

# **AGENDA**

# CANBY CITY COUNCIL REGULAR MEETING

November 20, 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 6:00 PM City Hall Conference Room 182 N Holly

This Work Session will be attended by the Mayor and City Council to discuss financial policies and the budget process.

#### CITY COUNCIL REGULAR MEETING

# 1. CALL TO ORDER

A. Pledge of Allegiance and Moment of Silence

## 2. COMMUNICATIONS

## 3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

# 4. MAYOR'S BUSINESS

# 5. COUNCILOR COMMENTS & LIAISON REPORTS

# 6. CONSENT AGENDA

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

A. Approval of Minutes of the November 6, 2013 City Council Work Session and Regular Meeting

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- A. Fees for Telecommunications Providers Under Canby Municipal Code Chapter
  12.36
  Pg. 1
- B. Fees for Payroll and Self-Employment Tax Payments Submitted Without
  Corresponding Tax Return

  Pg. 3

#### 8. RESOLUTIONS & ORDINANCES

- A. Res. 1177, Setting Fees for Telecommunications Providers Under Canby Municipal Code Chapter 12.36 Pg. 1
- B. Res. 1178, Setting Fees for Payroll and Self-Employment Tax Payments Submitted Without a Corresponding Tax Return Pg. 3
- C. Ord. 1387, Amending CMC Chapter 12, Section 12.36 Telecommunications Facilities (2<sup>nd</sup> Reading)
   Pg. 4
- D. 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 (2<sup>nd</sup> Reading) Pg. 22
- E. 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 (2<sup>nd</sup> Reading) Pg. 31
- F. 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 (2<sup>nd</sup> Reading)
   Pg. 40
- G. Ord. 1391, Amending CMC Chapter 3.24 Public Transportation Payroll and Self-Employment Tax
   Pg. 42

Pg. 57

#### 9. NEW BUSINESS

- A. Memorandum of Understanding IV with Canby Livability Coalition
- B. Discussion Regarding a Civic Building Voter Referral
- 10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS
- 11. CITIZEN INPUT
- 12. ACTION REVIEW
- 13. EXECUTIVE SESSION: ORS 192.660(2)(h) Pending Litigation
- 14. ADJOURN

\*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer, MMC, City Recorder at 503.266.0733. A copy of this Agenda can be found on the City's web page at <a href="www.ci.canby.or.us">www.ci.canby.or.us</a>. 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.

#### **RESOLUTION 1177**

# A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR TELECOMMUNICATIONS PROVIDERS UNDER CANBY MUNICIPAL CODE CHAPTER 12.36

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

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

WHEREAS, the proposed annual registration fees are meant to assure the compliance of telecommunications providers in the following of ordinances, rules, regulations, along with providing accurate and current information concerning business conducted in the City of Canby as well as aiding in the implementation and advancement of service quality and consumer protection; and

**WHEREAS**, the newly amended Chapter 12.36 requires the following to be set by resolution: a registration application fee, an annual registration fee, a franchise fee, and a right-of-way use fee; and

**WHEREAS**, the Canby City Council held a public hearing on November 20, 2013, to receive public testimony regarding the proposed fees.

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

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

Registration Application Fee: \$100

Annual Registration Fee: 5% of gross revenues\* earned in Canby, Oregon

Right-of-Way Use Fee: 7% of gross revenues\* earned in Canby, Oregon

Under the Right-of-Way Use Fee, if no revenues

are earned in the City of Canby by a

telecommunications provider who occupies the public Right-of-Way, then <u>a fee of two dollars per</u> linear foot occupied in the City of Canby shall be

charged and collected.

Franchise Fee: 7% of gross revenues\* earned in Canby, Oregon

Under the Franchise Fee, if no revenues are earned in the City of Canby by a telecommunications provider who occupies the public Right-of-Way, then a fee of two dollars per linear foot occupied in the City of Canby shall be charged and collected.

deduction for o	nues are defined as any and all revenue of any expense, earned in the City of Canby, minus a mitations imposed by federal or state law.			
Section 2:	The Canby City Council hereby classifies the fees imposed herein as not being subject to the limitations imposed by Section 11 (b), Article XI of the Oregon Constitution and that the City Recorder is hereby directed to publish notice in accordance with ORS 310.145.			
This resolution	on shall take effect on November 20, 2013.			
ADOPTED th	his 20 <sup>th</sup> November, 2013 by the Canby City Co	ouncil.		
	Brian Hodson			
	Mayor			
ATTEST:				
T7' 1 1 0 1				
Kimberly School City Recorder				

## **RESOLUTION 1178**

# A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR PAYROLL AND SELF-EMPLOYMENT TAX PAYMENTS SUBMITTED WITHOUT A CORRESPONDING TAX RETURN

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

WHEREAS, the proposed administration fee is meant to recover costs of staff time and resources expended following up on payments submitted without a return; and

WHEREAS, the return is the official record substantiating the amount of tax owed; and

WHEREAS, the updated Chapter 3.24 requires returns to be submitted with payment of tax; and

**WHEREAS**, the Canby City Council held a public hearing on November 20, 2013, to receive public testimony regarding the proposed fees.

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

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

Payment Submitted Without Return Fee: \$5 per 30 days, or fraction thereof. Total

not to exceed \$20 per instance.

Section 2: The Canby City Council hereby classifies the fees imposed herein as not being subject to

the limitations imposed by Section 11 (b), Article XI of the Oregon Constitution and that the City Recorder is hereby directed to publish notice in accordance with ORS 310.145.

This resolution shall take effect on December 4, 2013.

ADOPTED this 20<sup>th</sup> November, 2013 by the Canby City Council.

	Brian Hodson	
	Mayor	
ATTEST:		
V: 1 1 C 1 C MMC		
Kimberly Scheafer, MMC		
City Recorder		

Resolution 1178

#### **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. 2<sup>nd</sup> Avenue, Canby, Oregon.

		Kimberly Scheafer, MMC City Recorder
<b>PASSED</b> on the secon on November 20, 2013		the Canby City Council at a regular meeting thereof e:
YEAS	NAYS	_
		Brian Hodson
ATTEST:		Mayor
Kimberly Scheafer, M. City Recorder	MC	

# 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)

# 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.

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

<u>Cable Service</u> 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.

<u>City</u> 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.

<u>City Property</u> 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.

<u>Conduit</u> 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.

<u>Construction</u> 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.

<u>Control</u> or <u>Controlling Interest</u> means actual working control in whatever manner exercised.

<u>Days</u> means calendar days unless otherwise specified.

<u>Duct</u> means a single enclosed raceway for conductors or cable.

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

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

<u>Franchise</u> 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.

<u>Grantee</u> means the person to whom or which a franchise is granted by the city.

<u>Oregon Public Utilities Commission</u> or <u>OPUC</u> 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.

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

<u>Private Telecommunications Network</u> 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. <u>Private Tele-communications Network</u> includes services provided by the state pursuant to O.R.S. 190.240 and 283.140.

<u>Public Rights-of-Way</u> 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. <u>Public Rights- of-Way</u> shall also include utility easements as defined below.

State means the State of Oregon.

<u>Telecommunications Act</u> 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.

<u>Telecommunications Carrier Provider</u> 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.

<u>Telecommunications Facilities</u> means the plant and equipment, other than customer premises equipment, used by a telecommunications <del>carrier provider</del> 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.

<u>Telecommunications Utility</u> has the same meaning as O.R.S. 759.005(1).

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

<u>Usable Space</u> 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.

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

<u>Utility Facilities</u> 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)

# Registration of Telecommunication Providers.

- A. <u>Purpose</u>. The purpose of registration is:
- 1. To assure that all telecommunications <del>carriers</del> 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 earriers 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 31<sup>st</sup> 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 30<sup>th</sup> shall not be required to file an annual registration until December 31<sup>st</sup> 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. <u>Registration Application Fee</u>. Each application for registration as a telecommunications <del>carrier provider shall be accompanied by a nonrefundable registration application fee in the amount of \$35, or as otherwise</del> 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. <u>Exceptions to Registration</u>. The following telecommunications <del>carriers</del> providers are excepted from registration:
- 1. Telecommunications <del>carriers</del> 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. <u>General</u>. 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. <u>Construction Codes</u>. 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. <u>Construction Permits</u>. 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 <del>carrier</del> 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 <del>carrie</del>r provider has first applied for and been granted a franchise pursuant to § <u>12.36.070</u> of this code.

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

# **№** § 12.36.060 Location of facilities.

A. <u>Location of Facilities</u>. 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. <u>Interference with the Public Rights-of-Way</u>. 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. <u>Relocation or Removal of Facilities</u>. 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 earrier 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. <u>Coordination of Construction Activities</u>. 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. <u>Required</u>. A telecommunications franchise shall be required of any telecommunications <del>carrier provider</del> who desires to occupy public rights-of-way of the city.
- B. <u>Application</u>. Any person that desires a telecommunications franchise must register as a telecommunications <del>carrier provider</del> and shall file an application with the city which includes the following information:
  - 1. The identity of the applicant;
- 2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;
- 3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the city, including the location and route requested for applicant's proposed telecommunications facilities;
- 4. The area or areas of the city the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area;
- 5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed; and

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

# C. <u>Franchise Application and Review Fee</u>.

- 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. <u>Determination by the City</u>. 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. <u>Rights Granted</u>. 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. <u>Term of Grant</u>. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of 5 years.
- G. <u>Franchise Territory</u>. 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. <u>Amendment of Grant</u>. Conditions for amending a franchise:
- 1. A new application and grant shall be required of any telecommunications earrier 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 <del>carrier</del> provider that desires to provide a service which was not included in a franchise previously granted under this chapter.
- J. <u>Renewal Applications</u>. 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. <u>Renewal Determinations</u>. 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. <u>Obligation to Cure As a Condition of Renewal</u>. 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. <u>Assignments or Transfers of System or Franchise</u>. 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. <u>Revocation or Termination of Franchise</u>. 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. <u>Notice and Duty to Cure</u>. 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. <u>Public Hearing</u>. 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. <u>Standards for Revocation or Lesser Sanctions</u>. 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. <u>Other City Costs</u>. 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)

# S 12.36.080 General franchise terms.

- A. <u>Facilities</u>. 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. <u>Damage to Grantee's Facilities</u>. 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. <u>Duty to Provide Information</u>. 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. <u>Service to the City</u>. 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. <u>Compensation for City Property</u>. 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. <u>Cable Franchise</u>. Telecommunication <del>carrier providers</del> providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.
- G. <u>Leased Capacity</u>. 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. <u>Grantee Insurance</u>. 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. <u>General Indemnification</u>. 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. <u>Performance Surety</u>. 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. <u>Governing Law</u>. 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. <u>Written Agreement</u>. No franchise shall be granted hereunder unless the agreement is in writing.
- C. <u>Nonexclusive Grant</u>. 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. <u>Severability and Preemption</u>. 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. <u>Penalties</u>. 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. <u>Captions</u>. 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. <u>Compliance with Laws</u>. 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. <u>Consent</u>. 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. <u>Application to Existing Agreements</u>. 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. <u>Confidentiality</u>. 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.

<u>Section 3: Franchise Not Exclusive.</u> 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

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2nd Reading

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.
- <u>Section 6: Competitively Neutral Application.</u> 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.

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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.
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- (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.
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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
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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

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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.

<u>Section 17: Limitation of Liability.</u> 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.

<u>Section 19: Notice.</u> 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 3<sup>rd</sup> Avenue Canby, OR 97013 Phone: 503-266-4027 Facsimile: 503-266-9316

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# 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.

<u>Section 20: Captions.</u> 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.

<u>Section 21: Severability.</u> 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.

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<u>Section 23: Emergency.</u> 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 2<sup>nd</sup> Avenue, Canby, Oregon.

	Kimberly Scheafer, MMC City Recorder
<b>PASSED</b> on second and final reading by thereof on the 20th day of November 2013, by the	the Canby City Council at a regular meeting are following vote:
YEAS	NAYS
Attest:	Brian Hodson Mayor
Kimberly Scheafer, MMC City Recorder	Approved as to form
	Joseph A. Lindsay City Attorney
Accepted(Date)	Clackamas County
	By:

#### **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.

<u>Section 3: Franchise Not Exclusive.</u> 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.

<u>Section 6: Competitively Neutral Application.</u> 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.

# <u>Section 7: Construction, Maintenance and Repair of Infrastructure.</u>

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.

<u>Section 10: Indemnification.</u> 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.
- (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.

<u>Section 12: Extension of City Limits.</u> 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.

<u>Section 14: Right to Perform Franchise Fee Audit or Review; Default.</u> 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.

<u>Section 17: Limitation of Liability.</u> 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.

<u>Section 19: Notice.</u> 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 address, or such other address as each party may specify in writing:

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.

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 2<sup>nd</sup> Avenue, Canby, Oregon.

