubber, adjustable, chain lock “tree tie”; no less than one inch wide and secured at no less than two points along the tree trunk.

11. Excavated plant pits that will be left open when work is not in progress (nights, holidays, and weekends) or which pose hazards at any time to pedestrians or vehicles shall be adequately barricaded with qualified warning devices as per Oregon Department of Transportation and Oregon OSHA standards.

12. Trees will be protected at all times during handling, shipping, storage, and planting. Trees shall be protected from windburn during transit, extreme weather conditions, and drying of roots or root balls. Any trees showing substantial damage, as determined by the Director of Public Works or his or her designee will be rejected and replaced by the contractor at the contractor’s own expense.

13. If required, root barriers will be approved by City Forester before installation.

IV. LOCATION STANDARDS

All resource material for location standards and definitions referenced in this section area available at the Canby Public Works Department and Canby Planning Department upon request.

A. Trees Planted In The Street side Right-Of-Way:

1. On public streets without sidewalks or on major thoroughfares with no or one sidewalk, trees will be located to accommodate future sidewalk placement.
2. Trees will be located in the street right-of-way taking into account current and future utility line corridors.

B. Minimum Street Tree Planting Distances

1. Minimum distances from intersections, alleys, and driveways shall conform to the City of Canby's Land Development and Planning Ordinance as outlined in Title 16. Exceptions for allowing trees to be placed within the sight clearance areas may be granted by permission of the City.

Definitions for shade trees:

Spreading Crown	Trees with a mature crown which is 30’ or more
Global, Pyramidal	Trees with a mature crown which is 20' to 30'
Fastigate, Columnar	Trees with a mature crown which is 10' to 20'

Minimum spacing for tree planting are as follows:

Spreading Crown	30’ apart
Global, Pyramidal	25’ apart
Fastigate, Columnar	20’ apart

2. Minimum distance between the trunk of a tree from walks, curbs and utilities:

Sidewalk	1.5’
Access or Courtesy Walk	5’
Face of Curb	1.5’
Manholes and Catch Basins	10’
Fire Hydrants	10’
Water Meters and other Utility Boxes	5’

3. Minimum distances from buried utility lines shall be determined on an individual, case-by-case basis.
4. Minimum distance from structures:

Shade Trees	10’
Ornamental Trees	6’
Shrubs	3’

5. Minimum distance from streetlights: 20’

   (Shade trees are those trees that will grow to over 15’ in height. Ornamental trees are those trees that will grow to less than 15’ in height.)

6. Any tree planted ten feet (10’) or closer to an above ground structure shall have an impenetrable root barrier installed near the above ground structure. The root barrier shall run the length of the planting area or the above ground structure, and reach a depth of 18”.

C. Overhead Utility Lines

No tree with the potential of reaching a mature height of more than thirty feet (30’) shall be planted in the right-of-way under “primary” overhead wires (as defined in ANSI A300).

D. Vehicular Area

In or adjacent to any vehicular area and parking lot which abuts the right-of-way, provisions shall be made to prevent any parts of the vehicles from touching trees and plants; in addition provision shall be made to protect trees and plants from noxious fumes or chemicals, by providing sufficient distance between the vehicle and the plants by use of wheel stops.

VII. DEVELOPMENT REQUIRED STREET TREES

The following are the procedures to be used for the planting of trees along street frontages within a public or private right-of-way or easement for vehicular access as part of a subdivision or partition, as required by the City of Canby's Code:

1. Prior to final plat approval, the developer shall pay fees to the City based upon a requirement for one tree per 30 lineal feet of street frontage. These fees shall be deposited in the City’s Urban Forestry Program Fund and used to plant and establish trees within the public rights-of-way or public lands maintained by the City within or abutting the specified subdivision or partition. Any extra revenues received through interest earnings or discounts received from volume may be used for other trees in the public rights-of-way. Interested citizens and other parties may also contribute to this program.
2. The fee amount shall be established and may be amended by a resolution of the City Council and shall be sufficient to cover all costs associated with the planting and initial maintenance of

the trees. The fees may be adjusted upon approval by the City Council.

3. The City Forester will prepare an appropriate bid document in accordance with public contracting requirements on an annual (or semi-annual) basis and the City will contract for planting and establishing the street trees. The contractor shall be responsible for both the planting and establishment of street trees on specific developments. Contractors shall be paid from the Urban Forestry Program Fees account. The City Forester shall manage the planting and maintenance contracts.
4. Trees are to be planted during winter and early spring after occupancy permits are issued, or as otherwise approved by the City Forester within one year after final certificates of occupancy are issued. The City Forester shall inspect the trees for correct number planted and type and health. Contractor establishment responsibilities shall include watering at least weekly through either one or two summers. (More often in times of severe heat.) The City Forester shall inspect the newly planted trees for health. All contracts shall include replacement and subsequent maintenance of any trees which have died or are diseased within the warranty period. The City shall determine when the trees are established and thereafter tree maintenance responsibilities shall be in accordance with City Ordinances and this Policy.
5. After the City Forester determines that the trees are established, he/she shall notify the adjoining property owner thereof and include information on the care, maintenance and pruning of such trees and the process for removal or replacement of trees. Periodic seminars on tree care and maintenance may be conducted by the Public Works Department.

EXHIBIT “C”

STREET TREE LIST

A. Trees permitted in minimum 3-foot planting area with no overhead utility wire conditions:

1. Dogwood, Cornelian Cherry, Comus mas
2. Dogwood, Eastern, Comus florida
3. Dogwood, Kousa, Comus kousa chinesis
4. Hornbeam, Pyramidal European, Carpinus betulus 'Fastigiata'
5. Maple, Norwegian Sunset, Acer truncatum x A. platanoides 'Keithsform'
6. Maple, Pacific Sunset, Acer truncatum x A. platanoides 'Warremed'
7. Oak, Skyrocket English, Quercus robur 'Fastigiata'
8. Pear, Aristocrat Flowering, Pyrus calleryana 'Aristocrat'
9. Pear, Autumn Blaze Flowering, Pyrus calleryana 'Chanticleer'
10. Pear, Capital Flowering, Pyrus calleryana 'Capital'
11. Pear, Princess Flowering, Pyrus calleryana 'Princess'
12. Pear, Redspire Flowering, Pyrus calleryana 'Princess'
13. Plum, Krauter's Vesuvius Flowering, Prunus cerasifera 'Krauter's Vesuvius'
14. Plum, Newport Flowering, Prunus cerasifera 'Newport'

B. Trees permitted in minimum 4-foot planting area with no overhead utility wire conditions:

1. Ash Flowering, Fraxinus ornus
2. Ash, golden Desert, Fraxinus oxycarpa aureafolia 'Golden Desert'
3. Cherry, Shubert Select Flowering or Canada Red Chokecherry, Prunus virginiana 'Shubert'
4. Chokecherry, Red Canada or Shubert Select Flowering, Prunus virginiana 'Shubert'

