AMENDED AGENDA

CANBY CITY COUNCIL REGULAR MEETING
November 6, 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
6:15 PM
City Hall Conference Room
182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss Canby Municipal Code Landscaping Requirements. Pg. 1

CITY COUNCIL REGULAR MEETING

1. **CALL TO ORDER- 5:45 PM – City Hall Conference Room** – The Council will immediately go into Executive Session with a Work Session at 6:15 PM and the Regular Session following at 7:30 PM in the Council Chambers.

2. **EXECUTIVE SESSION:** ORS 192.660 (2)(h) Pending Litigations

3. **OPENING CEREMONIES – 7:30 PM – Council Chambers**
   A. Pledge of Allegiance and Moment of Silence

4. **COMMUNICATIONS**

5. **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.)

6. **MAYOR'S BUSINESS**

7. **COUNCILOR COMMENTS & LIAISON REPORTS**

8. 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 10, 2013 City Council Special Meeting
B. Approval of Minutes of the October 16, 2013 City Council Work Session and Regular Meetings

9. RESOLUTIONS & ORDINANCES

A. Ord. 1386, Adding CMC Chapter 5.06 Regarding the Regulation of Secondhand Dealers **(2nd Reading)** Pg. 26
B. Ord. 1387, Amending CMC Chapter 12.36 Regarding Telecommunications Facilities Pg. 45
C. Ord. 1388, Granting to Clackamas County a Nonexclusive Franchise to Construct, Operate and Maintain a Telecommunications Network and Provide Telecommunications Services within the City of Canby, Oregon Pg. 63
D. Ord. 1389, Granting to tw telecom of oregon llc ("TWTC") a Nonexclusive Franchise to Construct, Operate and Maintain a Telecommunications Network and Provide Telecommunications Services within the City of Canby, Oregon Pg. 72
E. Ord. 1390, Authorizing Contract with Hubbard Chevrolet of Hubbard; Auto Additions of Salem, and Ford Motor Credit Corporation for the Lease/Purchase of Two (2) 2014 Chevrolet Tahoe's with Police Equipment Packages Pg. 81

10. NEW BUSINESS

A. Findings Fred Meyer DR 12-03/TA 12-01/ZC 12-02 Pg. 85

11. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTSs

12. CITIZEN INPUT

13. ACTION REVIEW

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

15. 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.

CITY COUNCIL WORK SESSION

Landscaping Ordinance

Wednesday, Nov. 6, 2013

BEFORE

1st Avenue at N Grant St

AFTER

1ST Avenue at N Grant St

COUNCIL WORKSESSION

Landscaping Ordinance

16.49.070 Landscaping Provisions:

The intent is to establish standards for landscaping in order to enhance the environmental and aesthetic quality of the city:

- By encouraging the retention and protection of existing trees and the planting of trees in new development
- By using trees and other landscape materials to temper the effects of the sun, wind, noise and air pollution
- By using trees and other landscape materials to define spaces and uses of specific areas
- Through the use of trees and other landscaping materials as a unifying element within the urban environment

16.49.080 General Provisions for Landscaping

- (A) They are minimum provisions
- (B) Purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between incompatible adjacent lands uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community, and mitigate air and noise pollution.
- They also are intended to facilitate Low Impact Development techniques that: reduce erosion and storm water runoff, preserve and promote urban wildlife habitats, reduce the amount of carbon dioxide in the air, shade and reduce the temperature of adjacent waterways and pavement, and enhance the streetscapes along the public ROW with an emphasis on trees and LID storm facilities.

Minimum Area for Landscaping (% of total land area to be developed)

- 15% for Industrial and Commercial Zones
- 7.5% for Downtown – Commercial (C-1) Zone
- 30% for Residential Zones

Notes:

i. Applies to development area on private property

ii. Storm water management facilities are counted toward the minimum requirement when located on private property

iii. The retention of existing healthy trees & vegetation is encouraged

iv. Landscaping shall be designed and installed so that within 3 years 95% of the ground shall be covered by living grass or other plant material with the remaining 5% allowed to be mulch and up to 5% of landscape area may be covered with rock, stones, and similar material

v. Required sidewalks shall not be used to meet landscape area.

16.49.090 Specifications-Tree and Plant Materials

Deciduous Trees – shall be a minimum of 2” caliper (6” above ground)

Coniferous Trees – shall be a minimum of 5’ in height

Shrubs – shall be 1 to 5 gallon size

Groundcovers – shall be fully rooted and welled leafed and used to fill in and cover mulched areas without shrubs

Lawns – shall consist of grasses, sod, acceptable mix of seeds with 100% coverage in area utilized

16.49.100 Landscaping Installation

- Shall be completed prior to issuance of final certificate of occupancy
- Temporary CO issued when landscaping installation is immediately pending or in process
- A seasonal delay of landscaping installation of no more than 6-months from temporary occupancy is allowed when security equal to 110% of cost of landscaping materials and its installation is filed with the City
- All landscaping approved through Site & Design Review shall be continually maintained, including necessary watering, weeding, pruning and replacement, in a manner substantially similar to that originally approved

16.49.110 Landscape area credit for preservation of existing trees given

- 100% of natural area preserved may be counted toward required landscape area percentage
- Credit given for preservation shall not otherwise reduce or eliminate requirements pertaining to parking lots, buffering, and screening

16.49.120 Parking Lot Landscaping

(A) Goals of parking lot standards are to create shaded areas in parking lots to reduce glare, enhance the visual environment, and encourage the use of LID practices

(B) Parking Lot Landscaping Standards are Applicable to:

- Passenger vehicle parking area of 10 spaces or more
- Any paved vehicular area 3,500 square feet or larger
- Storage lot or a truck loading area shall be exempt from landscaping requirements within a parking lot

(C) Required Landscaping within a Parking Lot

- Area within a parking lot defined to include paved parking and maneuvering area and area within 10 feet of exterior curb surrounding parking area
- Interior areas shall be a minimum of 6 feet wide, 48 square feet in size, and contain one tree

16.49.120 Parking Lot Landscaping (continued)

(D) Minimum Landscape Area Required for Parking Area

- 15 % for all residential, industrial, and commercial zones
- 5% for Downtown-Commercial (C-1) zone
- 10% for Core Commercial sub-area of the DCO zone

(E) Parking areas with more than 16 spaces shall include landscape islands to break up rows of not more than 8 spaces

(F) Perimeter of Parking and Loading Area

- Screening of parking is required such that height and density within (3) years will shield vehicle headlights from head0on visibility
- One tree shall be planted every 40 feet along the required setback of the parking area

(H) Irrigation or Available Water Supply

- Landscaped areas shall be provided with automatic irrigation systems or a readily available water supply with at least one outlet locate within approximately 150 feet of all plant materials to be maintained

Additional Landscape Ordinance Provisions

16.08.130 Standard Transportation Improvements

- ✓ Landscaping as part of a transportation facility is an outright permitted use

16.08.140 Temporary Vendor

- ✓ Temporary vendor shall be located on a paved surface. Inventory and equipment shall not be displayed or stored in any landscaped areas

16.16.030 R-1 Development Standards

- ✓ The maximum amount of impervious surface allowed in the R-1 zone shall be 60 percent of the lot area
- ✓ Impervious surface includes all surface areas that create a barrier to or hinder the entry of water into the soil in comparison with natural conditions prior to development

16.18.030 R-1.5 Development Standards

- ✓ The maximum amount of impervious surface allowed in the R-1.5 zone shall be 70 percent of the lot area

16.20.030 R-2 Development Standards

- ✓ The maximum amount of impervious surface allowed in the R-2 zone shall be 70 percent of the lot area

Additional Landscape Ordin. Provisions (Cont.)

16.35.050 Industrial Area Overlay Zone – Development Standards

- ✓ All landscaped areas shall be irrigated

16.35.070 I-O Design Review Matrix – Table 16.35.040

- ✓ Development applications are reviewed against the design guidelines in this Table – requirements ask for parking lot landscaping area and/or trees planted to exceed base requirement to obtain required points to meet design objectives

16.36.010 Overlay Zone Minimum Requirements for Residential PUD

- ✓ 15% of the gross area of the development shall be devoted to open space either in a common area or dedicated to the public

16.41.050 Downtown Canby Overlay Zone – Development Standards

- ✓ Screening: Garbage/recycling areas and mechanical equipment shall be screened with wall, fence or landscaping
- ✓ Parking: A minimum 5' wide landscaped strip shall surround and abut the perimeter of the parking area

Additional Landscape Ordin. Provisions (Cont.)

16.44.030 Manufactured and Mobile Homes & Trailer Parks Standards and Criteria

- ✓ A minimum of fifteen percent of the total development shall be landscaped, including a strip at least fifteen feet wide along all interior lot lines

16.48 Site Plan Review

- ✓ In conjunction with building permit plan check, projects shall undergo a site plan review by staff which is intended to focus on code compliance and mitigation of health and safety hazards, but staff may also make certain recommendations intended to improve the overall quality or appearance of the development. This can and has included landscaping on occasion.

Table 16.49.040 Site Design Review Menu

As part of Site and Design Review, the following menu shall be used as part of the review. In order to "pass" this table 60% of total possible points shall be earned,
10% of the total possible points must be from LID elements

Design Criteria	Possible Points				
Parking	**0**	**1**	**2**	**3**	**4**
Screening of parking and/or loading facilities from public right-of-way	Not screened	Partially screened	Fully screened	-	-
Parking lot lighting provided	No	Yes	-	-	-
Parking location (behind building is best)	Front	Side	Behind	-	-
Number of parking spaces provided (% of minimum required)	>120%	101-120%	100%	-	-
Screening of Storage Areas and Utility Boxes	**0**	**1**	**2**	**3**	**4**
Trash storage is screened from view by solid wood fence, masonry wall or landscaping.	No	Yes	-	-	-
Trash storage is located away from adjacent property lines.	0 - 10 feet from adjacent property	11 - 25 feet from adjacent property	>25 feet from adjacent property	-	-
Utility equipment, including rooftop equipment, is screened from view.	Not screened	Partially screened	Fully screened	-	-
Access	**0**	**1**	**2**	**3**	**4**
Distance of access to nearest intersection.	≤70 feet	71 - 100 feet	>100 feet	-	-
Pedestrian walkways from public street/sidewalks to building entrances.	One entrance connected.	-	Walkways connecting all public streets/ sidewalks to building entrances.	-	-
Pedestrian walkways from parking lot to building entrance.	No walkways	Walkway next to building only	Walkways connecting all parking areas to building entrances		.

Design Criteria	Possible Points				
Tree Retention	**0**	**1**	**2**	**3**	**4**
Percentage of trees retained	<10%	10-50%	51-75%	>75%	-
Replacement of trees removed	<50%	≥50%	-	-	-
Signs	**0**	**1**	**2**	**3**	**4**
Dimensional size of sign (% of maximum permitted)	>75%	50-75%	<50%	-	-
Similarity of sign color to building color	Not similar	Somewhat similar	Similar	-	-
Pole sign used	Yes	No	-	-	-
Building Appearance	**0**	**1**	**2**	**3**	**4**
Style (similar to surroundings)	Not similar	Somewhat similar (1 or 2 points possible depending on level of similarity)		-	-
Color (subdued and similar to surroundings is better)	Neither	Similar or subdued	Both	-	-
Material (concrete, wood and brick are best)	Either 1 or 2 points may assigned at the discretion of the Site and Design Review Board				
Size of building (smaller is better)	>20,000 square feet	≤20,000 square feet	-	-	-
Provision of public art (i.e. murals, statues, fountains, decorative bike racks, etc.)	No	-	-	-	Yes
Landscaping	**0**	**1**	**2**	**3**	**4**
Number of non-required trees provided	-	At least one tree per 500 square feet of landscaping.	-	-	-
Amount of grass (less grass is better) (% of total landscaped area)	>50%	25-50%	<25%	-	-
Low Impact Development (LID)	**0**	**1**	**2**	**3**	**4**
Use of pervious paving materials (% of total paved area)	<10%	-	10-50%	51-75%	>75%
Provision of park or open space area	None	-	Open space (Generally not for public use)	-	Park (public or privately owned for public use)

Design Criteria	Possible Points				
Use of drought tolerant species in landscaping (% of total plants)	<25% drought tolerant	-	25-50% drought tolerant	51-75% drought tolerant	>75% drought tolerant
Provision of additional interior parking lot landscaping (% of minimum required)	100%	101-110%	111-120%	>120%	-
Provision of an eco-roof or rooftop garden (% of total roof area)	<10%	-	-	10-50%	>50%
Parking integrated within building footprint (below-grade, structured parking, or tuck-under parking) (% of total on-site parking)	<10%	-	-	10-50%	>50%
Disconnecting downspouts from city stormwater facilities	None	Some downspouts disconnected	All downspouts disconnected	-	-
Shared parking with adjacent uses or public parking structure (% of total required parking spaces)	None	<50%	≥50%	-	-
Provision of rain gardens/bioretention areas for stormwater runoff (% of total landscaped area)	None	-	10-50%	51-75%	>75%
	Total Possible Points = 71, 60%=42.6 points, 10%=7.1 points				

(Ord 1296, 2008; Ord 1338, 2010)

16.49.070 Landscaping provisions, Authority and intent.

The purpose of this section is to establish standards for landscaping within the City of Canby in order to enhance the environmental and aesthetic quality of the city:

A. By encouraging the retention and protection of existing trees and requiring the planting of trees in new developments;

B. By using trees and other landscaping materials to temper the effects of the sun, wind, noise and air pollution;

C. By using trees and other landscaping materials to define spaces and uses of the specific areas;

D. Through the use of trees and other landscaping materials as a unifying element within the urban environment; and

16.49.080 General provisions for landscaping.

A. The standards set forth in this section are minimum standards for landscaping.

B. The purpose of these landscaping standards is to provide uniform standards for the development and maintenance of the landscaping of private property and public rights-of-way. The purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between incompatible adjacent land uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community, and mitigate air and noise pollution.