	Kimberly Scheafer, MMC City Recorder
<b>PASSED</b> on second and final reading by thereof on the 20th day of November 2013, by	the Canby City Council at a regular meeting the following vote:
YEAS	NAYS
	Brian Hodson
Attest:	Mayor
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:

#### **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

2nd Reading

#### 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 2<sup>nd</sup> Avenue, Canby, Oregon

Kimberly Scheafer, MMC City Recorder
ing by the Canby City Council at a regular meeting g vote:
Brian Hodson Mayor



**DATE:** NOVEMBER 20, 2013

TO: HONORABLE MAYOR HODSON AND CANBY CITY COUNCIL

**FROM:** HALEY FISH, FINANCE DIRECTOR

THROUGH: GREG ELLIS, CITY ADMINISTRATOR

**RE:** ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 3.24 PUBLIC

TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX

<u>ISSUE:</u> Chapter as originally adopted contains grammatical errors, inconsistent reference of terminology, is in areas misleading or hard to interpret, and silent in some key administrative areas.

SYNOPSIS: An update to the Canby Municipal Code Chapter 3.24 is necessary to ensure better understanding of the code and ensure all taxpayers are treated in a fair and consistent manner. Substantive changes include:

- 1. Clearly defining and consistently referencing the local transit area as including the city and area within the Canby Urban Growth Boundary which is currently the area in which service is provided and enforcement of payroll and self-employment tax has historically been applied.
- 2. Explicitly requiring taxpayers to submit a tax return even if there is no tax due and assessment of fees for non-compliance. This is imperative as we have no way of assessing compliance unless a return is filed.
- 3. Clarified the following:
  - a. The process necessary when requesting a waiver or adjustment of penalties and fees.
  - b. Requirements when filing an extension, and
  - c. No interest waiver clause.
- 4. Added a \$5 fee that will be assessed for each 30 days after a taxpayer submits a payment without a return not to exceed \$20; a lot of administrative time and effort is expended following up on payments submitted without a return.
- 5. Added explicit record keeping requirements previously inherently implied to allow the Collector to substantiate tax returns as considered necessary.

RECOMMENDATION: Staff recommends that Council approve Ordinance No. 1391 to come up for

second reading on December 4, 2013.

ATTACHED: Ordinance No. 1391

#### **ORDINANCE NO. 1391**

# AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 3.24 PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX.

**WHEREAS**, the City of Canby desires to change its current Public Transportation Payroll and Self-Employment Tax ordinance to reflect correction of errors and changes in suggested best practices; and

**WHEREAS**, the Canby Municipal Code is currently silent regarding waiving or adjusting penalties, interest, the use of non-filing fees and record keeping requirements; and

**WHEREAS**, clarifying the process to adjust penalties, interest and the use of non-filing fees will ensure all taxpayers are treated in a fair and consistent manner; 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 3.24 Public Transportation Payroll and Self-Employment Tax. A copy of Chapter 3.24 with changes identified 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 20, 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, December 4, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

	Kimberly Scheafer, MMC City Recorder
<b>PASSED</b> on the second and final reading to on December 4, 2013 by the following vote	by the Canby City Council at a regular meeting thereof e:
YEASNAYS	
ATTEST:	Brian Hodson Mayor
Kimberly Scheafer, MMC City Recorder	_

#### EXHIBIT A

## CHAPTER 3.24: PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX

<u>3.24.010</u>	Definitions.
3.24.020	Application; doing business in the city.
3.24.030	Payroll and self-employment tax imposed.
3.24.040	Apportionment of tax.
3.24.050	Alternate method of apportioning tax.
3.24.060	Fixed percentage.
3.24.070	Employer located outside of local transit districtarea.
3.24.080	Exceptions.
3.24.090	Nature of the tax.
3.24.100	Date due, returns, payments, prepayments and extensions.
<u>3.24.110</u>	Rebates.
<u>3.24.120</u>	Collector's duties.
<u>3.24.130</u>	Penalties, and interest and fees.
<u>3.24.140</u>	Failure to file, failure to pay, underpayment.
	Tax as debt; termination of taxable period and immediate assessment of tax.
<u>3.24.160</u>	Warrant for collection of taxes.
<u>3.24.170</u>	Discontinuing business in the local transit district.
<u>3.24.180</u>	Refunds.
<u>3.24.190</u>	Sale or other transfer of business.
<u>3.24.200</u>	Receivers, trustees, executors, administrators, guardians, conservators and others
<u>3.24.210</u>	Right of privacy.
<u>3.24.220</u>	Computer records of taxpayers.
<u>3.24.240</u>	False information, failure to file; penalty.
3.24.250	Appeal from Ceollector.
3.24.260	Record keeping requirement

## ₹ 3.24.010 Definitions.

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

<u>Association</u> means any club, group or organization, whether organized for business purposes, civic purposes, religious purposes or other purposes.

<u>Business Entity</u> means any sole proprietorship, self-employed person, partnership, limited partnership, corporation including nonprofit corporations engaged in any business enterprise, and any firm, association or entity of any kind engaged in business. This term shall also include any personal representative or assignee of any <u>Business Entity</u>.

City means the City of Canby.

<u>Collector</u> means the <u>city tax Ceollector</u> of the city. This may be an employee of the city or a contract agent or agency as the City Council shall from time to time determine. The City <u>Administrator Finance Director</u> shall have supervisory responsibilities over the <u>Ceollector</u>.

<u>Commission Merchant</u> or <u>Commission Employee</u> means any person who engages in the sale of goods for compensation in the form of a commission only and is subject to withholding under

O.R.S. Chapter 316. This also includes any person who buys and resells goods if the person does not maintain a retail store or wholesale sales floor and does not store goods except during a short period before transportation to the buyer.

<u>Corporation</u> means any business corporation and any nonprofit corporation organized under the laws of this state, or under the laws of any jurisdiction.

Employee means any individual employed by another, for wages. This also includes all real estate salespeople employed by a real estate broker and paid on a commission basis, and all mechanics who perform services for customers of an auto repair shop and who are paid by the owner of the auto shop for each repair or maintenance job done, provided that the remuneration is subject to withholding under O.R.S. Chapter 316.

Employer has the meaning prescribed by O.R.S. 267.380.

<u>Firm</u> means any sole proprietorship, partnership, corporation, joint venture, limited partnership or other form of organization formed for the purpose of doing business.

Individual means a natural person.

<u>Local Transit Area</u> means designated areas within a boundary established by the city and the <u>Canby Urban Growth Boundary</u> which will receive benefits of operation, management or delivery of a transit system.

Net Earnings from Self-Employment has the definition as prescribed by O.R.S. 267.380.

<u>Payroll Expense</u> means the wages paid by any employer to any employee. <u>Payroll Expenses</u> also include the commission received by a commission merchant or a commission employee, if that person is subject to withholding under O.R.S. Chapter 316.

<u>Personal Representative</u> means any trustee, receiver, executor, administrator, guardian, conservator or similar <u>Personal Representative</u> of any person, firm, association or corporation.

<u>Taxpayer</u> means any person, firm, corporation or association required by this chapter to file a return or to pay a payroll and/or self-employment tax.

Wages has the meaning means as prescribed by O.R.S. 267.380.

- ■§ 3.24.020 Application; doing business in the city.
- A. The payroll and self-employment tax shall apply only to persons, firms, corporations and associations doing business within the boundaries of the citylocal transit area.
- B. A person, firm, corporation or association is doing business within the boundaries of the local transit area if the entity does any of the following:
- 1. Employs <u>1</u>-one or more employees, commission merchants or commission employees to work in the <u>local transit areaeity</u>;
  - 2. Maintains a place of business in the <u>local transit areacity</u>;
- 3. Owns, manages or leases property in the <u>local transit areaeity</u>. Managing rental property owned by the entity or by others is included;
- 4. Solicits any business within the <u>local transit areaeity</u>, provided that solicitation is by mail or telephone contacts only, and solicitation by advertising only shall not subject any entity to the payroll and self—employment tax;
- 5. Uses the streets within the <u>local transit areacity</u> for any reason in connection with the work of any employee, commission merchant or commission employee; or
- 6. Maintains any place of business in the city, provided that any employer not maintaining a place of business in the city, but doing any of the acts described in divisions B.1. through B.5. of this section shall be subject to the payroll and self- employment tax.
  - 7. Conducts business in a residence within the local transit area.

#### 8. Received taxable income due to business activity in the local transit area.

§ 3.24.030 Payroll and self-employment tax imposed.

To carry out the purposes set forth herein, an excise tax is hereby imposed and levied on every person, firm, corporation or association doing business within the boundaries of the local transit area, which employs one-1 or more employees, or contracts orally or in writing with any commission merchant or commission employee. For the same purposes, a tax is imposed on each individual's net earnings from self-employment and hereinafter shall be included when there is a reference to payroll and self-employment tax. The amount of the tax shall be 0.6% of the total payroll expense of each taxpayer or of the individual's net earnings from self-employment, as the case may be. The payroll and self-employment tax shall be in full force and effect from and after January 1, 2002, and shall apply to payroll expense and net earnings from self-employment incurred after that date. This tax is imposed for the provision of public transportation services within the local transit area in order to provide for the business community to carry a share of the costs of local government in return for the benefits and opportunities available because of the city government and services.

## § 3.24.040 Apportionment of tax.

- A. The payroll and self-employment tax applies to the <u>gross taxable</u> payrolls of employees <u>either working or being</u> paid <u>within the local transit area or doing businessfor work performed</u> within the local transit area, <u>unless a portion of or all of the payroll is subject to a like type tax by Tri-Met</u>. If an employer employs or pays some individuals within the local transit area and employs or pays some individuals outside of the local transit area who are subject to Tri-Met tax <u>or a like tax</u>, then the tax shall apply only to the payroll covering employees working or being paid within the local transit area <u>who are not subject to Tri-Met tax</u>.
- B. If any employee spends part of his or her working hours within the <u>city-local transit area</u> and part outside of the <u>city-local transit area</u>, the fraction or percentage of the payroll of that employee to be taxed shall be determined as follows:
- \_1. If the employee's compensation depends on the amount of sales or volume of repair work or other services done, only the payroll attributable to sales made or services done in the local transit area shall be subject to the payroll tax.
- -2. If the employee is paid on any other basis, the fraction or percentage of the payroll concerning that employee to be taxed shall equal the fraction or percentage of the employee's working hours spent in the local transit area. The same apportionment is applicable to net earnings from self—employment if any of the earnings are subject to the Tri-Met payroll and self-employment tax or any like tax.

## ■§ 3.24.050 Alternate method of apportioning tax.

Any taxpayer may, at the taxpayer's sole option, propose an alternate method to the methods of apportioning the payroll tax set out in the preceding section of this chapter. If, due to the circumstances of the taxpayer's business, the methods set out in the preceding section result in more of the taxpayer's payroll being taxed than can reasonably be attributed to the connection of the taxpayer and the employees, commission merchants or commission employees within the local transit district, and if the proposed alternate method does provide for a reasonably accurate proportion of the taxpayer's payroll to be subject to the tax, the Ceollector may approve the

alternate method and the amount of payroll and self-employment tax owed by the taxpayer shall be the amount determined by the alternate method.

## § 3.24.060 Fixed percentage.

If the Ceollector finds that the percentage of any taxpayer's payroll required to be apportioned to business done in the local transit area remains stable with little variation, the Ceollector may notify the taxpayer that a fixed percentage has been established and that the percentage does not have to be calculated when each return is filed. If the taxpayer objects within 30 days of receiving the notice, the fixed percentage shall not be put into effect and the percentage shall continue to be determined as before. If the taxpayer does not object, the fixed percentage shall remain in effect until changed by action of the Ceollector, or changed by the taxpayer as follows: At any time the use of the fixed percentage may be discontinued, at the sole option of the taxpayer, by the taxpayer giving 30 days' written notice to the Ceollector. Each taxpayer whose payroll tax is determined by use of a fixed percentage under this section has a continuing duty to notify the Ceollector immediately of any significant change in conditions which would change the proportion of the payroll reasonably attributable to business done or work done in the local transit district. The Ceollector may change or discontinue the use of a fixed percentage at any time.

## § 3.24.070 Employer located outside of local transit districtarea.

Employers located outside of the local transit area are subject to the payroll and self-employment tax if any employee, commission merchant or commission employee of the employer does business in the local transit area in any way designated in § 3.24.020 of this chapter. Each employer shall contact the city Ceollector to obtain forms and shall file all returns required by this chapter.

- **№** § 3.24.080 Exceptions.
  - A. Wages which are excluded as remuneration paid under O.R.S. 267.380.
- B. Any payroll of any employer subject to the Tri-Met payroll or self-employment tax or any like tax. Refer to section 3.24.040.

## ■ § 3.24.090 Nature of the tax.

The tax imposed by this chapter is a tax on persons, firms, corporations and associations doing business in the local transit area. It is not a tax on employees. The payroll and self-employment tax shall not be withheld by the employer from the employee's compensation.