5. Crabapple, Profusion, Malus 'Profusion'
6. Crabapple, Red Baron, Malus 'Red Baron'
7. Crabapple, Royalty, Malus 'Royalty'
8. Crabapple, Spring Snow, Malus 'Spring Snow'
9. Crabapple, Sugar Tyme, Malus 'Sugar Tyme'
10. Ginkgo, Mayfield, Ginkgobiloba 'Mayfield'
11. Glorybower, Harlequin, Clerondendrum trichotomum
12. Goldenrain, Koelruteria paniculata
13. Goldenrain, Columnar, Koelruteria paniculata 'Fastigiata'
14. Hawthorn, Columnar, Crataegus monogyna 'Stricta'
15. Hawthorn, Lavalle, Crataegus x lavallei
16. Hawthorn, Washington, Crategus phaenopyrum
17. Lilac, Japanese Tree, Syringa reticulata
18. Maple, Crimson Sentry Norway, Acer platanoides 'Crimson Sentry'
19. Maple, Doric Red, Acer rubrum 'Doric'
20. Maple, English Hedge, Acer campestre
21. Maple, Flame Amur, Acer ginnala 'Flame'
22. Maple, Paperbark, Acer griseum
23. Maple, Tatarian, Acer tataricum
24. Pear, Chanticleer Flowering, Pyrus calleryana 'Chanticleer'
25. Pear, Cleveland Select Flowering, Pyrus calleryana 'Cleveland Select'
26. Pear, Trinity Flowering, Pyrus calleryana 'Trinity'
27. Redbud, Eastern, Cercis canadensis
28. Serviceberry, Cumulus, Amelanchier laevis x grandiflora 'Cumulus'
29. Serviceberry, Pyramidal Shadblow, Amelanchier canadensis 'Pyramidalis'
30. Serviceberry, Robin Hill Apple, Amelanchier x grandiflora 'Robin Hill'
31. Snowball, Japanese, Styrax japonica

C. Trees permitted in minimum 6-foot planting area with no overhead utility wire conditions:

1. Ash, Flame, Fraxinus osycarpa 'Flame'
2. Ash, Raywood, Fraxinus osycarpa 'Raywood'
3. Beech, Tricolor European, Fagus sylvatica 'Purpurea Tricolor'

4. Ginkgo, Ginkgo biloba
5. Ginkgo, Autumn Gold, Ginkgo biloba 'Autumn Gold'
6. Ginkgo, Fairmont, Ginkgo biloba 'Fairmont'
7. Ginkgo, Princeton Sentry, Ginkgo biloba 'Princeton Sentry'
8.Ginkgo, Shangri-la, Ginkgo biloba 'Shangri-la'
9.Honeylocust, Skyline, Gleditsia triacanthos 'Skyline'
10. Coffeetree, Kentucky, Gymnocladus dioicus
11. Cork Tree, Amur, Phellodendron amurense
12. Elm, Chinese or Lacebark Elm, Ulmus parvifolia
13. Elm, Homestead, 'Ulmus'Homestead'
14. Elm, Lacebark or Chinese Elm, 'Ulmus parvifolia'
15. Filbert, Turkish, Corylus
16. Hackberry, Common, Celtis occidentalis
17. Hophombeam, American, Ostrya virginana
18. Linden, Green Mountain Silver, Tilia tomentosa 'Green Mountain'
19. Linden, Redmond, Tilia americana 'Redmond'
20. Linden, Redmond Crimean, Tilia euchlora 'Redmond'
21. Linden, Sterling Silver, Tilia tomentosa 'Sterling'
22. Maple, Arrowhead Sugar, Acer saccharum 'Arrowhead'
23. Maple, Autumn Blaze, Acer rubrum x A. saccharinum 'Autumn Blaze'
24. Maple, Autumn Flame Red, Acer rubrum 'Autumn Flame'
25. Maple, Celebration, Acer x freemanii 'Celzam'
26. Maple, Cleveland Norway, Acer platanoides 'Cleveland'
27. Maple, Emerald Queen Norway, Acer platanoides 'Emerald Queen'
28. Maple, October Glory Red, Acer rubrum 'October Glory'
29. Maple, Red Sunset Red, Acer rubrum 'Red Sunset'
30. Maple, Schwedleri Norway, Acer platanoides 'Schwedleri'
31. Maple Spaethii Sycamore, Acer pseudoplatanus 'Atropurpurem'
32. Maple, Superform Norway, Acer platanoides 'Superform'
33. Mulberry, Kingan Fruitless, Morus alba 'Kingan'
34. Oak, Burr, Quercus macrocarpa
35. Oak, English, Quercus robur

36. Oak, Forest Green Hungarian or Italian, Quercus frainetto 'Schmidt'
37. Oak, Northern Red, Quercus rubra
38. Oak, Pin, Quercus palustris
39. Oak, Sawtooth, Quercus acutissima
40. Oak, Scarlet, Quercus coccinea
41. Oak, Shingle, Quercus imbricaria
42. Oak, Shumard, Quercus shumardii
43. Oak, Swamp White, Quercus bicolor
44. O(ik, Westminster Globe, Quercus robur 'Michround'
45. Rubber Tree, Hardy, Eucommia ulmoides
46. Sourgum, Black Tupelo, or Blackgum, Nyssa sylvatica
47. Tupelo, Black, Blackgum or Sourgum, Nyssa sylvatica
48. Yellow Wood, Cladrastis kentuckia
49. Zelkova, Green Vase, Zelkova serrata 'Green Vase'
50. Zelkova, Village Green, Zelkova serrata 'Village Green'

E. Trees permitted by Canby Utility and City of Canby for use under power wires:

1. Amur Maple, Acer ginnala
2. Hedge Maple, Acer campstre
3. Paper Bark Maple, Acer griseum
4. Apple Service Berny, Amelanchier
5. Shadblow Service Berry, Amelanchier canadensis
6. Eastern Redbud, Cercis canadensis
7. Glorybower, Clerodendrum trichotomum
8. Flowering Dogwood, Comus florida
9. Japanese Dogwood, Comus kousa
10. Washington Hawthorn, Crataegue phaenopyrum
11. Lauelle Hawthorn, Crataegus x lavallei
12. Globe-Headed European Ash, Fraxinus excelsior globosum
13. Flowering Ash, Fraxinus omus
14. Golden Desert Ash, Fraxinus oxycarpa aureopolia
15. Golden Rain Tree, Koelreuteria paniculata

16. Golden Chain Tree, Laburnum x waterii
17. Flowering Crabapple, 'Spring snow' or 'indian magic' malus
18. Flowering Cherry, 'Mt. fugi' prunus
19. Japanese Snowball, Styrax japonia

ORDINANCE NO. 1386

AN ORDINANCE ADDING CANBY MUNICIPAL CODE (CMC) CHAPTER 5.06 REGARDING THE REGULATION OF SECONDHAND DEALERS IN THE CITY OF CANBY.