These standards are also intended to facilitate Low Impact Development (LID) techniques through the retention of existing native vegetation and mature, healthy trees, to the extent feasible. Additional LID related goals of this chapter are to: reduce erosion and storm water runoff; preserve and promote urban wildlife habitats; reduce the amount of carbon dioxide in the air; shade and reduce the temperature of adjacent waterways; and enhance the streetscapes along the city's public rights-of-way with an emphasis on trees and LID stormwater facilities.

C. The minimum area requirement for landscaping for developments coming under design review shall be the percentage of the total land area to be developed as follows. Parking lot landscaping area is included in calculating the following landscape areas:

1. Fifteen (15) percent for all industrial and commercial zones (except the Downtown-Commercial zone, but including the Commercial-Residential zone).

2. Seven and one-half (7.5) percent for the Downtown-Commercial zone.

3. Thirty (30) percent for all residential zones.

D. LID stormwater management facilities, such as rain gardens and bioretention areas, may be counted toward the minimum landscaping requirement when they are located on private property. LID facilities in the public right-of-way cannot be counted toward the minimum landscaping requirement. The integration of LID stormwater management facilities within required landscaping must be approved by the city and shall comply with the design and construction standards set forth in the Canby Public Works Design Standards.

E. Trees and other plant materials to be retained shall be identified on the landscape plan. The Site and Design Review Board encourages the retention, to the extent practicable, of existing healthy trees and vegetation.

F. During the construction process:

1. The owner or the owner's agent shall provide above and below ground protection for existing trees and plant materials identified to remain.

2. Trees and plant materials identified for preservation shall be protected by chain link fencing placed around the tree, at the drip line.

3. If it is necessary to fence within the drip line, such fencing shall be specified by a qualified arborist, nurseryman or landscape architect.

4. Neither top soil storage nor construction material storage shall be located within the drip line of trees designated to be preserved.

5. Where site conditions make necessary grading, building, paving, trenching, boring, digging, or other similar encroachment upon a preserved tree's drip line area, such grading, paving, trenching, boring, digging or similar encroachment shall only be permitted under the direction of a qualified arborist, nurseryman or landscape architect. Such direction must assure that the health needs of trees within the preserved area can be met.

6. Tree root ends shall not remain exposed.

G. Landscaping under preserved trees shall be compatible with the retention and health of said trees.

H. When it is necessary for a preserved tree to be moved in accordance with the Tree Ordinance, the landscaped area surrounding said tree or trees shall be maintained and replanted with trees which relate to the present landscape plan, or if there is no landscaping plan, then trees which are complimentary with existing, nearby landscape materials.

I. Any required landscaped area shall be designed, constructed, installed and maintained so that within three (3) years, the ground shall be covered by living grass

or other plant material. (The foliage crown of trees shall not be used to meet this requirement.) A maximum of five percent of the landscaped area may be covered with bark chips, mulch, or other similar materials. A maximum of five percent of the landscaped area may be covered with rock, stones, walkways, or other similar material acceptable to the Board. Required sidewalks shall not be used to meet the landscaping requirements.

J. All trees and plant materials shall be healthy, disease-free, damage-free, well-branched stock, characteristic of the species. The use of tree and plant species native to the Pacific Northwest is encouraged. Any new street tree planted must be included on the city's list of approved tree species.

K. Landscaping methods should be guided by the provisions of the most recent edition of the Sunset Western Garden Book or similar publication.

L. The following guidelines are suggested to insure the longevity and continued vigor of plant materials:

1. Select and site permanent landscape materials in such a manner as to produce a hardy and drought-resistant landscaped area.

2. Consider soil type and depth, spacing, exposure to sun and wind, slope and contours of the site, building walls and overhangs, and compatibility with existing native vegetation preserved on the site or in the vicinity.

M. All plant growth in landscaped areas of developments shall be controlled by pruning, trimming or otherwise, so that:

1. It will not interfere with designated pedestrian or vehicular access; and

2. It will not constitute a traffic hazard because of reduced visibility.

3. It will not hinder solar access considerations.

N. After completion of site grading, topsoil is to be restored to exposed cut and fill areas to provide a suitable base for seeding and planting.

O. All planting areas shall be graded to provide positive drainage.

P. Neither soil, water, plant materials nor mulching materials shall be allowed to wash across roadways or walkways. (Ord. 890 section 49, 1993; Ord. 854 section 1,1991; Ord. 848, Part IV, section 2, 1990; Ord. 955 section 26, 1996; Ord 1237, 2007; Ord. 1338, 2010)

16.49.090 Specifications for tree and plant materials.

A. Deciduous Trees. Deciduous shade and ornamental trees shall be a minimum of two inch (2") caliper, measured six inches (6") above ground, balled and burlapped.

Bareroot trees will be acceptable to plant during their dormant season. Trees shall be well branched and characteristically shaped specimen.

B. Coniferous Trees. Coniferous trees shall be a minimum five feet (5') in height above ground, balled and burlapped. Trees shall be well branched and characteristically shaped specimen.

C. Evergreen and Deciduous Shrubs. Evergreen and deciduous shrubs shall be at least one (1) to five (5) gallon size. Shrubs shall be characteristically branched. Side of shrub with best foliage shall be oriented to public view.

D. Ground covers. Ground covers shall be fully rooted and shall be well branched or leafed.

E. Lawns. Lawns shall consist of grasses, including sod, or seeds of acceptable mix within the local landscape industry. Lawns shall be 100 percent coverage and weed free. (Ord. 890 section 46, 1993; Ord. 848, Part IV, section 3, 1990)

16.49.100 Landscaping installation and maintenance.

A. Except as allowed by subsection (2), all landscaping and exterior improvements required as part of the site and design review approval shall be completed prior to the issuance of any certificate of occupancy.

B. A temporary certificate of occupancy may be issued prior to the complete installation of all required landscaping and exterior improvements if security equal to 110 percent of the cost of the landscaping and exterior improvements, as determined by the Site and Design Review Board or City Planner, is filed with the city, assuring such installation within a time specified by the Board, but not to exceed six (6) months after occupancy. The applicant shall provide the cost estimates of landscaping materials and installation to the satisfaction of the Site and Design Review Board, City Planner, or city forester, prior to approval of the security. Security may consist of a faithful performance bond payable to the City of Canby, cash, certified check, time certificate of deposit, or assignment of a savings account; and the form shall meet with the approval of the City Attorney. If the installation of the landscaping or other exterior improvements is not completed within the period specified by the Board or City Planner, the security may be used by the city to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the city shall be returned. The final landscape and exterior improvement inspection shall be made prior to any security being returned. Any portion of the plan not installed, not installed properly, or not properly maintained shall cause the inspection to be postponed until the project is completed, or shall cause the security to be used by the city.

C. All landscaping approved through the site and design review process shall be continually maintained, including necessary watering, weeding, pruning and replacement, in a manner substantially similar to that originally approved by the Site

and Design Review Board, unless later altered with Board approval. (Ord. 890 section 47, 1993; Ord. 848, Part IV, section 4, 1990)

16.49.110 Landscape area credit for preservation of existing trees and tree groves.

A. Policy. It being the policy of the City of Canby to preserve healthy, mature trees wherever possible within its city limits, a system of landscape area credits is hereby established as an incentive for property owners and developers to preserve existing healthy, mature trees and to include them in the landscape plan for a proposed development.

B. Purpose. The primary goal of the landscape credit is to prevent haphazard removal and destruction of trees and tree groves, in order to preserve the ecological health, aesthetic character, and quality of life in Canby. Tree retention provides substantial benefits, including but not limited to erosion prevention, reduction in storm-water runoff, improved water and air quality, energy conservation, carbon sequestration, reductions in the development impacts on the stormwater drainage system, and better transition between adjacent land uses.

C. Landscape Credit.

1. Program for Landscape Credit. One hundred percent (100%) of the area preserved under any mature, healthy tree or grove of trees retained in the landscape (as approved by the Site and Design Review Board) may be counted directly toward the percentage of landscaping required for a development.

2. Limit to Landscape Area Credit.

a. Landscape credit for preserved trees or tree groves shall not eliminate or reduce the landscaping requirements pertaining to parking lots, buffering, and screening.

b. Landscape credits for individual trees shall not comprise more than 40 percent of the total landscape requirement. For example, in districts requiring 15 percent landscaping, preserved tree area shall not count toward more than 9 percent of the requirement).

c. Landscape credits for preserved tree groves shall not comprise more than 60 percent of the total landscape requirement. A grove is defined as a stand of three or more healthy, mature trees located close together to provide some overlap in canopy coverage.

3. Trees Near a Property Line:

a. When the drip line of a tree extends beyond the owner's property line, credit can be granted for that portion of the drip line within the property line if that area exceeds 75 percent of the total drip line area. Trees so close to the property line

that their drip line area is less than 75 percent of the total, can only be given credit if a qualified arborist, nurseryman or landscape architect can assure the survival of the tree and its long term health if root damage is sustained by future development on the adjacent property.

b. Where trees have been preserved near a property line, such that the drip line of the tree spreads onto adjacent property, credit can be obtained by the adjacent property owner for protection of the drip line area that extends onto that adjacent property.

D. Trees and tree groves to be preserved and counted toward the landscape credit shall be identified on the landscape plan. (Ord. 890 section 48, 1993; Ord. 848, Part IV, section 5, 1990; Ord. 1338, 2010)

16.49.120 Parking lot landscaping standards.

A. General Provisions. In addition to the objectives stated in section 2 of this ordinance, goals of parking lot standards are to create shaded areas in parking lots to reduce glare, enhance the visual environment, and encourage the use of LID practices. The design of the parking area shall be the responsibility of the developer and should consider visibility of signage, traffic circulation, comfortable pedestrian access, and aesthetics. Trees shall not be cited as a reason for applying for or granting a variance on placement of signs.

B. Application. Parking lot landscaping standards shall apply to any surface passenger vehicle parking area of ten (10) spaces or more, or to any paved vehicular use area 3,500 square feet or larger on the same tax lot or on contiguous tax lots under common ownership. Any paved vehicular area which is used specifically as a utility storage lot or a truck loading area shall be exempt from landscaping requirements within a parking lot.

C. Landscaping Within a Parking Lot.

1. Area within a parking lot shall include the paved parking and maneuvering area, as well as any area within ten (10) feet of any exterior face of curb surrounding the paved parking and maneuvering area.

2. Each interior landscaped area shall be a minimum of six (6) feet wide, unless the area is added to the required perimeter landscaping.

3. The use of LID best management practices in parking lots is encouraged whenever site and soil conditions make it feasible. Such practices include, but are not limited to, permeable surfacing materials, and integrating LID stormwater management facilities into the required landscaping areas.

D. Computing Minimum Area Required to be Landscaped Within a Parking Lot. Minimum area required to be landscaped within a parking lot shall be as follows:

1. Fifteen (15) percent for all residential, industrial, and commercial zones

2. Five (5) percent for the Downtown-Commercial Zone for any off-street parking spaces provided.

3. Ten (10) percent for the Core Commercial (CC) sub-area of the Downtown Canby Overlay Zone for any off-street parking spaces provided.

E. All parking areas with more than 16 spaces shall include landscape islands to break up the parking area into rows of not more than 8 contiguous parking spaces.

1. Landscape islands shall have a minimum area of 48 square feet and a minimum width of six (6) feet.

2. Landscape islands shall contain at least one tree that meets the standards in section (F) below.

3. Landscape islands may be counted toward the minimum parking lot landscaping requirements.

F. Criteria for Trees in Parking Lots. Deciduous, evergreen and/or shade trees shall meet the following criteria:

1. Reach a mature height of approximately forty (40) feet. Trees must be approximately two-inch (2") caliper at the time of planting.

2. Cast moderate to dense shade in summer.

3. Be long lived, i.e., live to be over approximately sixty (60) years.

4. Do well in an urban environment:

a. Be pollution tolerant; and

b. Be tolerant of direct and reflected heat.

5. Require little maintenance:

a. Be mechanically strong;

b. Be insect and disease resistant; and

c. Require little pruning.

6. Be resistant to drought conditions.

7. Be barren of fruit production.

G. Perimeter of Parking and Loading Areas:

1. Screening of parking and loading areas is required. Within three (3) years of planting, screening shall be of such height and density as to shield vehicle headlights from head-on visibility.

2. In addition, one (1) deciduous, evergreen and/or shade tree shall be planted every forty (40) feet, minimum, along the required setback of the vehicular use area.

H. Irrigation System or Available Water Supply Required. Landscaped areas shall be provided with automatic irrigation systems or a readily available water supply with at least one (1) outlet located within approximately 150 feet of all plant materials to be maintained. (Ord. 890 section 49, 1993; Ord. 848, Part IV, section 6, 1990, Ord 1296, 2008; Ord. 1338, 2010)

16.49.130 Revegetation in unlandscaped areas.

The purpose of this section is to ensure erosion protection for those areas which are not included within the landscape percentage requirements so that eventually native plants will re-establish themselves, and so that trees will not be lost due to uncontrolled erosion.

A. Replanting. Where natural vegetation has been removed or damaged through grading in areas not affected by the landscaping requirement and that are not to be occupied by structures or other improvements, such areas shall be replanted with materials approved by the Site and Design Review Board.

B. Plant materials shall be watered at intervals sufficient to assure survival and growth for a minimum of two (2) growing seasons. (Ord.848, Part IV, section 7, 1990)

16.49.140 Minor revisions to approved landscaped plans.

Minor revisions (less than 10 percent of the landscaped area) to the approved landscaped plans shall be reviewed and approved by the City Planner. The City Planner shall report any minor revisions to the Site and Design Review Board at the next available Board meeting. (Ord. 890 section 50, 1993)

16.49.150 Parking lots or paving projects.

All new paving or parking lot projects which create over 2,500 square feet of impervious surface and any new paving added to existing paving areas which creates a total of more than 2,500 square feet of impervious surface must meet City storm drainage requirements, parking lot landscaping standards and the drainage and access standards of the Oregon Department of Transportation (if applicable). Applicants for such paving projects must submit an application to the Planning Department. Application procedures shall be as described in Chapter 16.89. (Ord. 1019 section 3, 1999; Ord. 1080, 2001)

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

2nd Reading

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.