- § 3.24.100 Date due, returns, payments, prepayments and extensions.
- A. Taxpayers shall comply with the following requirements concerning returns, payments, prepayments and extensions.
  - B. Taxes shall be determined for:
    - 1.——1.—Payroll: each quarter of the calendar year, and the tax due for each quarter of the calendar year shall be paid on or before April 30, <u>JulyJune</u> 3<u>10</u>, <u>September 30October 31</u> and January 31.
    - 2. Annual Payroll: The Collector may authorize annual payroll tax reporting for a taxpayer whose reporting history indicates the business does occasional work within the local transit area resulting in tax due of \$120.00 or less per year, or an average of \$30.00 or less per quarter. The tax due for each calendar year shall be paid on or before January 31 of the

following year. It is the responsibility of the taxpayer to notify the Collector and increase the reporting frequency to quarterly when the tax due exceeds the maximum limits for the annual reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Collector, is sufficient cause for the Collector to deny future annual filings by the taxpayer.

- —32. Self-employment: each quarter of the calendar year annually, and the tax due for each quarter of the calendar year shall be paid on or before
- \_\_\_April 15., June 15, September 15 and January 15.
- <u>C.</u> Each taxpayer shall file a return, on a form to be furnished by the <u>Ceollector</u>, and file the same along with payment of the tax, on or before the date payment is due. <u>Taxpayers are required</u> to file a zero tax due return if no tax is owed.
- <u>DC</u>. Extensions for filing may be granted by the <u>Ceollector</u> for good and sufficient cause shown, such as events outside the control of the taxpayer and which could not have been avoided by prudent business practices. <u>To be eligible for an extension, requests must be received in writing prior to the tax payment due date.</u> These extensions shall be for not more than 30 days <u>for quarterly and annual payroll taxpayers or six months for self-employment taxpayers.</u> Extensions are for more time to file a return only. A payment must be made based on an estimated return by the <u>original due date to avoid penalty and interest charges</u>. If the <u>Ceollector grants an extension under this division section</u>, the taxpayer shall pay interest at the rate of 1.5% per month on the <u>balance of any unpaid payroll</u> and self-employment tax due and shall pay no other penalty <u>if filed and account made current by the extension deadline; otherwise penalties, fees and interest could be accrued from the original filing deadline or late charge.</u>

## ₹ 3.24.110 Rebates.

- A. The Ceollector may request approval from the City Council to grant tax rebates or credits based on the financial performance of the transportation fund, giving due consideration to projected operating expenses and prudent reserves.
- B. Rebates will be returned to taxpayers on a pro-rata basis less costs of administration of the rebates and any incentive charges.

## § 3.24.120 Collector's duties.

The <u>Ce</u>ollector shall have the following duties in connection with the payroll and self-employment tax:

- A. Keep accurate records of all returns and of all sums received for payroll and self-employment tax. The records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. The nature of installment payments shall be indicated on the records. The Ceollector shall keep the original returns on file for a period of not less than 3 years after filing;
  - B. Enforce the provisions of this chapter;
  - C. Prepare forms and instructions for the returns and payments required by this chapter;
- D. Examine returns and, for any returns appearing to be incorrect, make inquiries, investigations and adjustments in the amount of tax due;
- E. Where necessary to determine accurate figures for determining the amount of tax due, examine books, records and information stored in computers of any taxpayer, provided that each city officer or employee acting under this chapter shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or

- refused access to any records or computer memory, the <u>Ceollector</u> or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the City Attorney, to obtain access to the information needed;
- F. The <u>Ceollector</u> may delegate duties assigned to the <u>Ceollector</u> in this chapter to any officer or employee under the <u>Ceollector</u>'s supervision, provided that the <u>Ceollector</u> shall approve the form of all returns and written instructions;
- G. The Ceollector shall prepare pamphlets for distribution to the public, clearly explaining the payroll and self-employment tax and the returns and payments required; and
  - H. The Ceollector shall perform all of the other duties assigned to the Ceollector by this chapter.

## § 3.24.130 Penalties, and interest and fees.

- A. <u>Original Delinquency</u>. Any <u>operator taxpayer</u> who has not been granted an extension of time for filing a return or remittance of tax due and who fails to remit any tax imposed by §§ <u>3.24.030</u>et seq. prior to delinquency, shall pay a penalty of 10% of the amount of tax due in addition to the amount of the tax <u>unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.</u>
- B. <u>Continued Delinquency</u>. Any <u>taxpayer-operator</u> who has not been granted an extension of time for filing a return or remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance firstast became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed <u>unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence</u>.
- C. <u>Fraud</u>. If the <u>Ceollector determines that the failure to file a return or that the nonpayment of any remittance due under §§ <u>3.24.030</u>et seq. is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions A. and B. of this section.</u>
- D. <u>Interest</u>. In addition to the penalties imposed, any operator who fails to remit a tax imposed by §§ 3.24.030 et seq. shall pay interest at the rate of 1.5% per month or a fraction thereof, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Said interest cannot be waived by the Collector-
- E. Payment submitted without Return. A fee of \$5.00 will be assessed for each 30 days or fraction thereof should a taxpayer remit a payment without a return unless said return is received by the Collector within five business days of receiving the payment. The total fees assessed shall not exceed \$20.00.
- <u>FE.</u> <u>Penalties Merged with Tax.</u> Every penalty <u>and fee</u> imposed and such interest as accrues under provisions of this section shall be merged and become a part of the tax herein required to be paid. Payments shall first be applied to penalties <u>and fees</u> imposed, then to interest accrued, then taxes due.
- GF. Attorney Fees. In the event it becomes necessary for an enforcement of the provisions of this chapter for the city to incur attorney fees' expense and cost, the taxpayer shall be assessed that expense and/or cost. It shall be due and owing upon billing and shall bear interest at the rate of 1.5% per month.
- **HG**. Imposition of Civil Penalties. An imposition of any civil penalties, interest, fees or costs by this section shall not be a bar for any prosecution under § 3.24.240.
  - <u>I.</u> The Collector may waive or adjust penalties and fees imposed by (A), (B), (C) and (E) above upon a finding that:

- 1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner;
- 2. The amount of the penalties or fees are greatly disproportionate to the amount of the tax;
- 3. The failure of a taxpayer to file a return and/or pay any tax by the due date was caused by any of the following circumstances:
  - a) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.
  - b) Erroneous or insufficient information was furnished the taxpayer by the Collector or their employee or agent.
  - c) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.
  - d) Unavoidable absence of the taxpayer immediately prior to the due date.
  - e) Destruction by fire or other casualty of the taxpayer's place of business or records.
  - f) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.
  - g) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.
  - h) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter, and after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.
  - i) The taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.
  - j) The taxpayer can provide some public record (court case; report in a periodical, professional journal, or publication; etc.) stating that the transaction is not subject to tax.
  - k) The Oregon Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.
- 4. A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.
- J. No request for waiver of penalty under Subsection (I) above may be granted unless written request for waiver is received by the Collector within sixty (60) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under Subsection (I) above may appeal under the provisions of Section 3.24.250 provided that a petition of appeal or request for an extension is submitted to the Collector within sixty (60) days of the taxpayer's receipt of notice by the City that waiver has been denied.
- K. For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity in this City.
- L. For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake." Examples of negligence include:

- 1. The taxpayer's failure to maintain records in accordance with Section 3.24.260 of this Chapter;
- 2. Repeated failures to file returns timely; or
- 3. Gross ignorance of the law.
- 3.24.140 Failure to file, failure to pay, underpayment.

The following rules apply when a taxpayer fails to file a return, fails to pay the payroll and self-employment tax when due, or pays less than the amount due:

- A. If a taxpayer fails to make a return, the Ceollector shall prepare an estimate of the amount of payroll and self-employment tax due from the taxpayer, based on the best information available to the Ceollector. The Ceollector may make investigations to assist in making the estimate. The Ceollector may consider the number of employees, the wages or other compensation customarily paid in the type of business, the volume of business done and customary commissions or bonuses paid to employees in the same type of business, and any other relevant matters. The Ceollector may estimate the compensation customary in the business by comparing returns filed by other taxpayers in the same business or similar businesses. When the Ceollector estimates the payroll and self-employment tax, the amount of the interest and late charge provided by this chapter shall be added to the taxes due. The Ceollector shall notify the taxpayer in writing of the amount due. The notification shall be in writing in the form of a pre-collection notice and shall containing a brief description of the method and estimated figures used in arriving at the estimated tax. Any taxpayer may dispute the amount of the estimated tax by filing, The taxpayer shall respond within 30 days of notification of the estimated tax by:
  - 1. Filing —a tax return accompanied by payment of the entire balance due, together with interest and late charge due. The return shall be processed like any late return, and shall establish the payroll tax liability of the taxpayer in place of the estimated tax prepared by the Ceollector. The Ceollector may, however, later determine that the amount shown on the return is insufficient, so there is a deficiency, in the same manner as in the case of other returns.
  - 2. Contacting the Collector or Finance Director to set up a payment plan.
  - 3. If the taxpayer fails to respond to the notification within 30 days a collection notice will be mailed informing said taxpayer of the estimated balance, interest and late charges being turned over to a collection agency.
- B. If the Ceollector determines, by examining available evidence that the amount of payroll and self- employment tax paid by any taxpayer is less than the amount required by this chapter, the Ceollector shall notify the taxpayer of the deficiency. The Ceollector may use any of the methods authorized by §§ 3.24.010et seq. of this chapter to determine whether a deficiency exists and to determine the amount of the deficiency. The Ceollector shall thereupon notify the taxpayer of the deficiency. The notice shall be in writing and shall state not only the amount of the deficiency, but also the methods and estimates used in arriving at the amount of deficiency. If the taxpayer does not object within 30 days of the date of receiving the notice, the taxpayer shall be deemed to have accepted the revised figures for payroll tax liability. If the taxpayer does file a written objection within the time specified, the taxpayer shall pay the tax, together with penalties and interest, under protest, and may thereupon, pursue administrative and judicial remedies as provided by ordinance and by state law, to seek a refund.

- C. If the <u>C</u>eollector finds that any taxpayer has overpaid, the <u>C</u>eollector shall notify the taxpayer of the taxpayer's overpayment and shall refund the amount of the overpayment to the taxpayer in accordance with § 3.24.180.
- D. When the Ceollector notifies any taxpayer of any estimated tax, alleged overpayment or refund, the Ceollector shall include in the notice clear instructions on how, when and where the taxpayer may protest or appeal the decision.
- E. If a taxpayer or any person, firm, association or corporation required by this chapter to pay a tax or to file a return shall fail to file any return for any year, the failure to file shall constitute a continuing offense against the city and the Ceollector may proceed to estimate and collect the payroll and self-employment tax at any time. In all other cases, no increase shall be made in any taxpayer's payroll tax liability unless the first notice of the increase is received by the taxpayer within 3 years of the time the return was first due.
- 3.24.150 Tax as debt; termination of taxable period and immediate assessment of tax.
- A. Every tax imposed upon employers measured by wages paid to employees and upon self-employed persons measured by net earnings from self- employment, and all increases, interest and penalties thereon shall become, from the time the liability is incurred, a personal debt due the city from the person or persons liable therefor.
- B. If the Ceollector finds that the taxpayer designs to depart quickly from the state or to remove his or her property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past quarter or the tax quarter then current, unless the proceedings be brought without delay, the Ceollector shall declare the current taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer. Simultaneously, the Ceollector, on the basis of the best information available to it, shall assess a tax for the terminated period and for the preceding tax quarter (if no return has been filed therefor, whether or not the time otherwise allowed by law for filing the return and paying the tax has expired), and shall assess additional tax for any quarters open to assessment under provisions of the applicable law. The Ceollector shall give notice to the taxpayer of all taxes so assessed. The taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his or her last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of the Ceollector, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design, and the certificate of the Ceollector if the mailing or issuing of the notice and findings specified in this section is presumptive.

## ■§ 3.24.160 Warrant for collection of taxes.

A. If any tax imposed upon employers by wages paid to employees or any portion of the tax is not paid within 30 days after it becomes due (or within 5 days, in the case of the termination of the tax quarter by the Ceollector under the provisions of § 3.24.150 of this chapter), and no provision is made to secure the payment of this by bond, deposit or otherwise pursuant to regulations promulgated by the Ceollector, the Ceollector, pursuant to O.R.S. 267.385 and/or the City Charter and the city code, the city shall issue a warrant under its hand and official seal directed to the sheriff of any court of the state commanding him or her to levy upon and sell real and personal property of the taxpayer found within his or her county, for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the

warrant to the Ceollector and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the day of the warrant.

- B. The sheriff shall, within 5 days after the receipt of the warrant, file with the Clerk of this county a copy thereof, and thereupon the Clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax proportion thereof and penalties for which the warrant is issued and the date when the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the Clerk. The sheriff, thereupon, shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued property upon judgment of a court of record, and shall be entitled to the same fees for his or her services in executing the warrant, to be added to and collected as a part of the warrant liability.
- C. In the discretion of the Ceollector a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect exercise taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of that duty.
- D. If a warrant is returned not satisfied in full, the Ceollector shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance his or her assessment record by transferring the unpaid deficiency to his or her delinquent record.