WHEREAS, the City of Canby currently has businesses that operate as secondhand dealers; and

WHEREAS, the City of Canby desires to provide local law enforcement with tools to strictly regulate and enforce best practices in the field of secondhand dealing; and

WHEREAS, the Canby Municipal Code currently does not have an ordinance that regulates secondhand dealers; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Canby Municipal Code (CMC) is hereby amended to include Chapter 5.06 Secondhand Dealers. A copy of the Chapter 5.06 is attached hereto as Exhibit "A."

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, October 16, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, November 6, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

_____
Kimberly Scheafer, MMC
City Recorder

PASSED on the second and final reading by the Canby City Council at a regular meeting thereof on November 6, 2013 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

EXHIBIT "A"

Chapter 5.06: SECONDHAND DEALERS

5.06.010 Purpose

The purpose of this chapter is to strictly regulate certain business activities that present an extraordinary risk of being used by criminals to dispose of stolen property. This risk is present despite the best effort of legitimate Secondhand Dealer and Pawnbroker businesses, because these businesses process large volumes of goods and materials that are frequently the object of theft. This chapter is intended to reduce this type of criminal activity by facilitating timely police notification of such property transactions, and by regulating the conduct of persons engaged in this business activity. The need for these regulations outweighs any anti-competitive effect that may result from their adoption.

5.06.020 Definitions

As used in this chapter, unless the context requires otherwise:

A. ACCEPTABLE IDENTIFICATION means either a current driver license, an Identification Card issued by the Department of Motor Vehicles of a United States state, or two current United States federal, state or local government-issued identification one of which has a photograph of the seller.

B. ACQUIRE means to take or transfer any interest in personal property in a voluntary transaction, including but not limited to: sales, consignments, memoranda between a Dealer and a private party seller, leases, trade-ins, loans, refinements and abandonments. Any acquisitions of regulated property by a Dealer will be presumed to be an acquisition on behalf of the Secondhand Dealer business. Notwithstanding the foregoing, "acquire" does not include:

1. Any loans made in compliance with state laws by persons licensed as Pawnbrokers by the State of Oregon for the purposes of making a pawn loan; or

2. Memoranda between a Dealer and a person engaged in the business of selling regulated property.

C. COUNCIL means the City of Canby City Council or its designee;

D. CRIMINAL CONVICTIONS RELATED TO FRAUD, DECEPTION, DISHONESTY, OR THEFT means any conviction for a criminal violation of this ordinance; ORS 162.015 to 162.121; 162.265 to 162.385; 164.005 to 164.235; 164.377; 164.395 to 164.415; Chapter 165, or any similar provision of previous or later Oregon statutes, or statutes of another state, or of the United States;

E. DEALER or SECONDHAND DEALER

1. Means any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business and that either:

a. Acquires regulated property on behalf of a business, regardless of where the acquisition occurs, for the purpose of reselling the property; or

b. Offers for sale regulated property in the City of Canby.

2. Notwithstanding Subsection 1 above, DEALER or SECONDHAND DEALER does not include any of the following:

a. A business whose acquisitions of regulated property consist exclusively of donated items and/or purchases from 501(c)(3) organizations; or

b. An individual or business whose only transactions involving regulated property in the City of Canby consist of the acquisition of regulated property for personal use, or the sale of regulated property that was originally acquired by the seller for personal use; or

c. A person whose only business transactions with regulated property in the City of Canby consist of a display space, booth, or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 calendar days in any calendar year.

F. HELD PROPERTY means any regulated property that cannot be sold, dismantled, altered, or otherwise disposed of for a proscribed period of time as more specifically described in Section 5.06.090.

G. INVESTMENT PURPOSES means the purchase of personal property by businesses and the retention of that property, in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.

H. MEDICATION means any substances or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.

I. NEW means anything conspicuously not used.

J. PAWNBROKER has the meaning set forth in ORS 726.010 (2) and includes any business required by ORS 726.040 to hold an Oregon Pawnbroker's license.

K. PERSON means any natural person, or any partnership, association, company, organization or corporation.

L. PRINCIPAL means any person who will be directly engaged or employed in the management or operation of the Secondhand Dealer business, including any owners and any shareholders with a 5% or greater interest in the company.

M. REGULATED PROPERTY means any property of a type that has been determined by the Chief of Police to be property that is frequently the subject of theft, including but not limited to the following property, unless excluded by subsection 3 below, and may be revised as necessary by the Chief of Police after giving appropriate advance notification.

1. Used Items:

a. Precious metals;

b. Precious gems;

c. Watches of any type and jewelry containing precious metals or precious gems;

d. Sterling silver including, but not limited to, flatware, candleholders, salt and pepper shakers, coffee and tea sets or ornamental objects;

e. Audio equipment;

f. Video equipment;

g. Other electronic equipment including, but not limited to: global positioning systems (GPS), electronic navigation devices or radar detectors;

h. Photographic and optical equipment:

i. Electrical office equipment;

j. Power equipment and tools;

k. Automotive and hand tools;

l. Telephones or telephone equipment;

m. Power yard and garden tools;

n. Musical instrument and related equipment;

o. Firearms including, but not limited to, rifles, handguns, shotguns, pellet guns or BB guns;

p. Sporting equipment;

q. Outboard motors, and boating accessories;

r. Household appliances;

s. Cell phones, smart devices, smart phones, tablets, ipods, and all similar devices;

t. Property that is not purchased by a bona fide business for investment purposes, limited to:

i. Gold bullion bars (0.995 or better);

ii. Silver bullion bars (0.995 or better);

iii. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or

iv. Postage stamps, stamp collections and philatelic items whose intrinsic market or collector value is greater than the apparent legal or face value.

u. Computers and computer related software and equipment;

2. New items.

a. New items purchased from a licensed business shall be exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent for the new items that specifies the seller's business name, physical and mailing address, date of transaction and description of the purchased items. The bill of lading shall be held by the Dealer for one (1) year, or as long as the property is in the Dealer's possession, whichever is longer. Upon reasonable belief that a specific licensed business is dealing in stolen property, the Chief of Police may deem that new items purchased from that specific licensed business are regulated property.

b. Items acquired from a manufacturer, manufacturer's representative or distributor that are discontinued or have been used for display or demonstration but not previously sold are new and exempt from regulation under this chapter if the Dealer has a bill of lading, receipt, invoice or the equivalent that includes the information specified in subsection (2)(a) of this section. The Dealer must hold the bill of lading, receipt, and invoice or equivalent for one (1) year or as long as the property is in the Dealer's possession.

3. Regulated property does not include any of the following property:

a. Books and comic books;

b. Sports cards and sports memorabilia;

c. Glassware and objects d'art including, but not limited to, paintings, prints, sculptures, ceramics, and porcelains;

d. Vehicles required to be registered with the Oregon Motor Vehicles Division;

e. Boats required to be certified by the Oregon Marine Board;

f. Furniture;

g. Refrigerators, freezers, stoves, ovens, dishwashers, washers and dryers;

N. REMANUFACTURED means that an item has been altered to the degree that that the main components are no longer identifiable as the original item.