ORDINANCE NO. 1387

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12, SECTION 12.36 TELECOMMUNICATIONS FACILITIES.

WHEREAS, the City of Canby desires to change its current telecommunications facilities ordinance to reflect changes in law and suggested best practices; and

WHEREAS, the Canby Municipal Code is currently silent regarding right-of-way use fees as well as annual registration fees; and

WHEREAS, options to set fees by resolution will result in a more level playing field for telecommunication providers as well as offer greater flexibility in any future changes; now therefore

THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:

Section 1. The Canby Municipal Code (CMC) is hereby amended to include amendments to Chapter 12.36 Telecommunications Facilities. A copy of the amended Chapter 12.36 is attached hereto as Exhibit "A."

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 6, 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 20, 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 20, 2013 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

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. 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 tele-communications 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)

ORDINANCE NO. 1388

AN ORDINANCE GRANTING TO CLACKAMAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY

WHEREAS: Clackamas County, Oregon, a political subdivision of the State of Oregon (Franchisee) desires to provide Telecommunications services within the City of CANBY, Oregon; and

WHEREAS: the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of Public Rights-of-Way; and

WHEREAS: Franchisee has applied for a Telecommunications Franchise pursuant to Canby Municipal Code (CMC) Chapter 12.36 relating to Telecommunications located in the public rights of way, and the City of CANBY "City" has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions of CMC Chapter 12.36 and stated herein:

NOW THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definitions.
Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense, earned in the City of CANBY and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Other definitions located in CMC Chapter 12.36

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, and across the City's Rights-of-Way, its lines, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications network within the City. If required, franchisee agrees to obtain and maintain a business license to conduct business in the City of Canby and keep it current during the life of this Franchise. Franchisee agrees to comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including CMC Chapter 12.36, as amended from time to time.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or

different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either party ninety (90) days before expiration, of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Grantee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove.

Section 5: No Limitation of City Authority.
(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same in accordance with Canby Municipal Code.

Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City.

Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may after reasonable attempts to contact the City provided emergency contacts immediately initiate such emergency repairs. At least two emergency contacts will be provided and kept up to date. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means before commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

Section 8: Insurance.

(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section. As an alternative to the insurance requirements contained herein, the County, as a government entity, may provide evidence of self-insurance subject to review and acceptance by the city.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City in accordance with policy provisions prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each person, and $3,000,000, for each occurrence of bodily injury and $3,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

The insurance policy limits required in section 8 may be satisfied by Provider through a combination of the underlying insurance policy and umbrella (excess) liability policy(ies) so long as said umbrella policies are, at a minimum, "follow form" and provide insurance equal to or greater than coverage afforded by the underlying liability policy(ies).

Section 9: Transfers and Change in Control.

(a) Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(b) Any transfer of ownership affected without the prior written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City.

The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification.

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall indemnify, defend and hold harmless the City, its councilors, officers, employees and agents from and against any and all liability, claims, damages, losses, and expenses, including but not limited to reasonable attorneys fees, arising out of or resulting from the acts of the County, its officers, employees, and agents in the performance of this Agreement or arising out of or resulting from the construction, operation, repair and/or maintenance of the Facilities.

Such indemnification shall not extend to independent claims of City negligence for City acts outside the scope of this contractual agreement. This indemnity shall survive the termination of this Agreement.

Section 11: Compensation.

(a) Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services. Point to point or multi-point services include but are not limited to fiber optic connections that are leased between two or more nodes or endpoints.

(b) Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City

in connection with the Grantee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

(e) Late franchise fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by the City.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Grantee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's Fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

Section 14: Right to Perform Franchise Fee Audit or Review; Default. In addition to all rights granted under Section 13, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make

such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16: Venue.
(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Circuit Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon.

Section 17: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following addresses, or such other addresses as each party may specify in writing:

Notice to the City:

City Administrator
P.O. Box 930
Canby, OR 97013
Phone: 503-266-4021
Facsimile: 503-266-7961

With a copy to

City Attorney
1175 NW 3rd Avenue
Canby, OR 97013
Phone: 503-266-4027
Facsimile: 503-266-9316

Notice to the County:

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, OR 97045
Phone: 503-722-6656
Facsimile: 503-655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, OR 97045
Phone: 503-655-8322
Facsimile: 503-655-8255

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 20: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 21: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.
(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

Section 23: Emergency. The City Council of CANBY finds the health, safety and welfare of the City requires this Ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency and this ordinance shall be in full force and effect from the time of its passage and approval.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 6, 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 Wednesday, November 20, 2013, after the hour of 7:30 PM in the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

_____
Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of November 2013, by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

Attest:

_____
Kimberly Scheafer, MMC
City Recorder

Approved as to form

_____
Joseph A. Lindsay
City Attorney

Accepted _____(Date) Clackamas County

By: _____
Printed Name: _____
Title: _____

ORDINANCE NO. 1389

AN ORDINANCE GRANTING TO TW TELECOM OF OREGON LLC ("TWTC"), A DELAWARE LIMITED LIABILITY COMPANY, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY

WHEREAS: tw telecom of oregon llc ("TWTC"), a Delaware limited liability company, provides Telecommunications services within the City of CANBY, Oregon ("City"); and

WHEREAS: the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of Public Rights-of-Way; and

WHEREAS: Franchisee has applied for a Telecommunications Franchise pursuant to Canby Municipal Code (CMC) Chapter 12.36 relating to Telecommunications located in the public rights of way, and the City has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions of CMC Chapter 12.36 and stated herein:

NOW THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1: Definitions.

Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense in the City of CANBY and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

Other definitions located in CMC Chapter 12.36

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and Franchise to erect, construct, operate, repair and maintain in, under, upon, along, and across the City's Rights-of-Way, its lines, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications network within the City. Franchisee agrees to obtain and maintain a business license to conduct business in the City of Canby and keep it current during the life of this Franchise. Franchisee agrees to comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including CMC Chapter 12.36, as amended from time to time.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to

other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance. Thereafter, this Franchise shall continue in full force and effect for an additional ten (10) years unless notice is given by either party ninety (90) days before expiration, of its intention to terminate or renegotiate the Franchise. Upon termination or expiration of the Franchise, Grantee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Grantee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove.

Section 5: No Limitation of City Authority.

(a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

(b) In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

(c) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

(d) Except as otherwise provided by law, and subject to Section 6 herein, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of Telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.
Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same in accordance with Canby Municipal Code.

Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City.

Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(b) In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may after reasonable attempts to contact the City provided emergency contacts immediately initiate such emergency repairs. At least two emergency contacts will be provided and kept up to date. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means before commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(c) Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

Section 8: Insurance.
(a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City in accordance with policy provisions prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be

responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than $1,000,000 for each person, and $3,000,000, for each occurrence of bodily injury and $3,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

The insurance policy limits required in section 8 may be satisfied by Provider through a combination of the underlying insurance policy and umbrella (excess) liability policy(ies) so long as said umbrella policies are, at a minimum, "follow form" and provide insurance equal to or greater than coverage afforded by the underlying liability policy(ies).

Section 9: Transfers and Change in Control.

(a) Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(b) Any transfer of ownership affected without the prior written consent of the City shall render this Franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the Franchisee and the City agree to an extension of time.

(c) The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(d) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the

Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

(e) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification. Franchisee shall indemnify and hold the City harmless for any losses, claims, damages, awards, penalties or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of representations and warranties made under this Agreement, provided that the Franchisee is promptly notified of any such claims. The Franchisee shall have the sole right to defend such claims at its own expense. The City shall provide, at the Franchisee's expense, such assistance in investigating and defending such claims as the Franchisee may reasonably request.

Such indemnification shall not extend to independent claims of City negligence for City acts outside the scope of this contractual agreement.

This indemnity shall survive the termination of this Agreement.

Section 11: Compensation.

(a) Franchise Fee. In consideration of permission to use the streets and Rights-of-Way of the City for the construction, operation, and maintenance of a Telecommunications system within the Franchise area the Franchise shall pay to City during the term of this Franchise an amount equal to seven percent (7%) of the Franchisee's Gross Revenues ("Franchise Fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services.

(b) Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Franchise Fee below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than

the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) The Franchise Fee includes all compensation for the use of the City's Rights-of-Way. Franchisee may offset against the Franchise Fee the amount of any fee or charge paid to the City in connection with the Grantee's use of the Rights-of-Way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

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review must be commenced not later than 3 years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

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Greg Ellis
City Administrator
PO Box 930
CANBY, OR 97013
Phone: 503-266-4021
Facsimile: 503-266-7961

tw telecom of oregon llc Attn: VP-Regulatory
10475 Park Meadows Drive Littleton, CO
80124
Phone: (303) 566-1280
Facsimile: (720) 225-5616

With a copy to:
tw telecom of oregon llc
Attn: Sr. VP & Deputy General Counsel
10475 Park Meadows Drive
Littleton, CO 80124
Phone: (303) 566-1279
Facsimile: (303) 803-9636

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

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SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 6, 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 Wednesday, November 20, 2013, after the hour of 7:30 PM in the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

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Kimberly Scheafer, MMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of November 2013, by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

Attest:

_____
Kimberly Scheafer, MMC
City Recorder

Approved as to form

_____
Joseph A. Lindsay
City Attorney

Accepted _____(Date)

tw telecom of oregon llc
By: tw telecom holdings inc.,
Its sole member

By: _____
Printed Name: _____
Title: _____

M E M O R A N D U M

TO: ***Honorable Mayor Hodson and City Council***
FROM: ***Lt. Jorge Tro***
THROUGH: ***Greg Ellis, City Administrator***
DATE: ***October 15, 2013***

THIS HAS BEEN REVIEWED BY THE FINANCE DIRECTOR

Issue: Purchase of two 2014 Chevrolet 2-wheel drive Tahoe police vehicles.

Synopsis: Scheduled replacement of two patrol vehicles.

Recommendation: Staff recommends that the City Council approve Ordinance #1390 allowing the Mayor and City Administrator to execute the appropriate lease/purchase contract with Ford Municipal Finance Program (Bid #77114) to purchase the Chevrolet Tahoe's through Hubbard Chevrolet.

Rationale: The purchase of these vehicles is a continuation of our vehicle replacement plan. Both of these vehicles are replacing existing older police units. Both of these vehicle will be a marked units assigned to the Patrol Division. The Chevrolet Tahoe gives us more space for front seat passengers and greater leg room for our taller officers due to due to its larger interior compartment compared to a standard sedan.

Background: Our Fleet Services Supervisor, Joe Witt, obtained the state bid quote of $56,117.30 from Hubbard Chevrolet Dodge for both vehicles as listed in the attached ordinance. The necessary police equipment, computers, paint, graphics and outfitting by Auto Additions Works of Salem will be added to the purchase price for a grand total of $91,892.30 for both vehicles. This total cost is financed through the Ford Motor Municipal Finance Program over a four-year period and will be funded from the Fleet Services and Police Vehicle Leasing line items as approved in the 2013/2014 adopted budget.

Chief Bret Smith and I recommend the approval of the attached City Ordinance #1390.

2013 2014 Vehicle Police Project Information

October 2013

(2) 2014 Chevrolet Tahoe's Outfitted as Police Patrol Units

Vendors and Cost

*** Hubbard Chevrolet**

Hubbard, Oregon

(2) 2014 Chevrolet Tahoe's: **$56,117.30**

*** Auto Additions**

Salem, Oregon

Outfitted (2) Tahoe's as Police Patrol Units: **$22,786.00**

*** Feeney Wireless**

Eugene, Oregon

(2) Toughbook Computers: **$9,668.00**

*** Hot Rod Dreamworks**

Canby, Oregon

Paint (2) Tahoe's Police Paint Scheme **$2,896.00**

Total Project Cost: Vehicles and Equipment: $91,467.30

Total Amount Funded: $91,467.30 plus underwriting fee $425.00 = $91,892.30

(4) Annual payments of $25,001.41

Project Funded by: Ford Motor Credit Company Bid # 77114

ORDINANCE NO. 1390

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HUBBARD CHEVROLET OF HUBBARD, OREGON; AUTO ADDITIONS OF SALEM, OREGON; AND FORD MOTOR CREDIT CORPORATION FOR THE LEASE/ PURCHASE OF TWO (2) 2014 CHEVROLET TAHOE'S WITH POLICE EQUIPMENT PACKAGES FOR THE CANBY POLICE DEPARTMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to lease/purchase two (2) 2014 Chevrolet Tahoe's with police equipment packages for the Canby Police Department; and

WHEREAS, the cost of the vehicles and equipment will be paid by the Canby Police Department which has budgeted said lease/purchase for the fiscal years 2013-2014 through 2017-2018; and

WHEREAS, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, Exhibit A, Section G (18), the City wishes to utilize an existing solicitation from another governmental agency; and

WHEREAS, the State of Oregon awarded Hubbard Chevrolet of Hubbard, Oregon a contract to supply Chevrolet vehicles to the State and other public agencies in accordance with Price Agreement # 0433 and Hubbard Chevrolet is able to provide two (2) 2014 Chevrolet Tahoe's in the amount of $56,117.30; and

WHEREAS, Auto Additions, Feeney Wireless and Hot Rod Dream Works, were the lowest bidders on the outfitting, police equipment packages and paint for the vehicles in the amount of $35,350.00; and

WHEREAS, Hubbard Chevrolet, Auto Additions, Feeney Wireless and Hot Rod Dream Works are able to provide two (2) 2014 Chevrolet Tahoe vehicles, outfitted with police packages to the City of Canby's Police Department for the total sum of $91,892.30, which includes the Ford Credit underwriting fee of $425.00; and

WHEREAS, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this proposed sales price, reviewed the staff report and believes it to be in the best interest of the City to purchase these vehicles from Hubbard Chevrolet; and

WHEREAS, in order to fund the purchase of these vehicles, the City wishes to enter into a lease/purchase agreement with Ford Motor Credit Company under its Municipal Finance Program (Bid # 77114); now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and direct to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate contract with Hubbard Chevrolet of Hubbard, Oregon, Auto Additions of Salem, Oregon, Feeney Wireless of Eugene, Oregon and Hot Rod Dream Works of Canby, Oregon, for the total purchase price of $91,892.30, which includes the Ford Credit underwriting fee of $425.00.