## ■§ 3.24.170 Discontinuing business in the local transit district.

Whenever any person, firm, corporation or association subject to the payroll and self-employment tax ceases to do business in the local transit area, due either to going out of business or to moving all of the business out of the local transit area, the person, firm or corporation shall file forthwith the payroll and/or self-employement tax return and pay the tax required by this chapter, regardless of the time of year. Taxes shall be due and payable only for the actual payroll expense for the part of the year during which the taxpayer did business in the local transit area. Each officer, partner or owner of any taxpayer falling to comply with the terms of this section shall be jointly and severally liable personally for any unpaid amounts of the tax due under this section. The personal liability provided in the preceding sentence shall not be applied to a person solely because of ownership of a minority of stock in a corporation or ownership of any minority interest not involving control of the business entity.

## ₹ 3.24.180 Refunds.

A. When any amount of any payroll and self—employment tax, penalty or interest has been overpaid, the taxpayer who made the overpayment shall be reimbursed under the terms of this section. If the Ceollector determines that an overpayment has been made, the Ceollector shall make the refund whether a claim for the refund has been filed or not. Any taxpayer may make a claim for the refund by filing a statement signed by the taxpayer or by a person with actual knowledge of the facts, stating the reasons for the claim for refund. The Ceollector shall examine each claim, and may require additional information and evidence from the taxpayer. The Ceollector may make an investigation to determine the facts as to whether a refund is due. The investigation may include examining the books, records and information in computer storage of the taxpayer.

- B. If any sum is due from the taxpayer to the city for any reason, the amount of the refund shall be applied first to offset the sum owed by the taxpayer to the city. Any balance remaining thereafter may, at the option of the taxpayer, be held by the collector to apply on future payroll tax payments. Any sum not used for this offset and not held at the taxpayer's request to apply on future payroll tax payments shall be returned to the taxpayer as soon as practicable. The Ceollector shall notify the taxpayer in writing of the Ceollector's decision approving a claim for refund, denying the claim or approving a refund for a smaller amount than the taxpayer claimed. If the Ceollector shall deny all or part of the refund claim, the taxpayer may, within 30 days, file a written protest. If the taxpayer fails to file a written protest within 30 days, the taxpayer shall be deemed to have waived any objections to the action of the Ceollector. Any taxpayer who has filed a written protest in accordance with this section may pursue the administrative remedies and judicial remedies available under city ordinances and state law, to obtain review of the decision denying all or part of the refund. Any action by the Ceollector under this section, except an action fully approving a claim for refund, shall be accompanied by a set of clear instructions on how to file an administrative appeal or court action and shall make it clear that failure to file a timely administrative appeal or court action will cause the Ceollector's decision to stand.
- § 3.24.190 Sale or other transfer of business.
- A. If any owner or group of owners acting together transfers a majority of ownership interest or controlling interest in any business entity that is subject to the payroll and self-employment tax, the seller or transferor must furnish to the buyer or transferee a complete record of payments, accompanied by receipts, showing past payments of the payroll expense tax for the past 3 years or the period of time since the business was subject to the tax, whichever period is shorter.
- B. The buyer and seller, or transferor and transferee, must also furnish written evidence to the Ceollector that the steps described in at least 1 of the following paragraphs have been taken:
- 1. The seller has filed a payroll and self- employment tax return covering the period up to the date of sale of the business entity, accompanied by payment of all payroll and self-employment tax accrued to the date of sale. This is due not later than 10 days after the sale is closed by transfer of ownership, regardless of the payment schedule;
- 2. The buyer or transferee has filed a written agreement with the city, undertaking to pay all payroll taxes to become due, including those accrued during the part of the year before the sale or transfer;
- 3. The buyer has furnished evidence to the city that the funds of the business entity are sufficient and will be sufficient to pay all payroll and self- employment tax anticipated to be due when the next payment is due, that the business entity has acknowledged its responsibility to pay the taxes and that there are no past due payroll expense taxes, penalties or interest payments owed to the city by the business entity;
- 4. A cash deposit or bond with a corporate surety has been filed with the Ceollector, sufficient to cover the amount of payroll and self-employment tax anticipated to become due for the payroll expenses before the transfer; or
- 5. The buyer or seller has provided an alternative means of assuring that the payroll and self-employment tax for the period before the sale will be paid, and the alternative means is reasonably sufficient, in the judgment of the Ceollector, to ensure the payment of the tax when due.

§ 3.24.200 Receivers, trustees, executors, administrators, guardians, conservators and others. If control of any employer subject to the payroll and self-employment tax passes to any trustee, receiver, executor, administrator, guardian, conservator or other personal representative or fiduciary, the personal representatives or fiduciary shall have all the duties of the employer under this chapter.

## 

Except when disclosure is required by law or in connection with the collecting and enforcing the payroll and self-employment tax, no city officer or employee shall disclose to any person outside of the Ceollector's office any and information learned from any return or other information filed by any taxpayer under this chapter. City officers and employees enforcing this chapter and collecting taxes shall not seek information that is irrelevant to the payroll and self-employment tax.

## ■§ 3.24.220 Computer records of taxpayers.

The following rules apply to taxpayers who have records stored in temporary or permanent memory in any computer.

- A. In lieu of any return or report required by this chapter, any taxpayer may submit a printout from a computer containing all of the information required in the return, in a format approved by the Ceollector.
- B. Whenever the Ceollector has the authority or the duty to examine any books and records of any taxpayer, the Ceollector shall also have the authority or duty to examine relevant information stored in any computer used by the taxpayer. The taxpayer need not permit the Ceollector or any city employee to operate the computer, but the taxpayer shall furnish to the Ceollector an employee or other person authorized by the taxpayer to operate the computer, permitting readouts and printouts as requested or determined by the Ceollector. The duties and powers of the Ceollector may be exercised by any person working under the supervision of the Ceollector.

## ■§ 3.24.240 False information, failure to file; penalty.

- A. No person, firm, corporation or association required by this chapter to file any return or report shall fail to file the return or report. No person, firm, corporation or association shall knowingly furnish any false information to the city as all or part of any information furnished under any provision of this chapter. The furnishing of false information shall constitute a violation of this section even if the person furnishing the false information could not have profited or saved money by the deception. If any individual officer, employee or owner of any firm, corporation or association knowingly furnishes false information, the individual shall also be subject to the penalty set out in this section. The penalty set out in this section shall be in addition to any interest, late charge or other civil penalty provided by ordinance.
- B. Any person, firm, corporation or association committing any violation described in this section shall, upon conviction, be fined not less than \$100, nor more than \$2,500, for each offense, and shall be subject to 1 year in jail. A separate offense shall be deemed committed with the filing of each false document.

- § 3.24.250 Appeal from Ceollector.
- A. An appeal from the determination upon the application made by the taxpayer for refund or revision of any tax, as provided for in this chapter, may be taken by the taxpayer to the circuit court located in Clackamas County. Any appeal must be within 60 days after notice of the Ceollector's determination has been received by the taxpayer, given as provided in this chapter. If the Ceollector fails to notify the taxpayer within 12 months after the claim was filed of its determination of the claim for refund or revision of the tax, the taxpayer may then appeal to the circuit court.
- B. Unless otherwise ordered by the circuit court, an appeal to the Ceollector or to the court from an assessment of taxes or additional taxes, shall not stay proceedings to collect any unpaid tax if the Ceollector believes that collection of the tax will be jeopardized by delay.

#### 3.24.260 Record Keeping Requirements

- A. It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation, or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Oregon Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Collector during any business day.
- B. The Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:
  - 1. Only for future reporting periods and;
- 2. Only by express determination of the Collector that such specific record keeping is necessary due to the inability of the City to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.

#### MEMORANDUM OF UNDERSTANDING IV

WHEREAS, the City of Canby, a Municipal Corporation, hereinafter referred to as "City" and the Canby Livability Coalition, a non-profit corporation, hereinafter referred to as "CLC" wish to enter into a fourth agreement which shall be referred to Memorandum of Understanding IV between the parties, and

WHEREAS, Holly Corners, LLC subdivided and developed a single family housing project known as Territorial Estates located at the corner of N. Holly Street and Territorial Road in Canby, Oregon during the spring of 2002. Local neighbors wished to preserve one lot of the subdivision for park and open space purposes and formed a non-profit corporation known as "CLC" to support the City and help raise funds for the purchase and development of this park and open space, and

WHEREAS, in June of 2004, the City and CLC entered in a written agreement entitled Memorandum of Understanding setting forth the terms of the relationship between the parties, and on November 1, 2006, CLC paid the sum of \$35,000.00 to the City of Canby pursuant to the Memorandum of Understanding. Thereafter, the City and CLC entered into a second Memorandum of Understanding (MOU II) establishing a timeline and other conditions for the development of the site as a park and open space area. However due to the economic downturn, the financial resources to complete this project has slowed and the CLC will not be able to meet the deadlines for development established in MOU II or those of the subsequent MOU III; and

WHEREAS, and the City and the CLC wish to enter into a fourth written agreement, entitled Memorandum of Understanding IV, to set forth conditions and a new timeline to complete the development of the site, now therefore, the parties to this Memorandum of Understanding agree as follows:

1. The CLC will continue to operate with a steering committee to oversee the development of the open space to be known as the "Canby Green Space and Art Park".

That committee will be made up of members of the Canby community and local organizations and will work in conjunction with the Clackamas County Arts Action Alliance to continue developing the master park design for the Canby Green Space and Art Park.

- 2. The completed master park design shall be presented to the Canby Parks and Recreation Advisory Board for approval and once that approval is obtained, the CLC shall seek to fund the development of the Park.
- 3. The CLC may develop the Canby Green Space and Art Park in phases under the following conditions:
  - a. Phase I shall be commenced no later than May, 2014 and shall be completed no later than October 30, 2014. It shall consist of at least ground preparation and the installation of walkways. The plan for Phase I shall take into account that irrigation will be necessary in the second phase, and shall plan installation of the irrigation system accordingly.

- b. Phase II shall be completed no later than September 30, 2015. It shall consist of an irrigation system, art pieces, structures and plantings.
- c. The entire park shall be completed no later than September 30, 2016.
- d. The CLC shall be responsible for regular maintenance and clean-up of the area beginning upon the date of this agreement.
- 4. The City recognizes the need for flexibility in the development process and will not unreasonably withhold approval of changes in the development blueprint as presented by the CLC and approved by the Parks Board. For instance, if funding becomes available for art pieces during the next two years, they may be installed in Phase I. Questions regarding flexibility issues shall be resolved by the Parks Board.
- 5. Pursuant to Memorandum of Understanding I, the City will fund the first \$3,000.00 of the budget for Phase I of the development of the Canby Green Space and Art Park. The total cost of each phase of development shall be raised in full in advance of any construction on the site.
- 6. In the event the CLC fails to complete Phase I and II as set forth above, the City Council may review the project to determine if it is still viable to continue. If the Council determines the project is no longer viable, or if the CLC indicates it does not wish to continue with the development process, the Council may, in its discretion, cancel the project and either complete it itself, or the City can sell the property. The City will not refund any of the \$35,000.00 donated by the CLC, but said funds may only be used for acquisition and development of other park and open space in the Parks Master Plan

Dated this day of November, 20	13.
IT IS SO UNDERSTOOD AND AGREED:	
On Behalf of the CLC	On Behalf of the City of Canby
On Behalf of the CLC	



# City of Canby Bi-Monthly Report Department: Administration For Months of: September and October 2013

To: The Honorable Mayor Hodson & City Council

From: Kim Scheafer, MMC, City Recorder Prepared by: Erin Burckhard, Office Specialist II Greg Ellis, City Administrator

Date: November 8, 2013

- 1. Business Licenses Thirty-three new business licenses were issued during the months of September & October 2013. This compares to 48 new licenses issued during September & October 2012. Twenty-nine business licenses were inactivated during the months of September & October 2013. This compares to 44 inactivated during the same period in 2012. Two hundred sixteen business license renewals were sent out, compared to 208 in 2012. The total number of businesses licensed with the City of Canby is 1,140 of which 645 have Canby addresses.
- 2. Complaints/Inquiries Nine complaints/inquiries were received during September & October 2013, all of which have been resolved. Seven follow-up cards were mailed and four were returned, all with excellent ratings.

**Cemetery -** Total property purchases recorded: Six

Total interments recorded: Seven

- **3.** Training/Meetings Greg Ellis, Kim Scheafer and Sue Ryan attended the LOC Conference on September 27 and 28. Sue Ryan attended Digital Preservation training, a program of the Library of Congress, at State Archives on October 3, 10 and 31.
- **4.** Special Animal Permits No special animal permits were issued during September & October 2013.
- 5. Sidewalk/Park Vending Permit None.
- **6.** Liquor Licenses Processed Two liquor license applications were processed during this time period.
- 7. **Miscellaneous** The City's electronic newsletter was distributed to 1,181 email addresses in September and 1,181 in October 2013.