O. CHIEF OF POLICE means the Chief of Police for the City of Canby Police Department, or his or her designee;

P. SELLER means any person who:

1. Offers items of regulated property in exchange for money or other property; or as collateral for a loan; or

2. Donates or abandons items of regulated property.

Q. TRANSACTION REPORT means the record of the information required by Section 5.06.080, transmitted to the Chief of Police by means required in Section 5.06.090.

R. TRADE SHOW means an event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell or trade items that may include regulated property.

S. USED means anything that has been put into action or service.

T. HEARINGS OFFICER means an officer, official of the City or other employee of the appropriate authority, but shall not have participated in any determination or investigation related to the incident that is subject of the hearing. The Hearings Officer is to be designated by the City Administrator.

5.06.030 Permit Required

A. No person shall act as a Secondhand Dealer in the City of Canby without a valid Secondhand Dealer's Permit issued by the Chief of Police.

B. Any person or business that advertises or otherwise holds him/ herself out to be acquiring or offering for sale regulated property within City of Canby will be presumed to be operating as a Secondhand Dealer subject to the terms of this chapter.

C. Any Pawnbroker operating within the City of Canby shall be required to maintain a valid license pursuant to the Oregon Revised Statutes Chapter 726. If any Pawnbroker also acts as a Secondhand Dealer, that Pawnbroker shall be required to obtain a Secondhand Dealer permit and meet all requirements of this chapter. Any Pawnbroker that is not a Secondhand Dealer shall nonetheless be subject to the following sections of this chapter:

1. 5.06.080 Reporting requirements (this section shall be used by Pawnbrokers in order to meet the requirements of ORS 726.280 – 726.285).

2. 5.06.090 Sale Limitations

3. 5.06.095 Exceptions to Sale Limitations

4. 5.06.100 Tagging and Inspection of Property

5. 5.06.110 Prohibited Acts

6. 5.06.120 Citations

7. 5.06.150 Nuisance

D. The sale of regulated property at events known as "garage sales," "yard sales," "flea markets" or "estate sales," is exempt from these regulations if all of the following are present:

1. No sale exceeds a period of seventy-two (72) consecutive hours; and

2. No more than fourteen (14) calendar days of sales are held in any twelve- (12) month period.

5.06.035 Minimum Standards

A. No person may operate as a Secondhand Dealer within the City of Canby unless the person maintains a fixed physical business location.

B. Any Secondhand Dealer who holds a valid permit may not change the business name of the premises without notifying the Chief of Police at least 30 days prior to the actual effective date of the name change.

C. Dealers shall comply with all federal, state and local regulations.

D. Dealers will also obtain and maintain a current business license with the City of Canby.

5.06.040 Application for Permit

A. An application for Secondhand Dealer's Permit shall set forth the following information:

1. The name, business and residential address, business and residential telephone number, birth date, driver license information, including state of issue and license number and principal occupation of the applicant and any person who will be directly engaged or employed in the management or operation of the business or the proposed business;

2. The name, address, telephone number, and electronic mail address of the business or proposed business and a description of the exact nature of the business to be operated;

3. The web address of any and all web pages used to acquire or offer for sale regulated property on behalf of the Dealer, and any and all internet auction account names used to acquire or offer for sale regulated property on behalf of the Dealer;

4. Written proof that the applicant and all principals of the business are at least 18 years of age;

5. Each principal's business occupation or employment for the five (5) years immediately preceding the date of application;

6. The business license and permit history of the applicant in operating a business identical to or similar to those regulated by this chapter.

7. A brief summary of the applicant's business history in the City of Canby or in any other city, county or state including:

a. The business license or permit history of the applicant; and

b. Whether the applicant has ever had any such license or permit denied, revoked, or suspended, the reasons behind it, and the business activity or occupation of the applicant subsequent to the suspension or revocation;

8. The form of the business or proposed business, whether a sole proprietorship, partnership or corporation, etc., and

a. If a partnership, the names, birth dates, addresses, telephone numbers, principal occupations, along with all other information required of any individual applicant, for each partner, whether general, limited, or silent, and the respective ownership shares owned by each;

b. If a corporation, or limited liability company, the name, copies of the articles of incorporation and the corporate bylaws, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, for every officer, director, and every shareholder owning more than five percent of the outstanding shares, and the number of shares held by each.

9. If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application;

10. All arrests and criminal convictions relating to fraud, deception, dishonesty or theft, or citations for violation of Secondhand Dealer ordinance or statutes of any city, county, or state of each principal and all natural persons enumerated in paragraphs 1 through 7 of this section; and B. New employees of dealers shall complete and submit the Secondhand Dealer personal history information as required in Section A of this Subsection. Employees may not acquire regulated property until all required information has been reviewed by the Chief of Police, unless the Dealer receives permission from the Chief of Police while those employees' background checks are being evaluated. The criteria used to review a new employee will be the same as those used in the review of an initial application in Section 5.06.050(B).

5.06.050 Issuance and Renewal of Permit

A. Applications for Secondhand Dealer's Permit must be notarized, and shall be filed with the Chief of Police and shall include payment of the required annual permit fee. Individual employee

history forms containing the required information of each employee need not be notarized, but must be signed by the specific individual represented on the form.

B. The Chief of Police shall conduct an investigation of the applicant and all principals and employees directly engaged in the management or operation of the business listed according to the requirements in Sections 5.06.040(A) and 5.06.040(B). The Chief shall issue such permit if no cause for denial as noted herein exists.

C. The Chief of Police shall deny an application for a Secondhand Dealer's Permit if:

1. The applicant, or any other person who will be directly engaged in the management or operation of the business, or any person who owns a five percent or more interest in the business, has previously owned or operated a business regulated by this chapter or a similar ordinance or law of another city, county or state, and

a. the license and permit for the business has been revoked for cause which would be grounds for revocation pursuant to this chapter; or

b. The business has been found to constitute a public nuisance and abatement has been ordered; or

2. Any person involved in the business has been convicted of any criminal offense related to fraud, deception, dishonesty or theft, or convicted of any violation of this chapter or laws of any city, county or state; or

3. The operation as proposed by the applicant would not comply with all applicable requirements of statutes and local ordinances including, but not limited to: building, health, planning, zoning and fire chapters; or

4. Any statement in the application is found to be false or any required information is withheld; or

5. Evidence exists to support a finding that the location of the business for which the application has been filed has a history of violations of the provisions of this chapter; or

6. The operation does not comply with applicable federal or state licensing requirements.

D. Notwithstanding Section 5.06.050(B), the Chief of Police may grant a permit despite the presence of one or more of the enumerated factors, if the applicant establishes to the Chief's satisfaction that:

1. The behavior evidenced by such factor(s) is not likely to recur;

2. The behavior evidenced by such factor(s) is remote in time; and

3. The behavior evidenced by such factor(s) occurred under circumstances which diminish the seriousness of the factor as it relates to the purpose of this chapter.