Section 2. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby and on its behalf, an appropriate Municipal Lease Purchase Contract (Bid # 77114) with Ford Motor Credit Company to finance the purchase of the vehicles.

Section 3. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide the Police Department with these vehicles without further delay, and to better serve the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on November 6, 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 November 20, 2013, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 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 20, 2013 by the following vote:

YEAS_____ NAYS_____

_____
Brian Hodson
Mayor

ATTEST:

_____
Kimberly Scheafer, MMC
City Recorder

BEFORE THE CITY COUNCIL
OF THE
CITY OF CANBY

In Re:

Application of Great Basin Engineering, for Text and Map Amendments and Site Design Review	)))))	**FINDINGS, CONCLUSION & FINAL ORDER** **TA 12-01/ZC 12-02/DR 12-03**

I. NATURE OF THE APPLICATION

Great Basin Engineering ("Applicant") seeks three consolidated approvals from the City of Canby ("City") for (1) Text Amendment #TA 12-01 seeking to adjust the subarea boundary of the Downtown Canby Overlay Zone ("DCO") from Core Commercial ("CC") to Outer Highway Commercial ("OHC") ("TA-01"); (2) Zoning Map Amendment #ZC 12-02 corresponding to the requested Text Amendment ("ZC 12-02"); and (3) Site Design Review #DR 12-03 for construction of the six unit fuel-dispensing station ("DR 12-03"). The approvals involve property described as Tax Lots 100, 200, 300, 2200, and 2300 in Section 33 of Township 3 South, Range 1 East, Clackamas County, Oregon (the "Property"). The Property is zoned Highway Commercial ("C-2") under the Canby Municipal Code ("CMC").

II. HEARINGS AND PROCEDURAL POSTURE

The Planning Commission considered applications TA 12-01 and ZC 12-02 after duly noticed hearings on July 23, 2012, September 24, 2012, and October 22, 2012. The City Council after duly noticed hearings on November 7, 2012 and December 5, 2012 approved the applications for TA 12-01 and ZC 12-02. On December 5, 2012, the City adopted the order approving the applications for TA 12-01 and ZC 12-02 supported by findings and conclusions. Subsequently, that decision was appealed to the Land Use Board Appeals ("LUBA") and LUBA remanded the decision of the City Council for further consideration in a Final Opinion and Order. (LUBA No. 2012-097 June 4, 2013) ("Final Opinion and Order"). On July 17, 2013, the City Council directed the Planning Commission to consider the LUBA remand in conjunction with its review of DR 12-03 and make a recommendation to the City Council.

The Planning Commission considered application DR 12-03 after a duly noticed hearing on July 23, 2012, during which time the Planning Commission also considered TA 12-01 and ZC 12-02. For administrative efficiency, the City stayed DR 12-03 pending resolution of TA 12-01 and ZC 12-02. The Planning Commission held a second hearing on January 28, 2013, and approved the application for DR 12-03 in a document represented by Findings, Conclusion and Final Order dated February 11, 2013. Subsequently an appeal was taken to the City Council of the Planning Commission's approval of DR 12-03. In the intervening time, the Applicant made certain improvements to its design plan. On May 1, 2013, the City Council began consideration

of an appeal of the Planning Commission's decision in DR 12-03 and, with the assent of legal counsel on behalf of both the Applicant and the Appellant ("Save Downtown Canby"), remanded the matter to the Planning Commission for review of the proposed changes. As noted above, on July 17, 2013, the City Council directed the Planning Commission to also review the LUBA remand issues as part of the Site and Design Review on remand from the Council.

On July 22, 2013, the Planning Commission held a hearing to consider the LUBA remand and revised design for DR 12-03. The Planning Commission unanimously approved the consolidated applications.

On September 4, 2013, the City Council held a hearing and unanimously approved the consolidated applications. These findings and conclusions are entered into the record to support the City Council's approval decision.

The applications are consolidated because Applicant elected to use the statutory allowance in ORS 227.175(1) and (2), which modifies the goal-post rule under ORS 227.178(3)(a). Opponents have argued throughout the proceeding that Applicant may not take advantage of the modified goal-post rule under ORS 227.178(3)(a) because the City did not properly consolidate the applications. The City finds that it did consolidate for purposes of review and intended the applications to be supported by a single record. The City did not err or "unconsolidate" the applications simply because, at different points in the proceedings, the City recessed the DR 12-03 hearings and then the TA 12-01 and ZC 12-2 hearings to obtain additional information related to each application. The City is allowed to recess hearings in order to obtain additional information or to serve further notice on persons or property owners it decides may be interested. CMC 16.89.050(E)(5). The City properly noticed the hearings after recessing and continued with the proceedings. Nothing in the CMC or state law requires that the City elevate the DR 12-03 to a Type IV decision or hear all consolidated applications on the same timeline. The City has the discretion using its procedures in CMC 16.89 to determine the most efficient procedure for processing consolidated applications. Accordingly, the City finds that it followed proper procedure in processing the consolidated applications. To further emphasize the consolidated nature of the applications, the City imposed a condition of approval on the consolidated applications requiring that the three approvals be linked such that effectiveness of one approval is contingent upon the effectiveness of the others.

The record in this consolidated proceeding includes all materials, recordings, writings, submissions, and testimony for TA 12-01, ZC 12-02 and DR 12-03. The record was physically present and available for review by the City Council at the time of the City Council hearing on September 4, 2013.

III. FINDINGS AND CONCLUSIONS

After hearing testimony on September 4, 2013, the City Council voted to recommend approval of TA 12-01, ZC 12-02 and DR 12-03. In support of its approval, the City Council adopts the findings set forth in this document and incorporates as additional findings the staff report dated July 22, 2013, along with referenced attachments thereto; the Planning Commission Findings, Conclusion & Final Order approved on August 26, 2013; and the findings and conclusions presented in Applicant's submitted materials. The City Council adopts the findings and

conclusions set forth in the above-referenced materials to the extent that they do not conflict with the findings contained within this document.

A. LUBA Remand Issues and Findings

LUBA remanded the City's approval of the TA 12-01 and ZC 12-02 in the Final Opinion and Order. On remand, the City Council reviewed the evidence with respect to the two identified issues and makes the following findings:

1. The first issue relates to whether the Transportation Planning Rule ("TPR") applies to the zone and map amendment approved by the Planning Commission and City Council. As LUBA set forth the issue:

> "[The city decision] requires further analysis under the TPR . . . [to] evaluate the square footage and hence the generation capacity of the most traffic intensive use allowed in the C-2 zone that could reasonably [be] constructed on the subject property, given the different footprint, height, setback, and floor area ratios that would apply to the two sub-areas. If that analysis showed that constructing the use under the OHC standards would increase traffic generation compared to constructing the use under the CC standards, then further analysis is necessary under the TPR. If not, then the City could conclude that no further analysis is necessary and the TPR is satisfied." Final Opinion and Order p. 8-9.

Applicant has submitted a supplemental analysis prepared by Mackenzie. That letter and the analysis contained therein make clear that, in accordance with LUBA's direction, the change of the overlay from CC to OHC in fact decreases the amount of potential development on the subject site. Very simply, considering the allowable footprint and height in the OHC and CC zones, it is clear that the CC zone allows for a greater building area than does the proposed OHC zone. Further, when parking requirements and reasonable expectations for reasonable development are added to the equation on the site, the effect is further compounded. As Mackenzie points out, these square footage numbers drive the calculation for the transportation demands and thus, the reduction in square footage allowable in the OHC zone results in a commensurate reduction in trip generation from the existing CC designation. Based upon this evidence and LUBA's direction set forth in the Final Opinion and Order, it is clear that Applicant appropriately addressed any TPR requirements and the City Council finds that the requirements under the TPR have been satisfied. The City adopts and incorporates herein by reference the analysis in the Mackenzie letter to further support its findings.

It is important to consider the standard that LUBA espoused. It requires an analysis of "the most traffic intensive use allowed in the C-2 zone that could reasonably [be] constructed on the subject property, given the different footprint, height, setback, and floor area ratios that would apply to sub-areas." That standard, calls for a test of reasonableness and not a speculative exercise in all possibilities. The City Council finds that Applicant's analysis provides an analysis of what reasonably can be constructed on the subject property. While opponents assert that the evidence demonstrates that the change in the overlay zone from CC to OHC increases the amount of potential development, the City Council disagrees. When applying the different footprint, height, setback and floor area ratios that apply to the two subareas, the City Council

believes that the same level of development can occur on both the CC and OHC sub-zoned properties whether the analysis is made on the building square foot basis or on a fueling position count basis.

Opponents simply do not recognize requirements of the CMC with respect to what constitutes a building under the Canby code. Opponents make several arguments for why Applicant's analysis under the TPR is incorrect for the site. Ultimately, Opponents argue that Applicant underestimated the level and intensity of development that could occur on the site and therefore underestimated potential impacts under the TPR. The City rejects these arguments and finds that Applicant properly addressed the TPR in the LUBA remand portion of this appeal. Opponents fail to accept the City's interpretation and application of the provisions of the C-2 zone and the DCO standards. Opponents make the assumption that the fuel station layout they proposed for the CC subarea is the only way to satisfy the CC subarea development and design criteria; it is not. Opponents fail to consider that the minimum setback requirement in the CC subarea is zero, compared to the OHC's 10-foot minimum setback requirement. Further, the CC subarea requires building(s) to be located at the minimum street lot setback along at least 60 percent of a site's street frontage, whereas the OHC only requires it along 40 percent. The footprint of development on the CC subarea could be greater than that in the OHC, as Applicant has demonstrated. Opponents may try to make arguments based on their interpretation of the CMC provisions and terms, but such interpretations are in error and inconsistent with the City's findings under the SDR criteria described below, which are incorporated herein to support the City's findings rejecting Opponents' arguments. Given the City's reasonable interpretation of the terms building, structure and coverage, it is not possible for Applicant to somehow later intensify the use onsite by adding fueling pumps. Applicant's analysis under the TPR is consistent with the possible development scenarios allowed under the CMC, based on the City's application and interpretation of the CMC provisions and terms. No further analysis is required to address the issue raised in this portion of LUBA's remand.

2. LUBA also requested that the City consider the impact of the potential future pedestrian crossing identified in the Transportation System Plan ("TSP"). As LUBA said:

> "The City's findings do not appear to consider the conflicts, if any, between uses allowed under the OHC subarea and a future pedestrian crossing in the area, as contemplated by the TSP, or explain why such conflicts need to be considered for purposes of CMC 16.88.160(D)(1).
>
> * * *
>
> "Because the City did not appear to consider the question at all, and the decision must be remanded in any event under the first assignment, remand is also warranted under this assignment of error for the City to adopt findings considering the future pedestrian crossing listed in the TSP to the extent it is relevant to the amendment, and balancing that consideration against other relevant considerations, or explaining why no such consideration is required under CMC 16.88.160(D)(1)."

Applicant's Transportation Impact Analysis, dated July 8, 2013 (updated) ("TIA") addresses the issues related to the crosswalk in Section VI. While it is unclear whether the requirement in the TSP has any applicability to the subject applications, Mackenzie prepared a response to LUBA's request to have more information in the record about the impact of the crosswalk. Mackenzie's analysis demonstrates that the addition of the crosswalk across Highway 99 E, in the proximity to the subject site, would present no future problems. It does not change the conclusion that all intersections and site driveways will operate within acceptable capacity standards for all analysis scenarios, including scenarios with full access, limited access (right in-right out), and no access to Highway 99 E. The City Council finds that CMC 16.88.160(D)(1) has been considered, as further described in Section VI of the TIA and incorporated herein by reference, and is not negatively impacted by the possibility of a crosswalk in this location.

B. Site and Design Review Findings

CMC 16.28, C-2 Zone

CMC 16.28.030, C-2 Development Standards

The following subsections indicate the required development standards of the C-2 zone:

A. Minimum lot area: none.

Finding: No minimum lot area is required and this standard is met.

B. Minimum width and frontage: none.

Finding: No minimum width or frontage is required and this standard is met.

C. Minimum yard requirements:

1. Street yard: twenty feet where abutting Highway 99-E and S Ivy Street. Gas station canopies shall be exempted from the twenty foot setback requirements. Remaining property none, except ten feet where abutting a residential zone. Sign setback along Highway 99-E and S Ivy Street are to be measured from the face of the curb rather than the lot line. Where no curb exists, the setback shall be measured from the property line. Other than signs which are nonconforming structures and street banners which have been approved per the requirements of the Uniform Sign Code, no signs will be allowed to be located within or to project over a street right-of-way.

Finding: The minimum street yard setback in the C-2 zone is inconsistent and conflicts with the minimum street yard setback in the OHC subarea of the DCO. Pursuant to CMC 16.41.050, the development standards of the DCO supersede the base zone development standards. Therefore, CMC 16.28.030(C)(1) does not apply.

2. *Interior yard: none, except ten feet where abutting a residential zone.*

Finding: No minimum lot area is required because the property abuts a commercial zone and this standard is met.

D. Maximum building height:

1. *Freestanding signs: thirty feet;*

Finding: The sign, as shown on Applicant's included sign plan is 18 feet, less than 30-foot maximum height. This standard is met.

2. *All other structures; forty-five feet*

Finding: The development is approximately 19 feet at the highest point, considerably less than 45-foot maximum building height requirement. See Figure A1. This standard is met.

E. Maximum lot coverage: sixty percent;

Finding: The site is approximately 33, 457 square feet. The total area within the living walls is approximately 16,736 square feet, including 8,543 of roof cover. Whether the total area within the walls is considered or only the area under cover, the development will not exceed the 60 percent maximum lot coverage standard. See Figure C1.1. Therefore, the City finds that this standard is met.

F. Other regulations:

1. *Vision clearance distances shall be fifteen feet from any alley or driveway and thirty feet from any other street or railroad.*

Finding: The vision clearance satisfies the 30-foot requirement, as shown on Figure C1.1. Applicant shall maintain landscaping to conform to clear vision triangle standards.