#### Canby Urban Renewal Agency Economic Development Department



#### M EMORANDUM

TO: Honorable Mayor Hodson and City Council

FROM: Renate Mengelberg, Economic Development Director

Jamie Stickel, and Main Street Manager

THROUGH: Greg Ellis, City Administrator

RE: BI-MONTHLY STAFF REPORT September – October 2013

ECONOMIC DEVELOPMENT DEPARTMENT

#### **Economic Development Updates**

The following projects are funded through Urban Renewal.

#### **Business Recruitment:**

- A new company, Cascade Engineering Technologies, Inc., is moving into the former Peco Building in the Canby Pioneer Industrial Park now. This rapidly growing company designs, manufacturers and tests complex and high tolerance components for the aerospace industry. The 35 employee company is moving from their current Oak Lodge location into a 34,000 square foot space that is 2.5 times larger in Canby. They will be fully operational in January. The company is well poised for strong growth including adding new equipment, a future building expansion and the potential to have 150 employees over 5 years. Learn more at <a href="http://www.cmm-measure.com/">http://www.cmm-measure.com/</a>
- Site information for five locations was provided to a broker representing a stainless steel tank fabricator now located outside Oregon City.
- A proposal was presented to Project Sparkle a company looking for 10-15 acres to build 200,000 to 300,000 square foot facility.

Canby Industrial Forum -The 2013-14 program launched Wednesday, October 16th with a presentation on "How Managing Safety in the Workplace Can Add to the Bottom Line". American Steel hosted 14 people that represented five Canby manufacturers and provided a tour of their facility. The next forum will be held at Dragonberry Produce in February. Details on this program and PowerPoint presentations from past meetings can be found at <a href="https://www.canbybusiness.com/IndustrialForum.htm">www.canbybusiness.com/IndustrialForum.htm</a>

**Team Track Feasibility Study -** The city received a technical assistance grant to explore the potential of a team track or trans- load facility in the Canby Pioneer Industrial Park. This facility would provide rail access for cargo from Canby businesses and those from surrounding areas. Rail can substantially reduce shipping costs for certain types of products and raw materials traveling over long distances. This study will determine if there is enough demand, what amenities are needed, a development plan and cost estimates. A survey and focus groups with key stakeholders is planned for November 14<sup>th</sup>. The study should be completed in January. If the project proves to be feasible, it would be well positioned for Connect Oregon grant funding for construction.

**Revolving Loan Fund Activity -** The first URA loan was made to help fund the American Legion's extensive \$90,000 façade improvement, new handicapped accessibility ramp and interior lobby updates. The Urban Renewal Commission will receive semi-annual reports on all loan activities in January and June. A reopening celebration is planned on Nov.5<sup>th</sup>.



#### **Video Production:**

- A production company filmed a commercial in Canby High School among other locations on September 28. This is the cities first film and video production since the new policy was adopted. Once post production is completed, the company will provide the commercial to feature on our website. They have expressed interest in using Canby locations for future projects.
- A Canby site was also proposed for the upcoming Reese Witherspoon movie "Wild" but the production company will likely film the Post Office scene in a sound stage instead.

**Expedited Development Review Process Update -** Planning and Economic Development staff submitted a \$40,000 grant request to explore best practices and to streamline the city's development code. The Oregon Department of Land Conservation and Development will make a decision on grant awards in a month. Customer surveys were mailed to 98 development applicants to determine issues, suggestions and areas to focus on. Results will guide next steps in the process. Other streamlining ideas are being explored for implementation regardless of receiving the grant.

**Community Response Team** -The group will meet on November 6<sup>th</sup> to learn more about the Team Track Feasibility Study and new manufacturing initiatives at Canby High School. The next meeting will be held in February.

**Metals Industry Cluster – Next Steps -** Becoming more engaged with the school district was a key action step identified at the summer Metals Summit. In September, the city partnered with the Chamber of Commerce and Canby High School to coordinate tours of six local manufacturers for 60 Canby high school students to celebrate national manufacturing day. Post event surveys showed that it was a good experience for students and companies and all committed to participating again next year. Another step was to have metals manufacturing leaders meet with the School Board to share information about their industry, the job potential and skills needed for students have careers with Canby metals firms. That meeting is planned for November 7<sup>th</sup>. All metals firms were invited to participate.

#### **Main Street Updates**

The following projects are funded through Urban Renewal.

#### Promotion

**Downtown Canby First Friday and Cash Mob**— The September 6<sup>th</sup> and October 4th First Friday programs featured seven and eight businesses respectively. During September and October, vendors were included in the first Friday event, and children's bubbles and chalk were available. In an effort to expand participation, we have eliminated any cost for businesses to be involved and set low rates for vendors. Since August, the First Friday event is being marketed through targeted Facebook advertisements, flyers, and brochures. This new approach was successful in attracting a broader audience including more families and children downtown.

**Kiss Summer Goodbye Party** – The Kiss Summer Goodbye Party was held on Saturday, September 7<sup>th</sup> from 4-8 pm. This event featured 14 vendors selling crafts, food, beverages, etc. The band that performed was Dance Hall Days, a talented group that performed a variety of music to appeal to all ages including country, pop and Motown. Allegro Dance Studio and the Canby Dance Team each performed during the party. The event was family friendly and free to attend. This event brought people to downtown, and will hopefully grow over the coming years.

**Downtown Draw** – The September Downtown Draw featured The Place To Be Café located at 190 NW 2<sup>nd</sup> Avenue. The café offers food and drinks, and serves as a gathering place for the community. The October Downtown Draw focused on CTV5, located at 351 NW 2nd Avenue. CTV5 is a local non-profit that focuses on all things Canby. This effort helps market downtown businesses and focuses on both entertainment and service-oriented businesses. The Downtown Draw article is featured on the Canby Main Street website, on facebook, and in the e-newsletter. This indepth article will spotlight downtown businesses and give a better insight into the businesses and the people who run them.

Canby's Spooktacular Village – The Promotions Committee worked hard to coordinate all of the Spooktacular happenings in downtown Canby for Halloween. This annual event is in its second year and featured a costume parade that began at 4:30 pm at the clock tower in front of Cutsforth's Thriftway. Businesses participated by providing candy for children in costume, decorating windows or dressing up, and this year, an added Scarecrow Contest helped to create even more fun in downtown Canby. Canby Main Street will create and distribute a poster with the entire list of events, including cross promotion with the haunted house located at the fairgrounds. The winners of the contests were: Salon L, best scarecrow; Europa Studio for Hair, best window decorating display; and Place To Be Café, best costume.

#### **Organization**

**Historic Review Board** –The Historic Review Board met on Monday, September 9<sup>th</sup> and October 7<sup>th</sup>. The group received a more in depth survey from Carol Palmer – a new member working with the Canby Historical Society. On September 9<sup>th</sup>, the Historic Review Board went on a walking tour of the downtown historic sites. On October 7<sup>th</sup>, the Historic Review Board met Kuri Gill from the State Historic Preservation Office and discussed the details of the Certified Local Government grant and receive insight and guidance for this newly formed board.

**Parking** – The Parking Task Force met on September 10<sup>th</sup>. The Task Force wanted to do everything possible to create a customer-friendly downtown, including designating more space in the 1<sup>st</sup> Avenue parking lot for business owners, so that the best parking on street spots are available for customers.

**Oregon Main Street Conference** – The Oregon Main Street Conference was held from Wednesday, October 2<sup>nd</sup> until Friday, October 4<sup>th</sup> in Astoria, OR. The conference focused on integrating the Main Street 4-Point approach in communities in Oregon. Walking tours, workshops, and lectures were offered. Attending the conference to learn best practices is required for Canby Main Street's continued participation in the Oregon Main Street program. Canby Main Street won the award for Outstanding Downtown Partnership for the downtown flower basket program.

#### Economic Restructuring

**Business Outreach** – Canby Main Street and the Chamber of Commerce contacted businesses who expressed interest in receiving more help from the Small Business Development Center. Businesses met with Karen Carrol, the SBDC representative on Thursday, September 12<sup>th</sup>. Karen described the services that the SBDC provides and discussed the needs of the individual business. Karen will continue to work with these businesses to address issues and help them thrive.

#### Design

Arts & Culture Action Alliance – The City of Canby is seeking Canby residents to join its newly formed Arts & Culture Action Alliance. The committee will have seven to nine community members focused on encouraging art and culture in Canby. The Alliance will focus on encouraging all forms of public art, bringing public art to downtown Canby, provide recommendations to City Council on public art, and identify funding sources to install art throughout Canby. This may include paintings, sculptures, murals, performance art, rotating galleries incorporated into public places, to name a few. The City of Canby encourages artists, teachers, community members, students and others committed to art and culture to apply for this committee. The Arts & Culture Action Alliance will meet quarterly, or as necessary. The deadline for applications is Monday, November 18<sup>th</sup>. Anyone interested in participating in the Arts & Culture Action Alliance should contact Jamie Stickel, Main Street Manager, at 503.266.0772 or StickelJ@ci.canby.or.us



## **Bi-Monthly Finance Department Report**

**To:** Mayor Brian Hodson & City Council Members

**Through:** Haley Fish, Finance Director Greg Ellis, City Administrator September & October 2013

Compiled by: Suzan Duffy

In addition to providing services and responding to inquiries from both internal and external customers, and performing the tasks listed statistically on the last page, the Finance Department reports the following items of interest this period.

- The majority of effort early this period was toward drafting the Comprehensive Annual Financial Report (**CAFR**) for the final onsite fieldwork which was done in October. The audit firm expects to complete its review of the reports in December. At this time no findings have been identified.
- In Payroll, retroactive checks were manually calculated once the Police contract was finalized in September. The annual **United Way** campaign kicked off with payroll stuffers.
- Significant time was spent analyzing procedures and updating or developing formal procedures for **utility billing and collections processes.** Also, significant time has been spent addressing older account issues that needed further action. Property ownership on several accounts was verified with the Clackamas County Assessor's office. This is significant because account balances are ultimately the property owner's responsibility per the governing ordinance.
- **Successful outcomes** in two utility cases were notable this period. A large property that had been in a bankruptcy reorganization process for several years has sold and the debt cleared. Also, in a multi-property case that went to mediation last January, all terms have been met and accounts have been brought current, some of these balances had been outstanding for several years.

- Several **technical and process improvements** were made this period including:
  - o A review of the cash receipting process at the Swim Center which entailed an analysis of the potential fraud risks to be mitigated through strengthening controls resulting in a better documentation and reconciliation process, and streamlined information flow/filing between the department and finance.
  - o The banking feature Positive Pay was upgraded to include payee identification in the teller line.
  - Utility payments made to the lockbox are now being uploaded to Xpress Bill Pay daily to allow customers to access up-to-date activity online should they choose to sign up for this free service.
- This time of year also trends toward a heavy **training and conference** schedule. Events attended included the League of Oregon Cities conference, the Emerging Local Government Leaders first annual conference and the Oregon Municipal Finance Officers Fall Institute. The Finance Director made presentations at the OMFOA conference and at the Oregon Association of Municipal Recorders conference. Finance staff also took advantage of CPR training and a flu shot clinic set up by Human Resources.

## Statistics this period:

•	Account	s Par	zahle
•	ACCOUNT	o I a i	anic

Invoices:	631
Invoice entries:	996
Encumbrances:	16
Manual checks:	19
Total checks:	412

## • Payroll

Timesheets processed: 430
Total checks and vouchers: 561
New hires/separations: 4/5

#### • Transit Tax Collection

Forms sent:	758
Delinquent notices sent:	17
Non-filed notices sent:	8
Collection notices sent:	4
Accounts sent to collections:	2
Accounts opened/closed:	27/33
Returns posted:	513

## • Utility Billing

Bills sent:	9082
Counter payments:	308
Accounts opened and closed:	194
Lien payoffs:	3
Lien payoff inquiries:	28
Collection notices sent:	55
Accounts sent to collections:	46

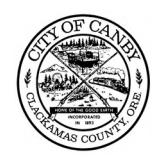
## • General Ledger

Total Journal entries: 237

## • Cash Receipts Processed

Finance:	1072
Utility:	524

## PLANNING & DEVELOPMENT SERVICES SEPTEMBER/OCTOBER 2013 BI-MONTHLY REPORT



TO: Honorable Mayor Hodson and City Council

FROM: Bryan Brown, Planning Director

DATE: November 8, 2013

THROUGH: Greg Ellis, City Administrator

The following report provides a summary of the Planning and Development Services activities for the months of September and October, 2013. Please feel free to call departmental staff if you have questions or desire additional information about any of the listed projects or activities. This report includes planning activities, a listing of land use applications and building permit site plan review coordination projects.