E. Secondhand Dealer's Permits shall be for a term of one year and shall expire on the anniversary of their issuance. The permits shall be nontransferable and shall be valid only for a single location. When the business location is to be changed, the permit holder shall provide the address of the new location in writing to the Chief for approval or disapproval at least 30 days prior to such change.

F. All Secondhand Dealer's Permits shall be displayed on the business premises in a manner readily visible to patrons.

G. The Chief of Police will have primary authority concerning the issuance of a permit. If an applicant for permit is denied, denied applicants will make their first appeal to the Hearings Officer. If denial of an application for permit is denied by the Hearings Officer, review shall be by writ of review as provided in ORS 34.010 to 34.100.

5.03.060 Permit Fees

Every person engaged in conducting, carrying on or controlling a Secondhand Dealer's business shall:

A. File an application as described in Section 5.06.050 and pay a nonrefundable fee as required by the Chief of Police. This fee shall be set by resolution.

B. For renewal of a Secondhand Dealer's Permit, file an application and pay a nonrefundable fee as required by the Chief of Police.

5.06.070 Additional Locations

A. The holder of a valid Secondhand Dealer's Permit shall file with the Chief an application for a permit for each additional location, and shall pay a nonrefundable fee as required by the Chief for each additional location.

B. Permits issued for additional locations shall be subject to all the requirements of this chapter, and the term of any permit issued for an additional location shall expire on the same date as the initial permit.

5.06.080 Reporting of Secondhand Dealer Regulated Property Transactions and Seller Identification A. Dealers shall provide to the Chief all required information listed for each regulated property transaction (not including sales). The Chief may designate the format of transfer of this information and may direct that it be communicated to the City of Canby Police Department by means of mail, the internet or other computer media.

1. In the event the Chief directs that the transaction information be transmitted via computer media, the Chief will specify the system that will be utilized in order to ensure conformity among all dealers.

2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Chief alters the required format; Dealers will be given at least sixty (60) days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a Dealer must, prior to the deadline submit a written request to the Chief for additional time.

3. Pawnbrokers are required to report only new transactions. Loan renewals and redemptions by the original client do not need to be reported as long as the property involved in the transaction has not left the store for any period of time. If someone other than the original pawner attempts to redeem the pawned item(s), a photocopy of the redeemer's license or other valid ID is required.

B. In the event of legitimate technical difficulties, pre-approved paper forms can be provided to Dealers with transaction report forms at cost. Any technical difficulties shall be remedied by Dealer as soon as practicable. The chief may specify the format (size, shape and color) of the transaction report form. The Chief may require that the transaction report form include any information relating to the regulations of this chapter. Dealers may utilize their own forms, in

lieu of those supplied by the Police Department, if the Chief has approved such forms. The Declaration of Proof of Ownership is considered to be included in references in this chapter to the transaction reports, as appropriate. Declaration of Proof of Ownership will be retained by the business and made available to law enforcement.

C. When receiving regulated property, the Dealer must do all of the following:

1. The Dealer must obtain acceptable photo identification from the seller or pledger and verify that person in the photograph is the individual participating in the transaction.

2. The Dealer must record the seller's current residential address, telephone number and thumbprint on the transaction report.

3. The dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. If an item is new, the Dealer must include the word "new" in the property description.

a. The Dealer must complete the transaction report in its entirety, and the individual completing the report must initial it.

b. Transaction reports must be completed in legible printed English.

4. The Dealer must require the Seller to legibly complete the Declaration of Proof of Ownership except that no such Declaration of Proof of Ownership is required for pawn loans made in compliance with state law by licensed pawnbrokers.

a. In completing the Declaration of Proof of Ownership the Seller must, at the time of the transaction, certify in writing that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased.

b. The Dealer or Dealer's employee must place the identifiable print of the seller's right thumb (left if right is unavailable) in the thumbprint box on the Declaration of Proof of Ownership. Thumbprints and the information on the Declaration of Proof of Ownership may be produced using a digital format with prior approval of the process from the Chief.

c. When no Declaration of Proof of Ownership is required for pawn loan transactions, the Dealer or Dealer's employee shall verbally verify that the seller has the legal right to sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased, and enter that information in the transaction report by noting in the item description the length of time the seller has owned the item.

5. A Dealer may provide a description of any motor vehicle (including license number) identified as used in the delivery of regulated property and record the description and license number next to the seller's thumbprint.

6. Transaction reports are designed to assist in the investigation of the theft of property. Therefore, additional reporting for Dealers includes unregulated property that is identifiable with markings indicating apparent ownership.

7. Dealers must take either a photograph or still video of each person selling or loaning on an item of regulated property or make a copy of the acceptable identification presented by the

seller. All information on the copy must be legible and may be made by photostatic copying, computerized scanning or any other photographic, electronic, digital or other process that preserves and retains an image of the document, and which can be subsequently produced or reproduced for viewing of the image. If a photograph is taken, a print of the photograph must be referenced to the transaction report number. A video photograph (still) must be referenced by time and date and transaction report number to correspond to the regulated property accepted. Copied identification must be kept with the transaction report or shall be referenced to the transaction report number. The photograph or videotape or copied identification must be kept by the Dealer for one year and must be provided to the Chief of Police upon request.

D. Dealers must mail or deliver to the Chief of Police at the close of each business day the original of all transaction reports describing articles received during that business day.

E. Dealers must retain at their business location a copy of all completed and voided transaction reports for a period of not less than one year from the date of acquisition. Any unused transaction reports must be available for inspection by the Chief of Police.

5.06.090 Regulated Property Sale Limitations

A. Regulated property is subject to the following limitations:

1. Holding Period: Regulated property acquired by any Dealer must be held for a period of thirty (30) full days from the date of acquisition. Pawnbroker loan transactions are exempt from the 30-day hold requirements of this section because of the redeemable nature of the loans and the holding requirements of ORS 726. However, if the loan is converted to a buy by the Pawnbroker within 30 days from the date of the pawn transaction, the difference between the original date of the pawn and the buy will count toward the 30-day hold requirement. All other provisions of this section remain in effect.

2. Requirements of held property: All held property must remain in the same form as when received, must not be sold, dismantled, altered or otherwise disposed of, and must be kept separate and apart from all other property during the holding period to prevent theft or accidental sale, and to allow for identification and examination by the Chief of Police. Held property must be kept at the business location during this holding period so that it can be inspected during normal business hours as provided in Section 5.06.100.