2. *Except in cases where existing building locations or street width necessitate a more narrow design, sidewalks eight feet in width shall be required.* * * *

Finding: As shown on Figure C1.1, the sidewalk will be eight feet in width and consistent with CMC 16.08.090(A).

CMC 16.49, Site and Design Review

CMC 16.49.020, Establishment of the Site Design Review Board

Finding: Pursuant to **CMC** 16.49.020(A)(3), the Planning Commission sits as the Site and Design Review Board for purposes of the initial review of the site and design review application. The Planning Commission in that capacity approved Applicant's site and design review application and the City Council acts as the review body for that decision.

CMC 16.49.030, Site and Design Review Plan Approval Required.

Finding: Pursuant to **CMC** 16.49.030(A)(1), site and design review plan approval is required.

CMC 16.49.035, Application for Site and Design Review

A. For those projects in the Downtown Canby Overlay Zone, applicants may choose one of the following two processes:

1. Type II - If the applicant meets all applicable site and design review standards set forth in Chapters 16.41 and 16.49; applicant shall submit a Type II application for approval pursuant to the approval criteria set forth in 16.49.040.2; or

2. Type III - If the applicant proposes the use of alternative methods or materials to meet the intent of the site and design review standards set forth in Section 16.49.070, the applicant shall submit a Type III application for approval pursuant to the approval criteria set forth in 16.49.040[C]. The applicant must still meet all applicable requirements of Chapter 16.49.

Finding: Applicant opted to pursue site design review under CMC 16.49.035(A)(2) because Applicant proposed to use alternative methods or materials to meet the intent of the site and design review standards set forth in CMC 16.41, Downtown Canby Overlay Zone ("DCO").

CMC 16.49.040, Criteria and Standards

A. In review of a Type III Site and Design Review Application described in Section 16.49.035.B, the Board shall, in exercising or performing its powers, duties or functions, determine whether there is compliance with the following A through D, and with Criteria 4, 5, and 6 below:

Finding: This standard does not apply because the City is reviewing Applicant's site and design review application under CMC 16.49.035(A)(2), not 16.49.035(B).

B. In review of a Type II Site and Design Review Application described in Section 16.49.035.A.1, the Planning Director shall, in exercising his powers, duties or functions, determine whether there is compliance with the DCO site and design review standards set forth in 16.41.070.A through F and with Criteria 4, 5, and 6 below.

Finding: This standard does not apply because the City is reviewing Applicant's site and design review application under CMC 16.49.035(A)(2), not 16.49.035(A)(1).

C. In review of a Type III Site and Design Review Application described in Section 16.49.035.A.2, the Board shall, in exercising its powers, duties or functions, determine whether there is compliance with the INTENT of the DCO site and design review standards set forth in 16.41.070.A.1, 16.41.070.B.1, 16.41.070.C.1,

16.41.070.D.1, 16.41.070.E.1, and 16.41.070.F.1, and with Criteria 4, 5, and 6 below.

Finding: Applicant demonstrated that its proposed alternative methods and measures meet the intent of the applicable DCO site and design review standards as well as CMC 16.49.040(D), (E), and (F). The City's findings addressing the applicable CMC 16.41.070 provisions are set forth below and incorporated herein by reference to demonstrate that Applicant has satisfied the requirement in CMC 16.49.040(C) with respect to CMC 16.41.070.

With respect to the second requirement under CMC 16.49.040(C), the City finds that while CMC 16.49.040(C) (as well as subparts (A) and (B)) reference "Criteria 4, 5, and 6 below" when listing review criteria, such a reference is in error because there are no "Criteria 4, 5, and 6" listed in CMC 16.49.040 or any other provision of Chapter 16.49 that follow CMC 16.49.040(A), (B) or (C). The proper reference should be to sections (D), (E), and (F) of CMC 16.49.040. This interpretation is proper based on the language and context outlining the various site and design review procedures and standards in CMC 16.49.035 and 16.49.040.

SDC argued that Table 16.49.040 should also apply to Applicant's project. However, the only provision in CMC 16.49.040 that references Table 16.49.040 is CMC 16.49.040(A), which outlines the site and design review criteria and standards for applications described in CMC 16.49.035(B) (i.e., projects outside of the DCO). The City finds that SDC's argument is not supported by the language in the CMC and therefore rejects it. There is no reasonable argument that Criteria 4, 5, and 6 referenced in CMC 16.49.040(A), (B) and (C) are intended to reference specific criteria in Table 16.49.040. One, none of the design criteria in Table 16.40.040 are numbered. And two, the language in CMC 16.49.040(A) referencing Table 16.49.040 *and* Criteria 4, 5, and 6 as applicable review standards would be redundant and meaningless. The City does not read its code to require an applicant to demonstrate compliance with design standards in Table 16.40.040 and then turn around again demonstrate compliance with three more criteria from that table (criteria that were previously addressed).[1] Thus, for these reasons, the City finds that the design criteria in Table 16.40.040 do not apply to Applicant's project.

[1] Although not applicable to this application because it is not an applicable criteria, the City notes that CMC 16.49.040(A) also contains misreferences to numbers and letters. For example, CMC 16.49.040(A) states that there must be "compliance with the following A through D" but the following provisions are numbered (1)-(5), and then in CMC 16.49.040(A)(5), the provision references "[a]n application is considered to be compatible, in regards to subsections B, C, and D above, if the following conditions are met." The City recognizes that these are misreferences and typographical errors that must have occurred during a prior revision to the code. The proper reference in section (A) should be "with the following 1-4" and subsection (A)(5) should reference "2, 3 and 4 above."

D. The Board shall, in making its determination of compliance with the above requirements, be guided by the objectives and standards set forth in this section. It must be demonstrated that all required public facilities and services are available, or will become available through the development, to adequately meet the needs of the proposed development. If the site and design review plan includes utility facilities or public utility facility, then the City Planner shall determine whether those aspects of the proposed plan comply with applicable standards.

Finding: CMC 16.49.040(D) requires that the City take into consideration the objectives and standards "set forth in this section" when making its determination. The City finds that the reference to "section" is intended to specifically reference section (D) of CMC 16.49.040. It would not make sense for "section" to refer to CMC 16.49.040 in whole because sections (A), (B) and (C) specifically apply to different types of site design review applications. Further, CMC 16.49.040(A)(5) specifically references "subsections [2, 3, and 4] above." It is consistent with the structure of the code that if "subsections" in CMC 16.49.040(A)(5) references (A)(2), (A)(3) and (A)(4) of CMC 16.49.040 then "sections" should reference (A), (B), (C), (D), (E), and (F) of CMC 16.49.040. Therefore, the City interprets the term "section" in CMC 16.49.040(D) to require the City to consider the objectives of having functional and safe public facilities and services prior to construction of the project and confirm that the project will meet the applicable public utility facility and services standards. As discussed extensively under CMC 16.08.160 the required public facilities and services are available to meet the needs of the proposed development or will otherwise be constructed prior to the fueling station's operation. Based on these findings, this standard is met.

E. The Board shall, in making its determination of compliance with the requirements set forth, consider the effect of its action on the availability and cost of needed housing. The Board shall not use the requirements of this section to exclude needed housing types. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the requirements of this section. The costs of such conditions shall not unduly increase the cost of housing beyond the minimum necessary to achieve the purposes of this ordinance.

Finding: This standard is inapplicable. The site is zoned for commercial use and the application does not propose any housing.

F. As part of the site and design review, the property owner may apply for approval to cut trees in addition to those allowed in Chapter 12.32, the city Tree Ordinance. The granting or denial of said application will be based on the criteria in Chapter 12.32. The cutting of trees does not in and of itself constitute change in the appearance of the property which would necessitate application for site and design review. (Ord. 848, Part III, section 2, 1991; Ord. 955 section 24 & 25, 1996; Ord 1237, 2007, Ord 1296, 2008)

Finding: Tree removal and cutting are not a part of this proposal. This standard is inapplicable.

CMC 16.49.050, Conditions placed on site and design review approvals

A. A site and design review approval may include restrictions and conditions. These restrictions and conditions shall be reasonably conceived to:

1. Protect the public from the potentially deleterious effects of the proposal; and/or

2. Fulfill the need for services created, increased or in part attributable to the proposal; and/or

3. Further the implementation of the requirements of the Canby Municipal Code.

Finding: The City adopts the conditions of approval set forth below. The City finds that the adopted conditions are reasonably conceived to carry out the intent of this provision.

CMC 16.49.065, Bicycle and pedestrian facilities

Developments coming under design review shall meet the following standards:

A. The internal walkway system shall be extended to the boundaries of the property to adjoining properties developed or zoned for commercial, public, or multi-family uses. The walkway shall connect to an existing walkway system on adjoining property or be located so as to provide for development of a logical connection in the future when the adjoining property is developed or redeveloped.

Finding: As shown on Figure C.1.1, the site will have sidewalks along the perimeter and adjacent to the street frontages, which will connect to the internal walkaway system creating connectivity to adjacent properties. This standard is met.

B. On-site facilities shall be provided to accommodate safe and convenient pedestrian and bicycle access within new subdivisions, multi-family developments, planned development, shopping centers, and commercial districts, and connecting to adjacent residential areas and neighborhood activity centers. Residential developments shall include streets with sidewalks and accessways.

Finding: The proposal includes sidewalks and bicycle parking to accommodate safe accessibility to the site and adjacent properties. This standard is met.

C. Use of permeable surfacing materials for walkways is encouraged whenever site and soil conditions make it feasible. Permeable surfacing includes, but is not limited to, paving blocks, turf blocks, and porous asphalt. All permeable surfacing shall be designed, constructed, and maintained in accordance with the Canby Public Works Design Standards. (Ord. 1339, 2010)

Finding: This standard is not required for approval, it is only a recommendation. Applicant opted not to utilize permeable surfacing given the proposed operations, which make the use of

permeable materials infeasible. Regardless, as discussed elsewhere, the proposed improvements will be designed, constructed and maintenance in accordance with the Canby Public Works Design Standards.

CMC 16.49.080, General provisions for landscaping

C. The minimum area requirement for landscaping for developments coming under design review shall be the percentage of the total land area to be developed as follows. Parking lot landscaping area is included in calculating the following landscape areas:

1. Fifteen (15) percent for all industrial and commercial zones (except the Downtown-Commercial zone, but including the Commercial-Residential zone).

2. Seven and one-half (7.5) percent for the Downtown-Commercial zone.

3. Thirty (30) percent for all residential zones.

Finding: The minimum area for landscaping is 15 percent of the site. The proposed landscaped area is approximately 7,178 square feet or 22.1 percent of the site. See Figures C1.1, L1.1 and L2.1. This exceeds the 15 percent requirement and therefore this standard is met.

I. Any required landscaped area shall be designed, constructed, installed and maintained so that within three (3) years, the ground shall be covered by living grass or other plant material. (The foliage crown of trees shall not be used to meet this requirement.) A maximum of five percent of the landscaped area may be covered with bark chips, mulch, or other similar materials. A maximum of five percent of the landscaped area may be covered with rock, stones, walkways, or other similar material acceptable to the Board. Required sidewalks shall not be used to meet the landscaping requirements.

Finding: Figures L1.1, L2.1, and L3.1 are the landscape plans for the site. As shown on these figures, the required landscape area standards are satisfied and the City will impose a condition of approval to ensure that within three years, the landscape plan is successfully implemented.

J. All trees and plant materials shall be healthy, disease-free, damage-free, well-branched stock, characteristic of the species. The use of tree and plant species native to the Pacific Northwest is encouraged. Any new street tree planted must be included on the city's list of approved tree species.

Finding: Figures L1.1, L2.1, and L3.1 are the landscape plans for the site. Applicant proposes tree and plant species native to the Northwest and meet the City planting requirements. This standard is met.

CMC 16.49.100, Landscaping installation and maintenance

A. Except as allowed by subsection (2), all landscaping and exterior improvements required as part of the site and design review approval shall be completed prior to the issuance of any certificate of occupancy.

Finding: The City will require that all landscaping and exterior improvements be completed before the City will issue a certificate of occupancy, as described in the condition below.

CMC 16.49.120, Parking lot landscaping standards

Finding: The site has more than 3,500 square feet of paved vehicular use area therefore the parking lot landscape standards in CMC 16.49.120 apply. The minimum area to be landscaped is 15 percent given that the site is in a commercial zone. However, because there are less than 16 parking spaces, no landscape islands are required. The site contains approximately 22.1 percent of landscaped area, exceeding the 15 percent landscape requirement. See Figure L1.1. Applicant proposes trees in the landscape plans that also satisfy the City's parking lot tree criteria. Screening will be provided with the vegetation given the proposed species and the tree spacing requirements are satisfied. Further, Figures L2.1 and L3.1 illustrate the on-site irrigation system. For these reasons, the City finds that CMC 16.49.120 is met.

CMC 16.41, Downtown Overlay Zone

CMC 16.41.030, Uses Permitted Outright

Finding: The proposed fueling station is allowed in the C-2 underlying base zone and therefore is permitted in the DCO zone subject to the DCO Outer Highway design review standards.

CMC 16.41.050, Development Standards

The following subsections indicate development standards required in the DCO zone. These standards supplement and in some cases replace, the development standards in the underlying base zones. Where the standards set forth in the following subsections conflict with standards in the underlying base zone, the DCO development standards set forth below supersede the base zone standards.

A. Setbacks, Floor Area Ratio, Building Footprint and Height Requirements.

1. Setbacks. Minimum and maximum setbacks for each DCO subarea are described in Table 1 and must meet the following requirements.