## **Planning Activities**

- 1. North Redwood Master Plan. A competitive TGM Grant application to secure planning assistance on the north Redwood Master Plan area within the Urban Growth Boundary, that is likely to see pressure towards annexation in the near future, was awarded to the City. Staff is working with the ODOT grant project manager to determine the final scope of work, strategize the appropriate approach to the project, and set a project schedule.
- 2. Dog Park. The existing water well on the property has now been decommissioned. The City is moving forward soon with removal of the existing house on the property after having received 3 estimates. The dog park design is now essentially completed. Staff is now seeking additional grant funding sources in order to fully fund the current design.
- **3. Northwoods Park.** Construction is in its final stage with completion within a month. Signage for the park and the planned restroom facility are separate projects to come later.
- 4. NE Canby Master Plan. The current draft plan is to be revised to gain consensus on a new land use/zoning scheme around a new industrial access route to 99E. Staff has been exploring alternative access from OR 99E with property owners. This project is on hold while we work to establish the final detailed scope of work and schedule for the new North Redwood Master Plan.
- 5. Buildable Land Analysis. Senior Planner has begun the data analysis to identify and map re-developable and infill potential, current vacant parcels, and determine need for each land use type for next 20 year period based on the new population projection completed for the City. Staff is preparing for a future joint Council/Planning Commission work session to explain the infill and redevelopment assumptions which will be the basis for determining current land capacity.
- 6. Industrial Rail Spur (Team track). Senior Planner and economic development

- director are working with the grant consultant on the grant funded feasibility study.
- 7. New Tree Ordinance. The Council approved an amendment to Chapter 12.32 Tree Regulations of the Canby Municipal Code which provided a new method of handling the installation of street trees with new development, provided for a street tree planting and maintenance policy document, and established a new official Street Tree List.

## **Land Use Application Activity**

PRA 13-07	Will Snyder/ White River Homes	Pre-application for N Pine St. Beck property 19 lot Residential Subdivision	1732 N Pine Street
MOD 13-06	Wayman Layman/ Canby High School	Site & Design Review Modification for Girls Softball Concession, Restroom and Dugouts on High School Campus	721 SW 4 <sup>th</sup> Ave
MOD 13-07	David Edwards/ SOS Lock Service	Modification for Commercial Garage Addition	906 S. Ivy Street
MLP 13-02	Lindsay Schloeder/ Gorilla Capitol	Minor Partition to create two separate parcels	341 N. Cedar Street/ 347 N. Cedar Street
DR 13-02	Jennifer Kimura/ VLMK Engineering	Site & Design Review for Pro-Active Sports Warehouse Addition	155 Hazel Dell Way
LLA 13-01	Ronald Tatone	Lot Line Adjustment to adjust lot lines between two adjacent properties	1155 N. Locust Street/ 1127 N. Locust Street
TV 12-04	Jason Padden/ Canby Lions Club	Temporary Vendor Permit for Christmas Tree Sales Lot	NE/corner N Ivy St. & NE 2 <sup>nd</sup> Avenue
PRC 13-02	Jennifer Kimura/ VLMK Engineering	Pre-Construction Conference for Bowen Gravel Storage Yard	155 SE Hazel Dell Way

#### 8. Pre-Application Conference(s) Held:

 Will Snyder with White River Homes submitted a pre-app for a 19 lot Residential Subdivision on an R-1 Low Density Residential zoned 5 acre property that was annexed into the City in 2009 at 1732 N Pine Street.

#### 9. Land Use Applications Submitted September 1 through October 31, 2013:

 Wayman Layman, on behalf of Canby High School, submitted a Minor Modification for improvements to the girls' softball sports complex with a new concession/restroom building with 2<sup>nd</sup> story news reporter perch and new dugouts with a home team room on the south end of the High School campus

- near 13<sup>th</sup> Avenue.
- David Edwards with SOS Lock Service submitted a Minor Modification to add a garage/shop to his recently converted office use on the property at 906 S. Ivy Street.
- Lindsay Schloeder with Gorilla Capitol submitted a Minor Partition to divide an R-2 High Density Residential Zoned property which is already fully developed with 2 homes into two separate parcels at 341 and 347 N. Cedar Street.
- Ronald Tatone submitted a Lot Line Adjustment to adjust the lot lines between two adjacent properties allowing an additional means rear property access for the properties at 1155 N. Locust Street and 1127 N. Locust Street.
- Jason Padden, representing the Canby Lions Club submitted an annual Temporary Vendor Permit for the operation of seasonal Christmas Tree Sales at the NE/corner of N Ivy Street & NE 2<sup>nd</sup> Avenue.
- **10. Pre-Construction Conference(s) Held:** A pre-construction conference was held to approve the construction plans for the Bowen gravel storage yard located behind the Bowen manufacturing building at 155 SE Hazel Dell Way.

#### 11. PC Meeting Items Reviewed:

- Bristol Minor Partition at the NW/corner of N Maple & NE 10<sup>th</sup> Avenue was approved with a modification that eliminated one of the 3 parcels originally proposed.
- Draft Street Vendor Ordinance after two meetings of discussion around requests staff has received to accommodate permanent options for mobile type vendors and a unique mobile manufacturing production unit that Planning Commission directed staff to explore possible options for the later and voted to Table further consideration of the draft Street Vendor ordinance at this time.

## 12. Action on Fred Meyer Appeal to Council and LUBA Remand:

- The City Council made an oral decision at a public hearing to approve the all 3
  reconsolidated land use applications which comprise the proposed Fred Meyer
  fuel facility at the SW/corner of SE Locust Street & Hwy. 99E including and
  appeal of the Planning Commission's decision to approve the Site & Design
  Review and the further analysis and findings addressing the LUBA remand
  issues.
- The Council also passed amendments to Chapter 32 of Canby Municipal Code amending the Tree Regulations, adopting a Street Tree Planting and Maintenance Policy, and a new official Street Tree List.
- The Council acknowledges a 1 year renewal of the building program contract with the Clackamas County building codes division.

## Site Plans Reviewed for County Building Permit Approval

## September and October 2013

SP 13-70	VLMK	Gavel Outdoor Storage Yard	155 S Hazel Dell
SP 13-71	Potters Industries	Tenant Improvement	350 NW Bakers Dr
SP 13-72	Canby School District	Concession Stand and Dugouts	721 SW 4 <sup>th</sup> Ave
SP 13-73	Scott Steele	Detached Garage in rear yard	713 N Ash
SP 13-74	Zimmer Ventures	Restroom in Suite B	195 S Hazel Dell
SP 13-75	Egli / Jordans/VLMK	Shed on the back of property	645 N Ivy St
SP 13-76	Pacific Life Style Homes	Single Family Residence	1371 N Fir St
SP 13-77	White River Homes	Single Family Residence	149N Elm St
SP 13-78	Nature's Pet	Tenant Improvement	195 S Hazel Dell
SP 13-79	Mark Callahan	Garage Conversion	1478 N Locust
SP 13-80	Canby HS	Safety Netting along 13 <sup>th</sup>	721 SW 4th
SP 13-81	SMS Auto Fabric	Warehouse	350 S Redwood
SP 13-82	Crystal Park Construction	Single Family Residence	1475 N Fir St
SP 13-83	Pacific Lifestyle Homes	Single Family Residence	1481 N Fir St
SP 13-84	SOS Locksmith	Garage Addition	906 S Ivy St
SP 13-85	Crisp Homes	Single Family Attached Residence	814NW 1 <sup>st</sup>
SP 13-86	Crisp Homes	Single Family Attached Residence	816 NW 1 <sup>st</sup>
SP 13-87	Egli / Jordan	Concrete Pad in Back Yard	645 N Ivy St
SP 13-88	Verizon Cell Tower	Modification of existing facility	1233 SE 1 <sup>st</sup> Ave
SP 13-89	Jeff & Shirley Hollar	Single Family Residence	1541 N Oak St

## Sign Applications Reviews for July and August 2013

SN 13-14	Marguis Hope Village	Monument Sign	1535 S Ivy St
SN 13-15	Backstop Bar & Grill	Oregon Lottery Sign	211 N Grant St
SN 13-16	Clark Signs	Move Existing Pole Sign	489 S Hwy 99E (SW 1st Ave)
SN 13-17	Marvel's Lone Elder Pizza	Lone Elder Pizza	207 SW 1st Ave
SN 13-18	Canby Eyecare	Monument Sign	364 N IVY ST

## **Active Permit Finals by Clackamas County 2013**

#### September

- ♣ Single Family Residence Crystal Park Construction
- ♣ Commercial Façade Improvements Advantage Mortgage
- ♣ Single Family Residence White River Homes
- Single Family Residence Brian Lisac, LBC

Residential Garage Conversion

### October

- Tenant Improvement Canby Transit CenterTenant Improvement Canby Center
- Remodel Medical Center
- ♣ Addition of Windows in Residential Dwelling
- ♣ Interior Residential Remodel
- ♣ Screening Wall for Loading Bay Wilco



## City of Canby Bi-Monthly Report Department: Police September-October 2013

To:

The Honorable Mayor Hodson & City Council

From: Date:

Chief Bret Smith November 8, 2013

### **Monthly Stats**

Description	August	Sept.
Calls for Service	1318	1374
Custodies (Adult and Juvenile)	59	33
All Incident Reports	244	240
Traffic Citations	310	279
Parking Citations	0	0
False Alarm Calls	36	0
Abandoned Vehicle / Parking Complaints	28	31
Animal Complaints	11	0
Other Ordinance Viol. Complaints	6	5
Total Code Enforcement Calls for Service	32	43

Note: Monthly statistics behind the bi-monthly reporting period to capture more statistics.

### Meetings & Events Attended - Chief Smith / Lt. Tro

- Monthly Police Chiefs Milwaukie PD
- Community Emergency Management Workshop
- Terrific Kids Awards Eccles Elementary School
- Lt. Testing & Interview Panel Gladstone Police Dept.
- Metro Gang Task Force Mtg. Beaverton PD
- Sergeant's Assessment/Interview Process Molalla PD
- Clackamas County Mid-Managers
- Rotary Annual Auction Clackamas County Fairgrounds
- Leadership Academy Sherwood PD
- Lockdown Procedures Exercise Baker Prairie Middle School
- Canby Youth Center Mtg.
- Canby Area Chamber of Commerce Luncheon
- Canby Rotary Lt. Tro
- Internal Affairs Training Marylhurst University
- Chief Jim Pryde Gladstone PD
- Brian Schmautz Clackamas County DA's Office
- Coffee for a Cure Human Bean
- Canby Adult Center lunch service Monthly
- Michael Whetsone CopDots Program
- All Hands Meeting Willamette Valley Country Club
- Loomis & National Armored Car Training Portland
- C800 Meeting / Fire & Law Services (CCOM Clackamas County Dispatch)

- Clackamas County Communications (CCOM 911) Users Monthly
- Capt. Dave Rash Oregon City PD
- Davies Clinic Open House Canby
- Halloween Parade Thriftway Canby
- Sgt. Kollias Clackamas County SO Lethality Screen presentation
- Chief Rod Lucich Molalla PD

Detailed reports for specific departmental programs are attached, submitted by the program supervisor.

### **Detective Sergeant Canby Police**

### Memo

To: Lieutenant Jorge Tro

From: Detective Sergeant Frank Schoenfeld

Date: November 5th, 2013

Re: Monthly Report for October 2013

### Meetings:

10/22/13 - MCT Supervisors Meeting at Milwaukie PD

### Training:

None for October 2013

\*\*\*See individual monthly reports attached for training and meetings attended by detectives, Evidence Technician, and SRO.\*\*\*

During the month of October I was away on funeral leave. This month investigative time was committed to an Internal Affairs investigation conducted for Gladstone Police Department. This I.A. involved 8 interviews, the forensic examination of 1 cell phone, and 4 computers.

Canby Police detectives observed a known Canby Heroin dealer doing hand-to-hand drug sales in the Clackamas area. Shortly after this first surveillance, this particular heroin dealer was observed again on two different occasions, conducting heroin sales to a couple of more local heroin users at the Canby Fred Meyer parking lot. Subsequently both buyers were arrested by Canby Police detectives and turned into informants that were used to conduct controlled heroin purchases from the suspect. The Suspect was arrested after a buy-bust with the first testifying informant.

After the suspect had been lodged on the first buy-bust, the suspect again contacted the second testifying informant and a second buy-bust was executed at a local Canby gas station after the suspect again delivered heroin. The suspect was finally lodged at the Clackamas County on 5 counts of DCS and 5 counts of PCS. Detectives also seized \$500.00 in cash which was also seized and forfeited through our civil process.

This case has had a very positive effect on our community because this suspect was selling small, user-amounts of heroin to a very large number of suspects in our city.

At the beginning of the month, detectives had started an investigation into a heroin dealer known to us only has "Rhonda." Rhonda was selling heroin to a known heroin dealer in Canby. This Canby suspect was arrested and detectives were only able to get one controlled purchase completed before the informant became unreliable. The informant was eventually arrested and the decision was made to arrest Rhonda as she was making her rounds to many of her heroin dealers in Northwest Portland. On 10/22/13 detectives followed Rhonda and arrested her while she was supplying heroin. Detectives seized 3 eight-balls of heroin from Rhonda. Detectives also seized \$2,700.00 of drug proceeds which was turned over to County Counsel or civil forfeiture to CPD. Rhonda was lodged for PCS/DCS-heroin.