B. Upon reasonable belief that an item of regulated property is the subject of a crime, any peace officer may provide notice to any Dealer that a specifically described item of regulated property must be held in a separate Police Hold area for a period not to exceed thirty (30) days from the date of notification, and is subject to the (30) days upon notice provided to the Dealer that additional time is needed to determine whether a specific item of regulated property is the subject of a crime. The Dealer shall comply with the hold notice and notify the Chief of Police of the hold notice not later than five (5) calendar days from the day the notice was received, either by telephone, fax, email or in person. A Dealer must notify the Chief of its intent to dispose of any item of regulated property under Police Hold at least ten (10) days prior to doing so. A Police Hold area must meet the following criteria:

1. Located out of public view and access, and

2. Marked “Police Hold”, and

3. Contains only items that have been put on Police Hold

C. Any peace officer or Community Service Officer (unsworn peace officers employed by law enforcement agencies) who places a police hold on any property suspected of being the subject of a crime shall provide the Dealer with a DPSST number and a valid incident number.

D. Upon probable cause that an item of regulated property is the subject of a crime, the Chief may take physical custody of the item or provide written notice to any Dealer to hold such property for a period of time to be determined by the Chief, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this subsection is subject to the requirements of subsection (A)(2) above, and will be maintained in the Police Hold area unless seized or released by the Chief. Seizure of property will be carried out in accordance with ORS.

E. If a Dealer acquires regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the Dealer shall continue to hold the regulated property at the business location for a period of ninety (90) full days after acquisition. The Dealer must notify the Chief of Police by writing "90-day hold" next to the item on the transaction report or by an electronic means approved by the Chief. The held property must conform to all the requirements of this section.

F. If a peace officer seizes any property from a Dealer, the Dealer must notify the Chief of Police not later than five (5) calendar days from the day the seizure occurs. The Dealer must provide the name of police agency, the incident or case number, the name and DPSST number of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Chief of Police may be given by telephone, fax, email or in person.

5.06.092 Release of Held or Seized Property

Items held or seized under Section 5.06.090 D may not be released to anyone other than the Dealer unless the property is released to:

A. Another law enforcement agency that has provided documentation to the satisfaction of the Chief of Police of the stolen status of the property, or

B. A person who reported the property as stolen; and

1. A stolen property report has been filed with a law enforcement agency where making an untruthful report is a violation of the law, and

2. A notice has been delivered to the Dealer holding the property or from whom the property was seized.

a. The notice required by this subsection will state that the property will be released to the person who has filed the stolen property report unless the Dealer or pawner/seller files a motion for return of seized property within 10 days of the date of the notice and in the manner set forth in the notice.

b. The notice required by this subsection will be sent electronically with a request for acknowledgement, or delivered in person to the Dealer at the email or physical address shown on the Dealer's permit application or most recent permit renewal application, and to the pawner/seller at the address shown in the transaction report required by Section 5.06.080.

c. The notice required by this subsection will provide the information necessary to submit a motion for return of seized property.

d. The failure of any person to receive the notice required in this subsection will not invalidate or otherwise affect the proceedings of this subsection.

5.06.095 Exceptions to Regulated Property Sale Limitations

A. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements in Section 5.06.080 and if:

1. The item is acquired through consignment by a Dealer and the consigned property is mailed or shipped to the Dealer.

2. The item is acquired during a trade show. Items acquired during a trade show may be sold or traded during the trade show without being held or creating a transaction record. Items still in a Dealer's possession at the end of the show held at a location within 400 miles of the City of Canby will be subject to the hold period and reporting requirements in effect for that Dealer's acquisitions of regulated property. The required reporting of the acquisitions must occur within two business days of the end of the trade show. The Dealer must enter at least the following information into the transaction record: a complete, clear and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other, and the name and date of the event and the address of the venue in the name, date, and address fields.

An item acquired during a trade show held at a location more than 400 miles from the City of Canby is exempt from regulation under Section 05.06.080 if the Dealer has a bill of lading, receipt, invoice or the equivalent for the item that specifies the seller's name, physical and mailing address, show location, date of transaction and a description of the purchased item. The bill of lading, receipt, invoice or the equivalent must remain in the Dealer's possession for one year or as long as the property is in the Dealer's possession, whichever is longer.

3. The item is acquired from a business whose acquisitions of regulated property consists exclusively of donated items and/or purchases from a 501(c)(3) organization. The Dealer must record the name and location address of the business in the name and address fields of the transaction report form and the date of acquisition.

4. The item is acquired through an internet transaction. The Dealer must record on the transaction report the seller's email address or seller's identification, the name of the internet website that listed the item, and the date of the acquisition.

5. The item is acquired by the Dealer from a yard sale, garage sale, estate sale or swap meet. The Dealer must record on the transaction report the physical address of the sale location and the date of acquisition.

Items acquired under subsection (A) must be held in compliance with the hold period requirement in effect for the Dealer's other acquisitions of regulated property. The hold period begins the day the acquisition is reported to the Chief.

B. A Dealer is not required to obtain the seller's identification, photograph the seller, record the seller's thumbprint, have the seller complete the Declaration of Proof of Ownership, or hold the item if the Dealer complies with the remaining requirements Section 5.06.080 and if:

1. The item is regulated property acquired from a duly registered business located outside the state of Oregon or Washington. The Dealer must keep a receipt for the item from the registered business that includes the registered business' name and a description of the item. The receipt must be retained at the Dealer's business location for one year or until the item is sold, whichever is longer. The Dealer must enter in the transaction record:

a. the name and location address of the business into the name and address fields;

b. the date of the acquisition; and

c. a digital photograph of sufficient size and focus to identify an item and distinguish it from similar items.

C. A Dealer is not required to photograph the seller, record the seller's thumbprint or have the seller complete the Declaration of Proof of Ownership if the Dealer complies with the remaining requirements of Section 5.06.080 and if:

1. The item is regulated property taken to the Dealer for repair;

2. The Dealer photocopied the customer's valid identification when the item was brought in for repair;

3. The item has been abandoned or consigned to the Dealer;

4. The item is reported in a transaction record on the same day that it is abandoned or consigned; and

5. The item is held for 15 days after it is reported to the Chief.

D. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint if the Dealer complies with the following requirements:

1. Conducts each and every acquisition of regulated property by either:

a. Not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer; or

b. Offering in-store credit that must be used for merchandise only and not redeemed for cash; and 2. Holds each and every item of regulated property for a minimum of fifteen (15) days from the date of acquisition; and

3. Complies with the remaining requirements set forth in the Section 5.06.080; and

4. Notifies the Chief in writing that each and every acquisition of regulated property will be conducted by not tendering payment to the seller for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer.