* * *

b. At least x % of the length of each lot frontage shall be developed with a building(s) built at the minimum setback from the street lot line (see Table 2 and Figure 12).

c. *Where feasible, buildings should be located at one or both street-facing corners on a lot.*

Finding: The minimum setback in the OHC subarea is 10 feet and there is no maximum setback from street lot lines. At least 40 percent of the length of each lot frontage must be developed with a building built at the 10-foot setback. Under CMC 16.04.090, a building means "a structure built for the shelter or enclosure of persons, animals, chattels or property of any kind. In turn, CMC 16.04.590 defines structure as "that which is built or constructed. Structure means an edifice or building of any kind or piece of work artificially built up or composed of parts joined in some manner and which requires a location on the ground." The City finds that collectively the proposed fuel canopy and living wall are a structure within the meaning of CMC 16.04.590 because both are artificially built up, joined in some manner and requires a location on the ground. The proposed fuel canopy and living wall also fall within the definition of building under CMC 16.04.090 because collectively it is a structure that is built for shelter (i.e., covers the fueling area and service areas) and the living walls encompass and provide a boundary for Applicant's property. Nothing in the code requires that a building be completely enclosed. In fact, the code only requires that the structure be built for "shelter *or* enclosure." Further, the building definition is broad in that it includes a structure to shelter "property of *any* kind." The City finds that the Applicant's fuel pumps and related infrastructure like the kiosk, mechanical room, and bathrooms are "property of any kind." The City also finds that the fuel canopy provides shelter as in a cover for such property and the living walls enclose such property. Therefore, the City considers that collectively, the fuel canopy and living walls are both a structure and building for purposes of evaluating the project against the DCO design and development standards.

As shown on Figure C1.1, the 10-foot minimum setback from each frontage (Highway 99 E, S Locust Street, and SE 2nd Avenue) is satisfied. The project also satisfies the 40 percent minimum percentage of frontage along the street lot line. Street lot line means "a lot line that separates the lot from a street other than an alley. The street lot line is not generally the same as the curb line." CMC 16.04.360. The City finds that there are three street lot lines for the subject property: the north frontage (Highway 99 E) at 162.32 feet; the east frontage (Locust Street) at 199.93 feet; and the south frontage (SE 2nd Avenue) at 162.42 feet . See Figure C1.1. The purpose of the minimum street lot line frontage requirement is to require that development on a lot be consistent with the density and characteristics of the subject DCO subarea. In the OHC subarea, the subarea is focused on automobile-oriented design, allowing for access and orientation to the highway. The site is unique in that it is bounded by three streets. Applicant has adequately addressed the intent of the minimum street lot line frontage requirement by proposing the living wall around the perimeter of the site, which creates the building for measuring the frontage percentage.

Save Downtown Canby (SDC) argues that City planning staff and planning commission erred when concluding that the project met the standards in CMC 16.41.050(A)(1). In its September 4, 2013 letter to the City Council, SDC argues that the revised plans do not qualify the project as a building because the trellis does not qualify as a building. However, in its February 19, 2013 written statement of appeal, SDC argues that the project clearly falls within the definition as a building because the fuel canopy qualifies as a building under the plain language of the term. The City finds that neither of SDC's arguments are persuasive. Moreover, the City disagrees with SDC in that the proposed project is inconsistent with the intent of the minimum street lot frontage requirement. For the reasons discussed above, the City finds that the revised design drawings demonstrate that the project amounts to a structure and a building under the City's reading of its code language and is consistent with the setback standards in CMC 16.41.050(A)(1).

2. *Floor area ratio, building footprint, and building height. Minimum floor area ratio, maximum building footprint, and maximum building height requirements for each DCO subarea are described in Table 3 and illustrated in Figures 13, 14, and 15. Footprints are exclusive of exterior displays or merchandize (e.g., garden centers).*

Finding: The minimum floor area ratio in the OHC subarea is 0.25, with the maximum building footprint of 80,000 square feet. Consistent with the C-2 zone, the maximum building height is 45 feet. Floor area ratio means "a method of calculating structural massing on a lot." CMC 16.04.222. The site is 32,457 square feet with approximately 16,736 square feet within the living walls. This amounts to approximately 51.6 percent of the site. Therefore, the City finds that the fuel canopy and living wall exceed the 0.25 minimum floor area ratio but do not exceed the 80,000 square-foot building footprint threshold. The City also finds that the project will not exceed the maximum building height of 45 feet.

SDC argues that the development will not satisfy the above DCO development standards. The City disagrees with SDC's argument and finds that the evidence in the record, particularly Applicant's revised plan drawings, demonstrate that the project will meet the floor area ratio, the building footprint and maximum building height standards. SDC may disagree with the City's interpretation of the CMC but the City's interpretation of its own code definitions and provisions is reasonable and supported by the plain language and context of the code provisions. The City incorporates the findings above in CMC 16.41.050(A)(1) to further support its findings under CMC 16.41050(A)(2). Based on the foregoing findings, the City concludes that the Applicant satisfied CMC 16.41.050(A)(2).

3. *Screening. All exterior garbage collection areas, recycling collection areas and mechanical equipment shall be screened with a site obscuring fence, landscaping on all sides, wall, other enclosure, or architectural element per the requirements below. * * **

Finding: As shown on Applicant's revised drawings, including Figures C1.1 and L1.1, all exterior garbage and equipment areas will be screened, with either walls, enclosures, architectural elements, or landscaping. Thus, this standard it met.

4. *Parking. Parking areas shall meet the following standards in addition to all other applicable requirements.*

* * *

a. *Side of building parking areas. In the CC, TC and OHC subareas, parking shall be permitted between a building and interior lot line that is not a rear lot line provided the following standards are met:*

1. *Parking and maneuvering areas shall be set back a minimum of 15 feet from the front lot line;*

Finding: As shown on Figure C1.1, the parking spaces are located more than 15 feet front the front lot line along Highway 99 E. This standard is met.

2. *A minimum 5 foot wide landscaped strip shall surround and abut the perimeter of the parking and maneuvering area, except where vehicular driveways and pedestrian accessways are permitted to interrupt the landscaped strip, and except where the parking and maneuvering area is part of a larger parking area in which case a perimeter landscaping strip is not required between the side of building parking area and the remainder of the parking area*

Finding: As shown on Figures C1.1 and L1.1, there is more than five feet of landscaping between the parking area and the interior lot line as well as the entire perimeter of the site and the maneuvering areas, except for driveways and accessways. SDC argues that Applicant failed to satisfy this standard but fails to provide an explanation upon which this argument is based. It is plain from the revised drawings that the City can find that this standard is satisfied and therefore City rejects SDC's arguments. Accordingly, this standard is met.

3. *Parking and maneuvering areas, including accessways and driveways must not exceed 40 percent of the lot frontage in the TT and CC subareas, or 60 percent of a lot frontage in the OHC area.*

Finding: The parking and maneuvering areas must not exceed 60 percent of the lot frontage for the site. Parking and maneuvering areas that abut Highway 99 E frontage are approximately 24.7 percent of that frontage as are the parking and maneuvering areas that abut SE 2nd Avenue. Accordingly, this standard is satisfied.

4. *On lots greater than 120,000 square feet, side parking areas shall be broken up into multiple smaller parking areas rather than concentrated in one portion of the lot. This may be done through the use of landscaping or the location of multiple buildings on a lot.*

Finding: This standard does not apply. The site is less than 120,000 square feet.

CMC 16.41.070, DCO Site and Design Review Standards

The following standards provide a framework for how a building should look, function, and feel. The standards are organized by topic and consist of the following elements:

- *Intent Statement - the big idea or the goal to be accomplished * * * In addition to providing context for specific standards, these statements are used to evaluate applications as a part of an alternative review process administered by the City's Design Review Board (see Section 16.49.035).*

- *Standards which provide clear, objective guidance related to specific design elements, in many cases providing options for how to meet a specific goal, and varying by sub-area.*

- *Illustrative graphics, including photos and diagrams, with an emphasis on examples of good design found in Canby and other communities.*

Finding: Pursuant to CMC 16.49.035(A)(2) and 16.49.040(C), Applicant must show that the proposed use of alternative methods or materials meets the intent of the DCO site and design standards rather than the specific standard itself. The City finds that Applicant has met its burden and demonstrated that the project meets the intent of each DCO site and review as follows:

A. Pedestrian oriented ground floor design standards.

1. Intent. Design standards in this section are intended to help create an active, inviting street and sidewalk-facing storefronts and entryways that are friendly and easily accessible to passerby. They also will help ensure that the ground floor promotes a sense of interaction between activities in the building and activities in the public realm.

2. Design standards and applicability.

Findings: Under CMC 16.41.070(A)(2), there are two applicable design standards: ground floor windows and building entries and doors. The project has three street facing frontages but the building design does not include ground floor windows or doors given that the walls are partial and open with live vegetation and there are open air accessways for pedestrians and vehicles. While the City finds that the Applicant does not meet the specific pedestrian oriented ground floor design standard, Applicant did demonstrate that the design does meet the intent of the standard, which the City is authorized to find meets the standard under the alternative review process described under CMC 16.49.035 above. The City finds that with the living walls and design features shown on Figures A1 and 2, the project helps create an inviting entryway and promotes a sense of interaction between the building and the public space by engaging the public in a unique green concept in an automobile-oriented subarea of the City. The accessways and pedestrian connectivity with the existing system also promotes accessibility and an interaction between the activities on the site and in the public realm. Accordingly, the City finds that through alternative methods, Applicant has demonstrated that the intent of CMC 16.41.070(A)(2) is met.

B. Cohesive architectural elements standards.

1. Intent. Build upon downtown Canby's traditional architecture vernacular by incorporating cohesive and repetitive architectural elements into the ground floor of street facing facades.

2. Design standards and applicability.

Finding: Under CMC 16.41.070(B), there is one applicable design standard: architectural bays. The design standard calls for bay divisions of no more than 50 feet off center in the OHC subarea and select design elements and decorative accents. As discussed above, the site has three street facing facades. The project does not have a ground floor with architectural bays but nonetheless the City finds that the proposed design has design elements and decorative accents that meets the intent of the design standard to create a purposeful facade with repeating elements. The characteristics of the living wall, coupled with the proposed landscaping, creates a repetitive architectural element that softens the project's façade along the street frontages. The canopy

columns also support the repetitive architectural element. Thus, for these reasons, the City finds that through alternative measures, Applicant has satisfied the intent of CMC 16.41.070(B).

C. Integrated building façade standards.

1. Intent. Build upon Canby's traditional downtown architecture by creating an attractive and unified building façade that celebrates ground floor activities, the top of the building (where the edifice meets the sky) and everything in between.

2. Design standards and applicability.

Finding: Under CMC 16.41.070(C), there are two applicable design standards: distinct base, middle and top of building and top of building design elements. The standards require that buildings have a clear and distinct base, middle and top to break up vertical mas and utilize changes in color, material or form to differentiate the base. The standards also require that flat roof employ a detailed projecting cornice or the like to visually cap the building. Here, as shown on Figures A1 and A2, there is stone used to delineate the base of the building, living wall note the middle, and a flat roof to visually cap the building, with differing color to break up the massing. The City finds that while these design features may not meet the strict requirements of the standards, Applicant has demonstrated that it nonetheless meets the intent of the design standards. The project has an attractive, green building façade that is unified through use of different materials and colors. Thus, for these reasons, the City finds that through alternative measures, Applicant has satisfied the intent of CMC 16.41.070(C).

D. Corner intersection standards.

Finding: These standards do not apply to the OHC subarea.

E. Materials standards.

1. Intent. Use building materials that evoke a sense of permanence and are compatible with Canby's business areas and the surrounding built environment.

2. Design standards and applicability. Materials allowed in the CC, TC and OHC subareas are summarized in the following table in terms of primary, secondary, and accent materials. Other materials may be permitted through the design review process described in [CMC] 16.49.

Finding: Under CMC 16.41.070(E), there are four applicable material requirements: primary; secondary, accent materials; and roof materials. Primary and secondary materials for the building façade in the OHC subarea may include brick, stone, stucco, wood siding, split-face

CMU, tilt-up concrete and spandrel glass curtain walls. Accent materials may include metal, ceramic tile, and vinyl for trim. As shown on Figures A1 and A2, Applicant opted to use versions of stone, concrete and metal building components but the primary material for the building façade is vegetation within the living wall. The roof material is metal, which is acceptable because the CMC standards only define roof materials for slopped roofs and the proposed roof is flat. While the City finds that Applicant has not met the specific standards for materials (i.e., 70 percent primary materials, 25 percent secondary, and up to 10 percent of accent materials), Applicant nonetheless met the intent of the materials standards. Applicant's building materials evoke a sense of permanence. Applicant's design exceeds those of other area automobile-oriented uses in the OHC by incorporating a living wall and stone. Accordingly, for these reasons, the City finds that through alternative measures, Applicant has satisfied the intent of CMC 16.41.070(E).

F. Color palette.

1. Intent. Use colors on buildings that are generally compatible with Canby's business area and the surrounding built environment.

*2. Design standards and applicability. Applicants are strongly encouraged to use colors from, or consistent with, the Sherwin-Williams Arts and Crafts color palette * * **

Finding: As shown on Figures A1 and A2, the color palette for the project is neutral with some accents of color, consistent with Applicant's branding. This color scheme is consistent and generally compatible with the surrounding building environment, which from photographs in the record, consist of other fueling commercial and industrial buildings of brown, blue, red accents, and other acceptable colors. The City finds that Applicant meets the intent of CMC 16.41.070(F).

CMC 16.08, General Provisions

CMC 16.08.080, Sidewalks Required

Finding: As shown on Figure C1.1, the required sidewalks and curbs are proposed, consistent with City standards. This requirement is satisfied.

CMC 16.08.110, Fences

Finding: No fences are proposed as a part the application. Although the site is adjacent to residentially zoned areas, the City determines that the project has sufficient landscape to provide screening.

CMC 16.08.150, Traffic Impact Study (TIS)

*C. Determination. Based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination. * * **

Finding: The City required Applicant to perform a TIS because the proposal involved a change in the intensity of use and had a projected increase in trip generation. Applicant opted to hire its own transportation engineer; the TIS was prepared by Brent Ahrend of Mackenzie, a registered traffic engineer in Oregon. All appropriate fees were paid for the TIS scope preparation and review. Thus, all requirements of the TIS determination and general provisions are met.