See Evidence Technician Don Hemstreet's monthly totals, Detective Ethington's monthly report/case status, and SRO Larrison's monthly stats attached.

To: Lt. Tro

From: Sgt. Kitzmiller

Date: 11-03-13

Re: Oct '13 Monthly Report

**Tactical Entry Team** 

TET did not serve any search warrants or conduct training during the month of October.

**Training** 

See the attached training schedule for additional individual officer training.

Respectfully,

Sgt. Doug Kitzmiller

### **SCHEDULED TRAINING**

October 2013

		0000001 =0.0	
Mead	Oct 14	Creating a High Performing Organization	Milwaukie
Smith Tro Sommer Kitzmiller Schoenfeld Green Warren	Oct 10	Internal Affairs: Start to Finish	Lake Oswego
Larrison Kitzmiller	Oct 22	Clackamas County Threat of Harm Procedures	Clackamas County Juvenile
Scharmota	Oct 28-30	Scenario Facilitator & Role Player	DPSST

### November 2013

Murphy	Nov 4-8	FTEP	OLCC
All Officers	Nov 13 & 20	Department Firearms Training (night Shoot)	CRGC
M. Smith	Nov 13-15	Firearms Instructor Update	Tri-County Gun Club
All Officers	Nov 22-27	ORPAT	Canby PD

### December 2013

All Officers	Dec 3-5	MILO / Con Sim	Canby PD	
Kitzmiller	Dec 9-13	NRA Patrol Rifle	DPSST	
Koehnke Krupicka	Dec 10-12	Commercial Vehicle Drug Interdiction	DPSST	
Hemstreet	Dec 17-19	Footwear & Track Evidence	PSTC	
Macom Farmer Dec 20		Advanced Report Writing	Salem	

### **SCHEDULED TRAINING**

September 2013

Hemstreet	Sept 10-12	DNA Evidence for Investigators	Salem	
All Officers	Sept 11	Department Firearms Training	CRGC	
Holstad	Sept 17	ODOT Truck Inspection Training	Portland	
Kitzmiller Larrison Ethington Schoenfeld Christman Fetters		DPSST Firearms Instructor Update	CRGC	
Floyd	Sept 25-27	2013 OHIA Major Crimes Conference	Bend	
Murphy Koehnke Sept 30		Mobile Video for DUII	Portland	

### October 2013

Farmer Mead	Oct 1	Creating a High Performing Organization	Milwaukie
Smith Tro Sommer Kitzmiller Schoenfeld Green Warren	Oct 10	Internal Affairs: Start to Finish	Lake Oswego
Wallbaum	Oct 21-25	FBI Basic HNT Course	Brooks, OR

### November 2013

All Officers	Nov 13 & 20	Department Firearms Training	CRGC	

### December 2013

Hemstreet	Dec 17-19	Footwear & Track Evidence	PSTC	
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# Canby Police Department Monthly Traffic Report

### 10/02/2013

### Officer Jeremy Holstad

### Report for month of August 2013

### **Citations**

Patrol Officers: 243 **Traffic Officers:** 67 **Total Citations for August:** 310 **DUII ARRESTS** Patrol Officers: Traffic Officers: 3 0 Total DUII for August: 3 **Traffic Crimes** Patrol Officers: 10 Traffic Officers: 0 Total Traffic Crimes for August: 10 **Traffic Complaints** Patrol Officers: Traffic Officer: 0 0 Total Traffic Complaints for August: 0 **Traffic Crashes** Traffic Officers: Patrol Officers: 6 2 Traffic Crashes injury: 2 Traffic Crashes parked: 6 Total Traffic Crashed for August: 8 **Truck Inspections** 

Traffic Officer:

13

### K9 Activity Report September 2013

Handler

Tim Warren

Dog

Freddy

Month

September 2013

### Training days:

09-02-13	County Shops	4 hrs
09-09-13	Canby	4 hrs
09-16-13	Canby	4 hrs
09-22-23-24-25	Medford Conference	36hrs

185 hrs YTD

Call outs:

DATE AREA/CRIME

CASE#

**AGENCY** 

DISPOSITION

No narcotic deployments for September

16 out of 20 K9 searches resulted in narcotic finds = 80% find ratio for this year. (Meaning 16of 20 searched have yielded a narcotic find & 4 yielded nothing)

Needs / Concerns / upcoming:

None

### K9 TRAINING MONTHLY 09-2013

Handler

OFC Farmer 32609

Dog

Deorak

Month

09-01-2013 to 09-30-13

### Training hours:

09-03-13 4 hours training with CCSO @ Roberts Field

09-10-13 4 hours training with CCSO @ Canby Shops

09-17-13 4 hours training with CCSO @ Canby Shops

09-22-13 2 hours training and standards test at Medford

09-23-13 8 hours training guest speaker over containment

09-24-13 8 hours training field work with K9

09-25-13 8 hours training field tests/exercises with K9

### Hours 38.00

### Care and Maintenance for Deorak

### 15.00 hours

### Call outs for Canby:

1. 13-1908 Alarm cad 491 search of business with fence cut in two places and a history of a previous burglary. 09-07-2013

### Call outs for outside agencies:

1. Oregon City 13- 1865 cad 73 report of burglary possible suspect inside residence. K9 search no suspect located inside house. 09-03-13

### Total hours with training and care to date:

TOTAL HOURS TO DATE: 299.60

### August 2013 Monthly K9 Report

Prepared by Sergeant Tim Warren Tuesday September 3<sup>rd</sup> 2013

<u>K-9 Activity</u> – K9's assisted patrol and detectives in taking suspects in custody and locating narcotics.

### **MONTHLY SUMMARY:**

Officer Warren / Freddy – Two Narcotic K9 deployments in August. Both were Detective search warrants consisting of three separate dwellings to be searched. All searches yielded narcotic finds.

<u>Officer Farmer / Deorak</u> –Two deployments in August. First was on a domestic assault where the subject was located and taken into custody. The second was a Felony warrant service where the subject surrendered and was taken into custody without injury.

### Concerns / goals

Both K9's need to re-certify prior to end of September, arraignments have been made. Fall K9 conference is scheduled in Medford in September.

To: Lt. Tro

From: Sgt. Kitzmiller

Date: 10-06-13

Re: Sept '13 Monthly Report

**Tactical Entry Team** 

TET did not serve any search warrants or conduct training during the month of September.

**Training** 

On September 11<sup>th</sup> Det. Smith and Officer Fetters conducted department firearms. The focus of the training was basic handgun fundamentals.

September 24-26<sup>th</sup> I hosted a DPSST Firearms Instructor Update Course at Canby Rod and Gun Club. Det. Ethington, Officer Fetters, Officer Larrison, Officer Christman, and I attended the training. The course covered the current curriculum and instructor techniques for the handgun fundamentals that are currently being taught to recruits at the basic academy. We also covered advanced instructor tips for dealing with problem shooters. The instructors also spent a significant amount of time covering the manipulation and use of the patrol rifle.

(See the attached training schedule for additional individual officer training).

Respectfully,

Sgt. Doug Kitzmiller

### October 2013 Monthly K9 Report

Prepared by Sergeant Tim Warren Wednesday November 6<sup>th</sup> 2013

<u>K-9 Activity</u> – K9's assisted patrol, detectives, and outside agencies with K9 searches.

### **MONTHLY SUMMARY:**

Officer Warren / Freddy – One deployment, vehicle search for CPD detectives. K9 located Heroin in two locations.

<u>Officer Farmer / Deorak</u> – Five deployments, 3 were for Canby. Officer Farmer and Deorak assisted PPB on a burglary for Officer Safety. Assisted OCPD on a building search for Officer Safety. For Canby Deorak searched a building on an alarm, a house for an open door, and under a house for a wanted subject who eluded officers. No subject were located.

### Concerns / goals

None

### K9 TRAINING MONTHLY 10-2013

Handler

OFC Farmer 32609

Dog

Deorak

Month

10-01-2013 to 10-31-13

### Training hours:

10-08-13 4 hrs K9 TRN WITH CCSO @ CANBY GROVE CANBY

10-15-13 4 hrs K9 TRN WITH CCSO @ RSG LUMBER MILL ESTACADA

10-22-13 4 hrs K9 TRN WITH CCSO @ OREGON CITY HIGHSCHOOL

10-29-13 4 hrs K9 TRN WITH CCSO@ CLACKAMAS FIRE TRAINING CNTR

### Hours 16.00

### Care and Maintenance for Deorak

### 15.30 hours

### Call outs for Canby:

- 1. 13-2135 CAD 53 10-07-13@1404 7<sup>TH</sup> ST OREGON CITY BUILDING SEARCH NO SUSPECT LOCATED OFFICER SAFETY SEARCH K9- SEARCH FOR **OREGON CITY POLICE**
- 2. 13-2180 CAD 349 10-13-13@ 101 N ELM ST CANBY BUILDING SEARCH ON AN ALARM TO BUSINESS. NO SUSPECT LOCATED -SEARCH DONE FOR CANBY POLICE
- 3. 13-2181 CAD 248 10-14-13@ 207 N MAIN ST BARLOW SEARCH UNDER RESIDENCE FOR WANTED SUBJECT IN AN ELUDE. NO SUSPECT LOCATED- SEARCH DONE FOR **CANBY POLICE**
- 4. 13-2184 CAD 56 10-14-13@ 7705 SE DIVISION ST PORTLAND BUILDING SEARCH OF BREAK IN TO PARMACY. NO SUSPECT LOCATED OFFICER SAFETY SEARCH-SEARCH DONE FOR **PORTLAND POLICE**.
- 5. 13-2228 CAD 451 10-21-13@ 1455 S BIRCH CT CANBY OPEN DOOR TO RESIDENCE RP CALLED IN K9 SEARCH OFFICER SAFETY WITH NO SUSPECT LOCATED- SEARCH DONE FOR CANBY POLICE

### Total hours with training and care to date:

**TOTAL HOURS TO DATE: 330,90** 

### Canby Swim Center Report

**From:** Eric Laitinen, Aquatic Program Manager

Date: November 8, 2013

**Re:** Bi-monthly Report

The Canby Swim Center is now open again for business and the pool looks great. Actually we opened September 16<sup>th</sup> and everything looks amazing. This year is going pretty well although with a short summer and a long close we are a bit behind on revenue and attendance. Revenue is down a total of \$7,900 for the year and attendance is down 1,900 swims. We should make up some of these at the end of the year as our summer schedule will begin a little earlier with the current school schedule plan.

Competitive swimming is a big part of the winter programs. The Canby Gators are back in the water and have had an away meet two home meets. The first was an away meet in Hood River then there was an intra-squad meet that was held in practice, and thirdly Canby hosted a dual meet with Forest Grove. The swimmers swam many best times and are off to a great start to the season. The Canby Master Swimmers seem to be gaining some steam and building their numbers. They are preparing for their first meet of the season this month at Tualatin hills. The Canby High School team will be getting going later this month and then competitive swimming will be in full swing.

Swimming lessons, public swims, lap swims and water exercise continue throughout the year. Times do change seasonally and we will change to our winter schedule on November 18<sup>th</sup>. It is holiday time again and that means it is times to help out the community. We are offering our free admission for public & lap swims November 1<sup>st</sup> to December 10<sup>th</sup> with two cans of food or a new unwrapped toy for the Kiwanis food and toy drive. This has been a very popular offer in the past and we are excited to be able to help out.