E. A Dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint when the Dealer acquires an item of regulated property on consignment if the Dealer complies with the following requirements:

1. Does not tender payment to the consignor for a minimum of fifteen (15) days after the regulated property is delivered to the Dealer;

2. Holds each and every item of consigned regulated property for a minimum of fifteen (15) days;

3. Complies with the remaining requirements in Section 5.06.080.

F. The hold period for items may be reduced from 30 days to 20 days if the item either displays a complete legible serial number; or is an item of jewelry; or is precious metal scrap. The Dealer must:

1. Report the acquisition in a transaction record on the same day the acquisition occurs; and

2. Include a description in the transaction record of the degree of detail for the type of item as required Section 5.06.080; and

3. Include a digital photograph of sufficient size and focus to identify the item and distinguish it from similar items and that clearly shows any legible serial number on the item in the transaction record; and

4. Comply with all remaining requirements in Section 5.06.080.

A Dealer may be required to reinstate a 30 day hold period if an examination of RAPID entries reveals a pattern of insufficient item descriptions or insufficient photographs.

G. A Dealer is not required to create a transaction record or hold the item if the acquired item is regulated property acquired from a registered business that has verifiably already entered the acquisition of that item in a transaction record in a jurisdiction approved by the Chief. The Dealer must keep the receipt for the item from the registered business that includes the registered business' name and a description of the item. The receipt must be kept at the Dealer's business location for one year or until the item is sold, whichever is longer.

H. A Dealer is not required to create a transaction record or hold the item if a customer, who originally purchased the item from the Dealer, returns it to the Dealer with the original receipt.

5.06.100 Tagging Regulated Property for Identification, Chief's Inspection

A. Secondhand Dealer acquiring any regulated property shall affix to such property a tag upon which shall be written a unique number, in legible characters, which shall correspond to the number on the transaction report forms required by Section 5.06.080. After the holding period has expired, the transaction number must remain identifiable on the property until it is sold.

B. After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.

C. After the applicable holding period has expired, items that are remanufactured need not remain tagged.

D. Upon presentation of official identification, the Chief or his designee may enter onto the business premises of any person with a Secondhand Dealer's Permit to ensure compliance with the provisions of this chapter. An inspection shall be for the limited purpose of inspecting any regulated property acquired by the dealer, held by the dealer pursuant to Section 5.06.090, or the records incident thereto. Such inspections shall occur only during normal business hours. The failure to grant permission to the Chief or his designee for inspection could result in a violation of this chapter.

5.06.110 Prohibited Acts

A. It shall be unlawful for any principal, employee or Dealer regulated by this chapter to:

1. Receive any property from any person known to the principal, employee or Dealer to be prohibited from selling by a court order or is under the age of eighteen (18) years,

2. Receive property prohibited by this chapter. Items specifically prohibited from being acquired by Secondhand Dealers include:

a. Medications;

b. Gift cards, in-store credit cards, or activated phone cards;

c. Property with serial numbers, personalized inscriptions or initials or other identifying marks which appear to have been intentionally altered, obliterated, removed, or otherwise rendered illegible;

d. Any item that cannot be lawfully possessed pursuant to local, state, or federal law.

3. Act as a Secondhand Dealer within City of Canby without a valid Secondhand Dealer's Permit issued by the Chief of Police.

4. Fail to obtain acceptable identification from the person selling any regulated property;

5. Fail to have the person selling any regulated property sign the transaction report form describing the article acquired;

6. Fail to retain on the business premises a copy of the transaction report form describing the acquired regulated property for a period of one (1) year from the date of acquisition;

7. Fail to mail or deliver to the Chief at the close of each business day the original and second copy of all transaction report forms describing regulated property acquired during that business day;

8. Fail to include on transaction report forms all readily available information required by the form;

9. Fail to withhold from sale any regulated property for the required holding period after acquisition;

10. Fail, after acquiring regulated property, to retain the property on the business premises for the required holding period after its acquisition;

11. Fail to allow inspection by the Chief of any regulated property being retained pursuant to this chapter;

12. Fail to allow inspection by the Chief of any records required by this chapter;

13. Fail to have affixed to any acquired regulated property, during the required holding period, a tag on which is written a number in legible characters which corresponds to the number on the transaction report form required by this chapter;

14. Continue activities as a Secondhand Dealer after suspension or revocation of a permit or a business license.

B. Any initial violation of Section 5.06.110(A) is a City Code violation punishable by a fine in an amount set by resolution of the City of Canby City Council or its designee. Fines for non-criminal violations of this section are presumptively $500 and are not to exceed $1000 per violating transaction and could also result in revocation of the secondhand dealer's permit.

Subsequent or repeated violations of this section can be punishable criminally as could any secondhand dealing that occurs after permit revocation due to violations of this section. Any criminal charges resulting from this ordinance shall go before the Canby Municipal Court and be punishable by no more than 365 days jail and/or a $6250 fine per violating transaction.

5.06.120 Citation

A. The Chief or his designee, upon learning of a violation of Section 5.06.110(A) may issue the Secondhand Dealer a citation. Such citation shall be delivered at the address listed on the permit application during regular business hours to a person who appears to be in charge.

B. The citation shall list the nature of the violation, whether it is a non-criminal or criminal, and the time and date of the citation. The citation shall also indicate the fine assessed for said violation, which is to be paid to the City, or appealed within ten (10) days from the date of delivery. Appeal of non-criminal violations must be in writing, state the grounds for appeal, and must be delivered to the Canby Municipal Court within ten (10) days of the citation date. Criminal citations are handled through the Canby Municipal Court.

C. Nothing in this section shall affect the ability of the Chief to take any and all actions otherwise authorized to abate any violation.

D. Any principal of a Dealer that has been assessed civil penalties under this Chapter in excess of $2,000 in the previous 365 days who knowingly violates Section 5.06 may be punished, upon conviction, by a fine of not more than $6,250 and a jail sentence of not more than 12 months.

E. Any principal of a Dealer that has been denied a permit or whose Secondhand Dealer permit has been revoked who knowingly violates Section 5.06 may be punished, upon conviction, by a fine of not more than $6,250 and a jail sentence of not more than 12 months.

5.06.130 Revocation or Suspension of Permit

A. The Chief may revoke or suspend any permit issued pursuant to this chapter:

1. For any cause which would be grounds for denial of a permit; or

2. Upon a finding that any violation of the provisions of this chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted business location so that the person in charge of the business location knew, or should reasonably have known, that such violations or offenses were permitted to occur at the location by the Dealer or any principal or employee engaged or employed in the management or operation of the business location; or

3. If lawful inspection has been refused; or

4. If the Secondhand Dealer's activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic congestion or other locational problems in the area around the Dealer's premises; or

5. If a fine assessed under this chapter has not been paid to the City of Canby or appealed within ten (10) days after the date of delivery of a citation; or

6. If any statement contained in the application for the permit is found to have been false; or

7. If any Secondhand Dealer fails to meet federal or state licensing requirements.

B. The Chief shall give the permittee written notice of proposed revocation or suspension of any permit issued pursuant to this chapter by causing notice to be served upon the permit holder at the address listed on the permit application. Service of the notice shall be accomplished by personal service, mailing the notice by certified mail, return receipt requested, or by service in the same manner as a summons served in an action at law. Refusal of the service by the person whose permit is revoked or suspended shall be prima facie evidence of receipt of the notice. Service of the notice upon the person in charge of a business, during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business.