*F. TIS Content. A project-specific TIS checklist will be provided to the applicant by the city once the city has determined the TIS scope. A TIS shall include all of the following elements, unless waived by the city. * * **

Finding: Applicant's *Transportation Impact Analysis*, dated July 8, 2013 (updated) ("TIA") includes an introduction and summary, a description of existing conditions, a discussion of potential impacts, and mitigation measures. An appendix was also included. Therefore, the TIA meets the City's TIS content requirements.

H. Neighborhood Through-Trip Study. Any development projected to add more than 30 through-vehicles in a peak hour or 300 through-vehicle per day to an adjacent residential local street or neighborhood route will require assessment and mitigation of residential street impacts. Through-trips are defined as those to and from a proposed development that have neither an origin nor a destination in the neighborhood. The through-trip study may be required as a component of the TIS or may be a stand-alone study, depending on the level of study required in the scoping checklist. The through-trip study shall include all of the following:

1. Existing number of through-trips per day on adjacent residential local streets or neighborhood routes.

2. Projected number of through-trips per day on adjacent residential local streets or neighborhood routes that will be added by the proposed development.

3. Traffic management strategies to mitigate for the impacts of projected through-trip consistent.

If a residential street is significantly impacted, mitigation shall be required. Thresholds used to determine if residential streets are significantly impacted are:

1. Local residential street volumes should not increase above 1,200 average daily trips

2. Local residential street speeds should not exceed 28 miles per hour (85th percentile speed).

Finding: Applicant performed a neighborhood through-trip study looking at added trips on SE 2nd Avenue. The scope and the results of the study are included in Section VII of Applicant's TIA. The City adopts as findings Section VII and incorporates herein by reference. Traffic volumes east of Ivy Street and on the west segment of SE 2nd Avenue already exceeds 1,200 average daily trips. Applicant's full access scenario would add the lowest site trips volumes to SE 2nd Avenue and allow operational standards to be met. To address potential impacts, the City will require Applicant to construct curb extensions or curb bulb-outs at SE 2nd Avenue/S Knott Street intersection. This mitigation obligation is implemented through a condition of approval set forth below. The City finds that this mitigation measure is adequate to address potential impacts to residential streets.

I. *Mitigation. Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area. Mitigation measures may be suggested by the applicant or recommended by ODOT or Clackamas County in circumstances where a state or county facility will be impacted by a proposed development. The city shall determine if the proposed mitigation measures are adequate and feasible. ODOT must be consulted to determine if improvements proposed for OR 99E comply with ODOT standards and are supported by ODOT. The following measures may be used to meet mitigation requirements:*

   1. *On-and off-site improvements beyond required standard frontage improvements.*

   2. *Development of a transportation demand management program.*

   3. *Payment of a fee in lieu of construction, if construction is not feasible.*

   4. *Correction of off-site transportation deficiencies within the study area that are substantially exacerbated by development impacts.*

   5. *Construction of on-site facilities or facilities located within the right-of-way adjoining the development site that exceed minimum required standards and that have a transportation benefit to the public.*

Finding: As summarized in Section IX of Applicant's TIA, all study intersections and site driveways are anticipated to operate within acceptable capacity standards during all analysis scenarios, including scenarios with full access, limited access (right in/right out), and no access to Highway 99E. Site trips are not anticipated to push queue demand beyond the available storage in any analysis scenario. Signal timing refinements or optimization will adjust for the minor increases in queues generated by site trips. The Access Management Plan (set forth in Section VIII of the TIA) demonstrate no operational or safety concerns are likely to be generated by the proposed full-movement access to Highway 99E and the site trips. The City finds that the full-movement access is acceptable to serve the subject site. Further, the City finds that refining or optimizing the traffic signal timing along Highway 99 E to better manage weekday PM peak hour queues, particularly at Ivy Street, is adequate mitigation to address potential impacts.

J. Conditions of Approval. The city may deny, approve, or approve with appropriate conditions a development proposal in order to minimize impacts and protect transportation facilities.

1. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or accessways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use.

2. Where the existing transportation system is shown to be burdened by the proposed use, improvements such as paving, curbing, installation or contribution to traffic signals, traffic channelization, construction of sidewalks, bikeways, accessways, paths, or street that serve the proposed use may be required.

3. The city may require the development to grant a cross-over access easement(s) to adjacent parcel(s) to address access spacing standards on arterials and collector roadways or site-specific safety concerns. Construction of shared access may be required at the time of development if feasible, given existing adjacent land use. The access easement must be established by deed.

Finding: The City adopts two conditions to minimize impacts and protect transportation facilities.

K. Rough Proportionality Determination. Improvements to mitigate impacts identified in the TIS shall be provided in rough proportion to the transportation impacts of the proposed development.

1. The TIS shall include information regarding how the proportional share of improvements was calculated, using the ratio of development trips to growth trips and the anticipated cost of the full Canby Transportation System Plan. The calculation is provided below:

Proportionate Share Contribution = [Net New Trips/(Planning Period Trips-Existing Trips)] X Estimated Construction Cost

a. Net new trips means the estimated number of new trips that will be created by the proposed development within the study area.

b. Planning period trips means the estimated number of total trips within the study area within the planning period identified in the TSP.

c. Existing trips means the estimated number of existing trips within the study area at the time of TIS preparation.

d. Estimated construction cost means the estimated total cost of construction of identified improvements in the TSP. (Ord 1340, 2011)

Finding: Applicant's proposed development involves constructing an access onto Highway 99E and an access onto SE 2nd Avenue when developing a previously empty site. Requiring three traffic-related conditions (1) to close an existing access, (2) to require Applicant to coordinate with ODOT to limit site access should ODOT determine safety problems in future studies, and (3) to implement curb extensions are reasonable and proportionate measures when considering the project's construction costs and potential transportation impacts. The conditions have been accepted by Applicant as non-objectionable. Thus, the City finds that the three traffic-related conditions are proportionate and reasonable under this criterion.

CMC 16.08.160, Safety and Functionality Standards

The City will not issue any development permits unless the proposed development complies with the city's basic transportation safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submission of a development permit application, an applicant shall demonstrate that the development property has or will have the following:

A. Adequate street drainage, as determined by the city.

Finding: The proposal will not change the existing street drainage and therefore the City finds that there is adequate street drainage for the proposal.

B. Safe access and clear vision at intersections, as determined by the city.

Finding: Site distance is addressed in Section IV of the Applicant's TIA. The City adopts and incorporates the Applicant's discussion herein and finds that Applicant's site distance evaluation is adequate and demonstrates safe access and clear vision at the proposed access location and Highway 99 E, SE 2nd Avenue, and Locust Street. The City finds that Figure C1.1 also demonstrates that site will have safe access and clear vision distances. Accordingly, this standard is met.

C. Adequate public utilities, as determined by the city.

Finding: There are adequate public utilities - water, sewer and electricity - to serve the site. Onsite stormwater management will also be addressed. This standard is met.

D. Access onto a public street with the minimum paved widths as stated in Subsection E below.

Finding: The site meets the frontage requirements of having minimum of 20 feet of paved frontage. This standard is met.

F. Compliance with mobility standards identified in the TSP. If a mobility deficiency already exists, the development shall not create further deficiencies. (Ord 1340, 2011)

Finding: Mobility standards are addressed in Section V of Applicant's TIA under the capacity and queuing analysis. The City adopts and incorporates Applicant's analysis herein and finds that all study intersections and driveways are anticipated to operate within acceptable capacity standards during all analysis scenarios. The weekday PM peak hour queues at Highway 99E/Ivy Street currently exceed available storage lengths at three reported locations, but queues at the proposed site access to Highway 99 E and SE 2nd Avenue are not anticipated to exceed the available on-site storage so on-site vehicle circulation patterns will remain unimpeded. The record demonstrates that even if there were a mobility deficiency as opponents may allege, Applicant's proposed fueling station would not create further deficiencies. The City finds that this standard is met.

CMC 16.10, Off-street Parking and Loading

CMC 16.10.050, Parking Standards Designated

Finding: The City finds that the fueling station falls within the commercial use category of "Retail store handling exclusively bulky merchandise such as furniture, automobile and service repair shops" in Table 16.10.050. This use requires one parking space per 1,000 square feet of sales floor area. The total square feet of the kiosk, restroom/mechanical room and storage shed is approximately 143 square feet. See Figure C1.1. The City finds that this space is the equivalent of sales floor area and therefore the fueling station must have one parking space. The site plan shows two spaces: one regular and one handicapped accessible. Therefore, the off-street parking standard is met.

CMC 16.10.060 Off-Street Loading Facilities

G. The Planning Commission may exempt a building from the loading berth requirement or delay the requirement, based on findings that loading berths are not needed for a particular building or business.

Finding: Under CMC 16.10.060(A), a commercial use with less than 5,000 square feet of floor area will require zero loading berths. A use with 5,000 to 25,000 square feet of floor area requires one loading berth. As described above under CMC 16.41.050(A)(2), the development has approximately 16,736 square feet of floor area including the area within the living wall and under the fuel canopy. As such, the project would normally require one loading berth but given the nature of the use, the City exercised its authority under CMC 16.10.060(G) and waives any requirement for a loading berth at the fueling station. The fueling station does not require a loading berth because the on-site product is restocked using a fueling truck, not a shipping truck; commodities are not delivered in the same manner as if it were a retail outlet or even a mini-mart.

CMC 16.10.070, Parking Lots and Access

A. Parking Lots. A parking lot, whether as accessory or principal use, intended for the parking of automobiles or trucks, shall comply with the following:

1. Parking lot design shall comply with the dimensional standards set forth in Figure 1 of this section.

2. Parking stalls of eight (8) feet in width and sixteen (16) feet in length for compact vehicles may comprise up to a maximum of thirty (30) percent of the total number of parking stalls. Such parking stalls shall be marked "Compact Parking only" either on the parking surface or on a sign in front of the parking stalls.

3. Areas used for standing or maneuvering of vehicles shall have paved asphalt, concrete, solid concrete paver surfaces, or paved "tire track" strips maintained adequately for all weather use and so drained as to avoid the flow of water across sidewalks or into public streets, with the following exception:

5. Except for parking to serve residential uses, parking areas adjacent to or within residential planning districts or adjacent to residential uses shall be designed to minimize disturbance of residents. Artificial lighting, which may be provided, shall be so deflected as not to shine or create glare in any residential planning district or on any adjacent dwelling, or any street right-of-way in such a manner as to impair the use of such way.

7. Off-street parking areas, and the accesses to them, shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and the maximum safety of pedestrian and vehicular traffic on the site and in adjacent roadways. The Planning Director or Planning Commission may require engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow based on the number and type of vehicles using the site, the classification of the public roadway, and the design of the parking lot and access drives.

8. Parking bumpers or wheel stops shall be provided to prevent cars from encroaching on the street right-of-way, adjacent landscaped areas, or adjacent pedestrian walkways.

9. Accessible parking shall be provided, constructed, striped, signed and maintained as required by ORS 447.233 and all Oregon Structural Specialty Code requirements.

Finding: As shown on Figure C1.1, the parking lot associated with the fueling station satisfies the parking requirements in CMC 16.10.070(A). Lighting is discussed below and the City's findings confirm that the on-site lighting will not create on-site glare.

B. Access.

2. The City of Canby encourages joint/shared access. Owners of two (2) or more uses, structures, or parcels of land may agree to, or may be required by the City to, utilized jointly the same ingress and egress when the combined ingress and egress of both uses, structures, or parcels of land satisfies their combined requirements as designed in this ordinance, provided that satisfactory legal evidence is presented to the City Attorney in the form of deeds, easements, leases or contracts shall be placed on permanent files with the city recorder.

Finding: Applicant proposes a joint access driveway with the property to the west of the site and received approval from the Oregon Department of Transportation (ODOT) for this shared driveway. Applicant must coordinate all necessary deeds, easements, leases or contracts with ODOT and adjacent property owners, as necessary, for the shared driveway as a condition of approval.

3. All ingress and egress shall connect directly with public streets.

Finding: Access to the site is directly on to Highway 99 E and SE 2nd Avenue, both public streets. The existing driveway off S Locust Street will be closed. This standard is met.

*6. To afford safe pedestrian access and egress for properties within the city, a sidewalk shall be constructed along all street frontages, prior to use or occupancy of the building or structure proposed for said property. The sidewalks required by this section shall be constructed to city standards except in the case of streets with inadequate right-of-way width or where the final street design and grade have not been established, in which case the sidewalks shall be constructed to a design, and in a manner approved by the Site and Design Review Board. * * **

Finding: As shown on Figure C1.1, Applicant proposes sidewalks along the perimeter of the site and along street frontages, in accordance with City standards. A final sidewalk design must be approved by the City prior to construction through the building permit process.

9. Maximum driveway widths and other requirements except for single-family dwellings [see subsection (d) below]:

a. Unless otherwise herein provided, maximum driveway widths shall not exceed forty (40) feet.

b. No driveways shall be constructed within five (5) feet of an adjacent property line, except when two (2) adjacent property owners elect to provide joint access to their respective properties as provided by subsection 2.

c. There shall be a minimum distance of forty (40) feet between any two (2) adjacent driveways on a single property.

Finding: As shown on Figure C1.1, the proposed driveways do not exceed 40 feet and satisfy the minimum separation requirements. Accordingly, this standard is met.

> *10. Distance Between Driveways and Intersections- Except for single-family dwellings [see subsection (f) below] the minimum distance between driveways and intersections shall be as provided below. Distances listed shall be measured from the stop bar at the intersection:*
>
> *a. At the intersection of any collector or arterial streets, driveways shall be located a minimum of fifty (50) feet from the intersection.*
>
> *b. At the intersection of two (2) local streets, driveways shall be located a minimum of thirty (30) feet from the intersection as provided, the driveway shall be constructed as far from the intersection as possible, while still maintaining the five (5) foot setback between the driveway and property line.*
>
> *c. If the subject property is not of sufficient width to allow for the separation between driveway and intersection as provided, the driveway shall be constructed as far from the intersection as possible, while still maintaining the five (5) foot setback between the driveway and property line.*
>
> * * *
>
> *e. When considering a public facilities plan that has been submitted as part of site and design review plan in accordance with this ordinance, the city Public Works Supervisor may approve the location of a driveway closer than fifty (50) feet from the intersection of collector or arterial streets, based on written findings of fact in support of the decision. Said written approval shall be incorporated into the recommended decision of the City Planner for the site and design review plan under the process set forth.*

Finding: As shown on Figure C1.1, the proposed driveways meet the minimum distance requirements between the driveway and intersections. This standard is met.