C. Revocation or suspension shall be effective and final ten (10) days after the giving of such notice unless such revocation or suspension is appealed in accordance with Section 5.06.140.

5.06.140 Appeals

A. Appeals of revocations or suspensions of permits shall be made to the Hearings Officer, to be designated by the City Administrator. A Hearings Officer may be an officer, official of the City or other employee of the appropriate authority, but shall not have participated in any determination or investigation related to the incident that is subject of the hearing. Hearings under this section may be informal in nature, but the presentation of evidence shall be consistent with that required for contested cases under ORS 183.450. The determination of a hearings officer at the hearing for non-criminal violations under this section is final and is not subject to appeal.

B. Orders of the Hearings Officer:

1. The Hearings Officer shall provide a written statement of the results of the hearing held under this section to the person requesting the hearing.

2. Findings of fact and conclusions of law shall accompany a final order. The findings of fact shall consist of a concise statement of the underlying facts supporting the Hearings Officer's order.

3. The Hearings Officer shall notify the appellant and respondent of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to the appellant and respondent or, if applicable, their attorney of record. The Hearings Officer shall issue a final order within fourteen (14) days from the conclusion of the hearing.

4. The Hearings Officer shall file all final orders with the City Recorder. A final order shall become effective five (5) days after it is filed unless a party makes objections to the form of the order within five (5) days of filing and the Hearings Officer subsequently amends the final order.

C. Enforcement of Hearings Officer Order:

1. Fines and costs are payable upon receipt of the final order declaring the fine and costs. Fines and costs under this chapter are a debt owing to the City of Canby and may be collected in the same manner as any other debt allowed by law.

2. The City of Canby may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce any order of the Hearings Officer, including, but

not limited to, an action to obtain judgment for any fine or any assessment for costs imposed pursuant to Sections 5.06.110(B) or 5.06.140(G).

D. Judicial Review of the final order of the Hearings Officer under this chapter shall be by writ of review as provided in ORS 34.010 – 34.100.

E. Appeals of criminal violations of this chapter can be made *de novo* with the Clackamas County Circuit Court following the procedures governing criminal appeals in the State of Oregon.

5.06.150 Maintenance of Regulated Business Activity in Violation Declared a Nuisance, Abatement

Any business maintained in violation of the provisions of this chapter is hereby declared to be a public nuisance. The Chief is authorized to bring any action or suit to seek imposition of fines or other authorized penalties for violation of this chapter or to abate such nuisance by seeking injunctive or other appropriate relief to:

A. Cease all unlawful activities;

B. Close the unlawful business establishment;

C. Return property obtained through unlawful activities to the rightful owners; or

D. Seek such other relief as may be appropriate.

AMENDMENT TO EMPLOYMENT CONTRACT
City Attorney

This Amendment, dated October 16, 2013, to the Employment Agreement dated March 12, 2012, between the City of Canby, Oregon, a Municipal Corporation, and Joseph A. Lindsay, is intended to memorialize negotiations between the parties regarding a 5.0% merit increase in base salary.

Section 5 of the current employment agreement is amended by changing the amount of the base salary to $68,250.00 per year, effective retroactive to March 12, 2013, representing a merit increase of 5% and continuing at said base salary through October 26, 2013.

Effective October 27, 2013, Section 5 of the current employment agreement is amended by changing the amount of the base salary to $90,000.00 per year, which represents a comparable and competitive salary for the City Attorney position.

The Council will meet with Joseph A. Lindsay within the next 30-60 days to develop and discuss goals, objectives and training opportunities for the next review period. Any future salary increases will be based on merit and economic conditions.

All other terms and conditions of the current employment agreement remain in full force and effect, including a full time, five-day workweek.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Employment Agreement the day and year first written above.

CITY OF CANBY:

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer,
City Recorder, MMC

_____
Joseph A. Lindsay,
Canby City Attorney

Management Team Meeting Minutes
September 30, 2013
2:00 PM
City Hall Conference Room

In attendance: Greg Ellis, Amanda Zeiber, Haley Fish, Darvin Tramel, Bryan Brown, Kim Scheafer, Renate Mengelberg, Jorge Tro, and Julie Wehling.

Kim Scheafer
- Reviewed Agenda for October 9 URA Meeting

Amanda Zeiber
- Gave an update on the Affordable Care Act

Bryan Brown
- Working with SOS Lock Service regarding the addition of a shop in the back of their location
- Working with Potters Industries regarding putting in the foundation for a new warehouse

Renate Mengelberg
- Four businesses applied for Technical Assistance Grants from the Federal Government and received them

Darvin Tramel
- Working on various reports and having a hazardous marker installed in Willamette River

Julie Wehling
- New site is almost ready
- MV's General Manager is retiring today

Greg Ellis
- Gave an update on what's happening with the library siting
- RDI is recruiting for the next leadership program
- Attended the LOC Conference
- Met with Package Containers, Inc. last week

Haley Fish
- Getting ready for audit in two weeks
- Following up on repayment of loan
- Attended LOC Conference

Minutes taken by Kim Scheafer

Management Team Meeting Minutes
October 7, 2013
2:00 PM
City Hall Conference Room

In attendance: Greg Ellis, Amanda Zeiber, Darvin Tramel, Bryan Brown, Kim Scheafer, Renate Mengelberg, and Bret Smith.

Kim Scheafer

- Reviewed Agenda for October 16 CC Meeting
- Records Management training is being held in Oregon City on October 24 from 9-11 AM. It can also be viewed via the web. All Departmental Records Coordinators have responded with the exception of Development Services.

Amanda Zeiber

- Remind staff to wear their photo ID badges
- URA is having a work session with the Library Board on October 8
- URA/CC toured the Sherwood Library and City Hall
- The State of Oregon sent out an email saying Eola Hills Charter School burned down and they are looking for any surplus items such as desks, bookcases, chairs, etc.

Bret Smith

- Canby resident was arrested in large meth bust off I-5 last week
- Police Department is looking for an individual or a family that is in need of a charitable contribution

Renate Mengelberg

- First Friday went well
- Attended Main Street Conference last week
- Industrial Forum will be held on October 16, 8-9:30 AM at American Steel
- Six businesses will be taking part in the manufacturing tours
- May be getting a new GIS Intern

Darvin Tramel

- Working on Stormwater Management Plan
- Working with Army Corps of Engineers to put hazard markers up on the river

Bryan Brown

- Planning Commission will be discussing food carts at their October 14 meeting
- Having a pre-construction meeting with Bowco Industries

Greg Ellis

- New bridge on Sequoia Parkway will be completed in the spring
- Mayor is trying to start a rural Area Commission on Transportation
- Was invited to participate on visioning for the Clackamas County Event Center

Minutes taken by Kim Scheafer