CMC 16.10.100, Bicycle Parking

Finding: Applicant proposes 3-4 bicycle parking spaces, which exceed the bicycle parking standard in Table 16.10.100 for auto-oriented services. The bicycle parking is located adjacent to the kiosk and restroom, and will be well lit. As shown on Figure C1.1, all spacing and maneuvering requirements are satisfied. Accordingly, the applicable bicycle parking standards are met.

CMC 16.42, Signs

CMC 16.42.020, Administration and Permit Requirements

*H. Conditional Use Signs or Signs under Site Design Review. Signs proposed at the time of * * * site and design review application shall be reviewed by the Planning Commission regarding size, height and location at the time of * * * site and design review. * * * In conditional use signs or signs reviewed under design review, provisions of this chapter shall apply.*

Findings: The City reviewed the signs associated with the fueling station as a part of the Applicant's site and design review process, consistent with the standards in CMC 16.42.

CMC 16.42.040 Design Standards for Signs

The following standards shall apply to signs in all zone districts:

A. Setbacks. Signs are required to meet the setback requirements of the applicable zone district, except however the street yard setback for signs may be reduced to fifty (50) percent of that required for other structures in the zone. Signs shall not obstruct a vision clearance area required in the applicable zone district.

Finding: As shown on Figure C1.1, the 18-foot pole sign is located outside the vision clearance area and is set back five feet from the properly line (which is 50 percent of the 10-foot building setback requirement). Accordingly, this standard is met.

B. Illumination.

1. External illumination is allowed. The external illumination may be either "direct" or "indirect," provided that the source of light (e.g., bulb) is shielded such that it is not directly seen by the public. External light sources shall be carefully located, directed and shielded in order to avoid direct illumination of any off-site object or property.

Finding: The pole sign and wall sign will have illumination but as shown in Figures A1 and A2 and Applicant's included sign plan, the illumination source will be shielded and located to avoid direct illumination on any off-site object or property. A condition of approval is imposed requiring that the signage shall not result in glare onto neighboring properties or onto public rights-of-way.

2. Internal illumination is allowed.

Finding: The pole sign and wall sign will have internal illumination and is consistent with this standard.

3. External or internal sign illumination shall not result in glare onto neighboring properties or onto public right-of-way, such that due to level of brightness, lack of shielding, or high contrast with surrounding light

levels, the sign illumination results in discomfort or visual disability for persons.

Finding: As discussed under CMC 16.42.040(B)(1), the City will impose a condition of approval to ensure that the fueling station signage will not result in glare onto neighboring properties or public right-of-ways. This standard is met.

4. *Sign illumination shall not appear to flash, undulate, pulse, or portray explosions, flashes of light, or blinking or chasing lights.*

Finding: The proposed monument sign or wall sign will not have blinking illumination or other illumination that would fall within this prohibition. This design standard is met.

CMC 16.42.060, Automobile Service Station Sign Standards

The purpose of the service station sign requirements is to control sign clutter for service stations so the traveling public can clearly identify the service station and the services and goods it offers.

A. *No sign other than detailed in this Section shall be displayed on a lot on which an automobile service station is located. In the event that a conflict exists between this Section and the sign standards set forth in other sections of this Chapter, the standards in this section shall prevail.*

Finding: The proposed signs fall under CMC 16.42.060. Applicant demonstrated compliance with CMC 16.42.040(A)-(B) above but the standards in CMC 16.42.060 control for the remainder of the sign standard requirements, not the standards in CMC 16.42.040(C)-(G) or 16.42.050 because the proposed use is an automobile service station.

1. *Permitted signage includes one of the following options:*

   a. *One pole sign, and one wall sign, and window sings, and temporary signs; or*

   b. *Two wall signs, and window signs, and temporary signs.*

Finding: Applicant proposes one pole sign and one wall sign, as shown on Figures A1 and A2 and Applicant's sign plan. Therefore, the City finds that Applicant appropriately opted to pursue the option outlined in (A)(1)(a).

2. *Pole sign standards:*

   a. *Maximum area: 48 square feet total for a single-faced sign; 96 square feet total for a double-faced sign.*

   b. *Maximum height: 18 feet.*

c. *A bulletin board or electronic message board may encompass up to 75 percent of the sign face area of a pole sign.*

Finding: As shown on Figures A1 and A2 as well as Applicant's sign plan, these pole sign standards are satisfied for the proposed pole sign.

3. *Wall sign standards:*

a. *Maximum area: 120 square feet per sign.*

b. *Maximum height: Sign shall not project above the roof line or parapet wall, whichever is higher.*

c. *A bulletin board or electronic message board may encompass up to 25 percent of the sign face area of a wall sign.*

Finding: As shown on Figures A1 and A2 as well as Applicant's sign plan, these pole sign standards are satisfied for the proposed wall sign.

CMC 16.43, Outdoor Lighting Standards

CMC 16.43.040 Lighting Zones

Finding: The site is located in a commercial zone and therefore is designated a Lighting Zone Two (LZ2).

CMC 16.43.070, Luminaire Lamps Lumens, Shielding, and Installation Requirements

Finding: Applicant will submit a light plan in accordance with CMC 16.43.110 prior to construction when it submits a building permit application. The plan will confirm that Applicant satisfies the LZ 2 requirements in Table 16.43.070. The lighting plan contained in the record demonstrates that it is feasible for Applicant to meet the lighting standards.

CMC 16.43.080, Height Limits

Finding: Applicant will submit a light plan in accordance with CMC 16.43.110 prior to construction when it submits a building permit application. The plan will confirm that Applicant satisfies the LZ 2 maximum lighting mounting height requirements in Table 16.43.080. The lighting plan contained in the record demonstrates that it is feasible for Applicant to meet these lighting standards.

CMC 16.46, Access Standards

CMC 16.46.030, Access Connection

A. Spacing of accesses on City streets. The number and spacing of accesses on City streets shall be as specified in Table 16.46.030. Proposed developments or land use actions that do not comply with these standards will be required to obtain an access spacing exception and address the join and cross access requirements of this Chapter.

Finding: Highway 99 E is a state highway and access is controlled by ODOT, not the City. Thus, the City does not address Highway 99 E under this standard. The record, however, demonstrates that Applicant obtained an access approval from ODOT on August 15, 2012, which authorizes the proposed access onto Highway 99 E. While ODOT noted that the proposed access cannot meet spacing standards, it nonetheless approved the proposed access because it is situated as far as possible from the nearest public roadway intersection (Locust Street), it encourages shared access to the maximum extent possible by allowing vehicles to enter the adjacent site (effectively replacing an existing access), and it brings conditions closer to conformance with the standards than previously existed or could otherwise be proposed if the parcels were developed individually. Further, the proposed access provides the preferred circulation for fuel delivery trucks, as described in more detail in Section VIII of Applicant's TIA, which is adopted and incorporated herein by reference. The City finds that the second proposed access to SE 2nd Avenue meets spacing standards (minimum of 50 feet to the nearest roadway and minimum 10 feet to the nearest driveway) and adopts and incorporates by reference the related discussion as findings in Section VIII of Applicant's TIA. The City finds that SE 2nd Avenue should not be the only access for the site because eliminating the second access at Highway 99 E would be contrary to the City's policy for Neighborhood Traffic Management ("NTM") which seeks to minimize daily vehicle trips on local residential streets like SE 2nd Avenue. The City finds that the Applicant's full access scenario is most consistent with the City's NTM. Further, the City conditions the proposed development as set forth in Condition 14 to require Applicant, or any other future property owner operating the same use to restrict access should ODOT find potential issues in future monitoring or studies of Highway 99 E.

CMC 16.46.035, Restricted Access

The City may allow an access to a City street that does not meet the spacing requirements of Table 16.46.030 if the proposed access is restricted (prevents certain turning movements). * * *

Finding: This standard does not apply. No restricted access is required. Similarly, CMC 16.46.040 also does not apply because the development meets access spacing requirements.

IV. RECOMMENDED CONDITIONS

The City adopts the following conditions for TA 12-01, ZC 12-02 and DR 12-03:

1. The approval of TA 12-01, ZC 12-02 and DR 12-03 are conditioned on the City Council issuing a single consolidated final order that (1) addresses the LUBA remand of TA 12-01 and ZC 12-02 and (2) affirms the Planning Commission approval of DR 12-03, as modified.

2. Applicant shall demolish the existing driveway along Locust Street and replace it with a new curb and sidewalk that matches the existing curb and sidewalk. Final sidewalk designs must be approved by the city prior to construction.

3. Construct curb extensions or curb bulb-outs at SE 2nd Avenue/S Knott Street intersection.

4. The site's signage shall not result in glare onto neighboring properties or onto public right-of-ways per CMC 16.42.040(B)(3).

5. Applicant shall use canopy lights that are recessed up into the canopy or that apply shielding in a manner that prevents light trespass, as defined in CMC 16.43.020.

6. Applicant shall be required to maintain all landscaping on the site.

7. Applicant shall coordinate with the Oregon Department of Transportation ("ODOT") and obtain all necessary permits from ODOT prior to construction.

8. Development shall comply with the standards of all outside utility and regulatory agencies; including Canby Utility, Northwest Natural Gas, Wave Broadband, Canby Fire District, Canby Telcom, ODOT, and Clackamas County.

9. Development shall comply with the City of Canby Public Works Design Standards.

10. Development shall comply with the design requests from agencies and Canby Public Works representatives that submitted design recommendations and incorporated into the staff report:

    a. Hassan Ibrahim and Curren McLeod, consulting City Engineers, Comments dated August 21, 2013;

    b. Chris Maciejewski, DKS, consulting City Traffic Engineers, Memorandum dated July 17, 2012;

    c. Gary Stockwell, Canby Utility Board, Comments dated January 9, 2013 with attached site plan markups, Comments dated February 21, 2012;

d. Dan Mickelsen, Canby Public Works; Comments dated January 14, 2013;

e. Dan Kizer and Jennifer Wood, NW Natural, Comments dated June 25, 2012 and January 9, 2013; and

f. Darvin Tramel, City of Canby Environmental Services Coordinator, Comments dated January 14, 2013.

11. Easements for electric service by Canby Utility shall be dedicated along the frontage of SE 2nd Avenue and a portion of the Locust Street frontage, as indicated in Gary Stockwell's comments dated February 21, 2012 and January 9, 2013.

12. Tree species suitable for planting under overhead lines along Locust Street frontage, in compliance with the provisions in CMC 16.49.120(F) and as approved by the City Arborist, shall be specified in the final landscape construction plans .

13. On-site stormwater management shall be designed in compliance with the Canby Public Works Design Standards, and in particular:

a. The project shall be required to retain and infiltrate on-site stormwater generated by the development up to the 25-year, 24-hour storm event (25-year storm) as defined in Section 4.301 of the Canby Public Works Design Standards.

b. An emergency overflow shall be designed to direct runoff from storms in excess of the 25-year storm to the street as defined in Section 4.311(b) of the Canby Public Works Design Standards.

14. If future ODOT monitoring, evaluating, or design review of improvements to OR Highway 99 E find that the full access to OR Highway 99 E has safety issues related to queuing onto the highway, or crash frequency increasing above typical levels, or conflicts with the design for the pedestrian refuge island (e.g., inadequate deceleration space or queuing conflicting with safe crossing conditions for pedestrians), the owner/operator of the site will accept the access being restricted to right in/right out maneuvers. This condition shall be placed upon the property such that it carries from one owner to another (to be effective if the property ownership changes in the future with the same use).

15. Prior to the issuance of building permits, Applicant must submit final construction plans showing the design, location and planned installation of all roadway improvements and utilities, including but not limited to water, electric, sanitary sewer, natural gas, telephone, stormwater, cable, and emergency service provisions. Construction plans must be designated and stamped by a professional engineer registered in the State of Oregon. The City must approve the final construction plans prior to the issuance of building permits. The City may require

a pre-construction conference to obtain final approval from utility providers and applicable City departments.

16. Clackamas County Building Code Division will provide structural, electrical, plumbing and mechanical for the project. Structural, electrical, plumbing, mechanical, and other applicable permits from Clackamas County are required prior to construction.

Management Team Meeting Minutes
October 14, 2013
2:00 PM
City Hall Conference Room

In attendance: Greg Ellis, Amanda Zeiber, Darvin Tramel, Bryan Brown, Kim Scheafer, Renate Mengelberg, Julie Wehling, Haley Fish, Eric Laitinen, and Bret Smith.

Kim Scheafer

- Reviewed Agenda for November 6 CC Meeting. Please turn in any items for that Agenda ASAP if possible. Sue will be preparing the packet on October 30.
- Deadline for E-News is October 25
- Free Notary Training will be held at the Police Department on November 7 from 1-4 PM
- Will be out of the office October 17-31

Amanda Zeiber

- Sent out reminders about evaluations

Renate Mengelberg

- Canby Rental decided to wait on doing new construction. They are proceeding with a façade improvement plan.

Eric Laitinen

- Extra public swims are being held on non-school days

Haley Fish

- Auditors are here this week in the former Transit office
- Attending OMFA Conference next week

Darvin Tramel

- Working on Stormwater Management Plan and Mixing Zone study
- Doing inspections

Julie Wehling

- Working out logistics in new office

Greg Ellis

- Spoke about Kidder Mathews report
- Received information about video lottery sales in Canby for the past year
- City Council had an executive session last week
- Talking with property owners by the Library
- A railroad beautification lease has been submitted

Bryan Brown

- Reviewing Fred Meyer Findings
- Planning Commission is discussion food trucks in the public right-of-way tonight
- Kicking off Team Track Study

Minutes taken by Kim Scheafer