FROM: ERIC LAITINEN, AQUATIC PROGRAM MANAGER SUBJECT: Attendance Numbers for SEPTEMBER 2013

DATE: November Report 2013

CANBY SWIM CENTER	ADMIT	ADMIT	PASS	PASS	TOTAL	TOTAL	TD TOTA	TD TOTAL
								13-14
September 2013	2012	2013	2012	2013	2012	2013	12-13	13-14
MORNING LAP	55	29	151	178	206	207	922	755
ADULT RECREATION SWIM	28	14	384	228	412	242	1769	1253
MORNING WATER EXERCISE	49	23	229	171	278	194	970	1001
PARENT/ CHILD	108	58	0	0	108	58	800	478
MORNING PUBLIC LESSONS	48	48	0	0	48	48	3436	3309
SCHOOL LESSONS	0	0	0	0	0	0	0	0
NOON LAP	58	51	133	130	191	181	631	644
TRIATHLON CLASS	0	0	0	0	0	0	0	0
AFTERNOON PUBLIC	131	49	5	7	136	56	1899	1650
PENGUIN CLUB	0	0	0	0	0	0	1043	1169
CANBY H.S. SWIM TEAM	0	0	0	0	0	0	0	0
CANBY GATORS	0	0	436	463	436	463	1354	1649
MASTER SWIMMING	5	0	20	0	25	0	141	0
EVENING LESSONS	369	514	0	0	369	514	2878	3161
EVENING LAP SWIM	53	31	43	45	96	76	520	362
EVENING PUBLIC SWIM	270	64	16	7	286	71	2077	1345
EVENING WATER EXERCISE	62	29	31	26	93	55	373	317
ADULT LESSONS	25	0	0	0	25	0	25	0
GROUPS AND RENTALS	279	113	0	0	279	113	572	527
KAYAK	0	0	0	0	0	0	0	0
OUTREACH SWIMMING	0	0	0	0	0	0	488	516
TOTAL ATTENDANCE	1,540	1,023	1,448	1,255	2,988	2,278	19898	18136

FROM: ERIC LAITINEN, AQUATIC PROGRAM MANAGER

SUBJECT: Attendance Numbers for October 2013

DATE: November Report 2013

CANBY SWIM CENTER	ADMIT	ADMIT	PASS	PASS	TOTAL	TOTAL	TD TOTA	/TD TOTAL
October 2013	2012	2013	2012	2013	2012	2013	12-13	13-14
October 2013	2012	2013	2012	2013	2012	2013	12-13	13-14
MORNING LAP	56	34	266	333	322	367	1244	1122
ADULT RECREATION SWIM	26	24	521	475	547	499	2316	1752
MORNING WATER EXERCISE	71	57	356	476	427	533	1397	1534
PARENT/ CHILD	132	118	0	0	132	118	932	596
MORNING PUBLIC LESSONS	93	68	0	0	93	68	3529	3377
SCHOOL LESSONS	0	0	0	0	0	0	0	0
NOON LAP	95	93	254	254	349	347	980	991
TRIATHLON CLASS	0	0	0	0	0	0	0	0
AFTERNOON PUBLIC	155	126	7	2	162	128	2061	1778
PENGUIN CLUB	0	0	0	0	0	0	1043	1169
CANBY H.S. SWIM TEAM	0	0	0	0	0	0	0	0
CANBY GATORS	0	0	1127	1029	1127	1029	2481	2678
MASTER SWIMMING	24	0	24	30	48	30	189	30
EVENING LESSONS	1149	997	0	0	1149	997	4027	4158
EVENING LAP SWIM	87	65	35	65	122	130	642	492
EVENING PUBLIC SWIM	154	240	39	12	193	252	2270	1597
EVENING WATER EXERCISE	62	62	37	48	99	110	472	427
ADULT LESSONS	25	0	0	0	25	0	50	0
GROUPS AND RENTALS	305	307	0	0	305	307	877	834
KAYAK	0	0	0	0	0	0	0	0
OUTREACH SWIMMING	0	0	0	0	0	0	488	516
TOTAL ATTENDANCE	2,434	2,191	2,666	2,724	5,100	4,915	24998	23051



September and October, 2013 Monthly Reports

Fleet Service – Joe Witt Parks Department – Jeff Snyder Public Works – Jerry Nelzen

### Fleet Services

Bi-Monthly Report: September / October 2013

Prepared by Joe Witt, Lead Mechanic

### September 2013

	Work	•			
Department	Orders	Labor Cost	Material Cost	Fuel Cost	Total Cost
Administration	1	\$165.00	\$5.50	\$27.50	\$198.00
Adult Center				\$489.55	\$489.55
Collections	5	\$881.25	\$290.25	\$375.89	\$1,547.39
Facilities	1	\$153.75		\$86.96	\$240.71
Fleet Service				\$200.73	\$200.73
Parks	8	\$2,351.25	\$651.01	\$1,109.00	\$4,111.26
Police	23	\$7,091.25	\$2,844.67	\$6,057.18	\$15,993.10
Streets	9	\$4,721.25	\$1,287.44	\$2,192.27	\$8,200.96
Transit (CAT)	20	\$13,148.25	\$5,444.94	\$6,645.28	\$25,238.47
Wastewater Treatment	3	\$821.31	\$270.56	\$514.76	\$1,606.63
Total Work Orders					
Processed for the					
Month	70		Totals*		\$57,826.80

<sup>\*</sup>Total includes labor, materials and fuel for all departments:

### October 2013

	Work	_			
Department	Orders	Labor Cost	Material Cost	Fuel Cost	Total Cost
Administration	2	\$120.00	\$60.28	\$66.99	\$247.27
Adult Center	1	\$453.75	\$260.36	\$512.95	\$1,227.06
Collections	4	\$1,091.25	\$1,947.99	\$202.42	\$3,241.66
Facilities	1	\$112.50	\$146.65	\$103.92	\$363.07
Fleet Service				\$69.82	\$69.82
Parks	7	\$1,848.75	\$1,035.68	\$969.95	\$3,854.38
Police	29	\$7,331.25	\$2,118.78	\$6,005.09	\$15,455.12
Streets	13	\$3,375.00	\$1,124.69	\$2,497.02	\$6,996.71
Transit (CAT)	26	\$8,640.00	\$979.67	\$8,567.55	\$18,187.22
Wastewater Treatment	8	\$4,196.25	\$1,271.59	\$336.36	\$5,804.20
Total Work Orders					
Processed for the					
Month	91		Totals*		\$55,446.51

<sup>\*</sup>Total includes labor, materials and fuel for all departments:

### Fleet Service Highlights

Fleet Service working with other City Departments kept the City's vehicles and equipment on the road performing their duties.

#### **Parks Maintenance**

By Jeff Snyder, Parks Maintenance Lead Worker September – October 2013

### **Park Renovations**

CR Woods Trucking and Excavation Inc. have been working on the Northwood Park playground project. Work resumed at Northwoods the middle of September once the approved equipment started to arrive. The project is on schedule and is going to be a nice addition to the neighborhood. Substantial completion of the project should be before the January 2<sup>nd</sup> deadline. Ben volunteered his time to work on the Veterans Memorial installation of the five new flag poles that fly the five branches of the armed force at the Vietnam Era Memorial. The only update I have for the proposed Dog Park is that the old well has been located and the well head has been exposed and decommissioned.

### **Park Maintenance**

The mowing of turf areas started to slow down by the end of October. The focus of staff started to change from mowing and turf maintenance to shrub bed maintenance, tree trimming and tree removal. Leaf and storm debris removal was also in full swing by the start of autumn. Building maintenance repairs were made and the irrigation systems were adjusted to the cooling weather and then shut off by the end of October. All the parks assets have been winterized for the year and needed repairs were made to ensure a smooth restart this next spring. All the open areas and right- of- ways received their final boom mowing by the end of October. All the playgrounds received a bi-annual inspection and needed repairs were addressed after a full summer of use. The Parks Department spent 2 hours addressing graffiti and vandalism the last two months. Regular maintenance was performed at the 30 areas the Parks Department is responsible for, the Adult Center, Arneson Gardens Horticultural Park, Baker Prairie Cemetery, City Hall, Community Park (River), CPIP sign, Eco Park natural area, Faist V property, Holly & Territorial welcome sign property, Hulbert's welcome sign property, Klohe Fountain, Library, South Locust Street Park, Logging Road Trail and Fish Eddy/Log Boom property, Maple Street Park, Nineteenth Loop Natural area, Northwood Estates Park, Police Department landscaping, Simnitt Property, Skate Park, Shop Ground, Swim Center, Legacy Park, Territorial Estates Future CLC Park, Transit Building, Transit Bus Stop, Triangle Park, Vietnam Era Veterans Memorial, Wait Park & Willow Creek Wetlands.

### Meetings attended

I attended a Lead workers meeting with Mr. Ellis and a meeting with HR Director Ms. Zeiber regarding a natural area maintenance question at Willow Creek.

I attended the Park and Recreation Board meeting.

I met with Mr. Ellis and was requested to draft an addendum addressing the maintenance needs of the Veterans Memorial site.

We all attended First Aid, CPR and AED training.

I met with Mr. Ellis and received my annual evaluation.

I met with Ken Daniels and gave him his annual evaluation.

I met with Jerry Nelzen to discuss future maintenance of the easement @ the Sequoia Parkway Bridge.

### **For your Information**

The Parks Department is responsible for 200 acres of property.

I continue to assist Russ Hall the project manager for Wilderness International. Russ runs a Youth Conservation Corps. wetlands restoration project at Community Park.

More land has been reclaimed from the briers on the North end of the Molalla forest Rd. path.

Department: <u>PUBLIC WORKS</u>

Date: September 2013 Prepared by: Jerry Nelzen

### 1. Streets:

During the month of September the Public Works crew removed a beaver dam at Willow Creek, removed hanging baskets from NW 1<sup>st</sup> and 2<sup>nd</sup> Avenues, trimmed all the landscape on NE 2<sup>nd</sup> Avenue and Cinema parking lot and restriped crosswalks around town and installed new crosswalk signage.

The crew received and located 83 locates for September.

Streets	Total Hours
Street Sweeping	87
Street Maintenance	304.5
Street Sign Manufacturing	7
Street Sign Maintenance	2
Street Sign Installation	5
Banners	3
Street Lights	9
Tree Trimming	75.5
Tree Removal	43.5
Dump Truck Usage	2

### 2. Sewer and Storm System:

The crew cleaned sewer main at the 1400 block of N Fir Street and repaired sewer lateral at 401 N Cedar Street. Cleared catch basin of debris on NE 30<sup>th</sup> Place and during the torrential down pours at the end of September.

Sewer	Total Hours
Sewer Laterals	5
Sewer Maintenance/Repair	70
Sewer TVing	21
Sewer Laterals	59
Lift Station Maintenance	4
Locating Utilities	81.5
Vactor Usage	4
Drying Beds	15
Storm	
Catch Basin Maintenance	11.5
Storm Line Maintenance/Cleaning	5
Drying Beds	13

### 3. Street Sign/Trees/Lights:

The crew trimmed tree limbs out of the right-of-way and removed (4) trees and installed new street signage around town. The crew assisted in the cleanup of a hazardous tree at Community Park. The crew fixed or repaired 4 street lights for May.

### 4. Miscellaneous:

Helped Swim Center during their yearly maintenance program. Put out barricades for Main Street Manager for "End of Summer" event at Wait Park.

Miscellaneous	Total Hours
Meetings	43
Warehouse Maintenance	1.5
Equipment Cleaning	10
Work Orders	36
Other	9
NW 1 <sup>st</sup> Ave & NW 2 <sup>nd</sup> Ave Irrigation	3
GPS Mapping	12
Leaf Disposal Site	12
Roadway Clearing at WWTP	24

### October 2013

### 1. Streets:

The Street Department removed and installed banners on NW 1<sup>st</sup>, NW 2<sup>nd</sup> and around the cinema for the Economic Development and Main Street Departments. Painted curb lines on N Cedar Streets between NW 2<sup>nd</sup> and NW 3<sup>rd</sup> Avenues for the Police Department. Moved furniture for City Hall and moved the entire office of Canby Transit to their new location at the Wilco Farms Store Complex. Removed graffiti from the SE 4<sup>th</sup> Avenue Bridge and repaired several potholes.

The crew received and located 83 locates for October.

Streets	Total Hours
Street Sweeping	124.5
Street Sweeping Maintenance	11
Street Maintenance	240.5
Sidewalks/Driveway Approaches	9
Street Sign Manufacturing	21
Street Sign Installation	9
Banners	60
Street Light Repair	43
Tree Trimming	125.5
Tree Removal	24.5
Dump Truck Usage	4
Vactor Usage	6

### 2. Sewer and Storm System:

The crews worked inspected and cleaned 3 sewer laterals. Cleaned sediment out of the drywells and cleaned and inspected the lift stations around town.

	Total Hours
Sewer Cleaning	15
Sewer Maintenance/Repair	4
Sewer TV'ing	26
Sewer Laterals	62
Lift Station Maintenance	81
Locating Utilities	123
Sewer Inspections	3
Vactor Usage	2
Storm	
Catch Basin Maintenance	1

### 3. Street Sign/Trees/Lights:

The crew during the month of October fixed 23 street lights. Replaced school signs on S Ivy Street and SE 13<sup>th</sup> Avenue. At the Canby School District's request the crew removed arborvitae hedges and bushes back behind the sidewalk on S Ivy Street across from Philander Lee School. Removed numerous tree limbs away from street lights and broken limbs causing hazardous conditions.

### 4. Miscellaneous:

Cored N Pine Street between NE 15<sup>th</sup> and NE 19<sup>th</sup> Avenue's to verify the roadway's condition for a proposed subdivision.

Miscellaneous	Total Hours
Meetings	11.5
Warehouse Maintenance	2
Equipment Cleaning	23
Work Orders	28.5
School/Training	28
NW 1st Avenue Irrigation	2
GPS Mapping	6
Moving Transit Furniture to new location	43
Other	7.5

Tech Services Department Bi-Monthly Report for September & October 2013

From: Amanda Zeiber

Prepared By: Bryce Frazell Date: November 8, 2013

### Google Analytics Summary Report: September and October 2013

<u>Audience Overview</u>	<u>September</u>	<u>October</u>
Visitors	916	1072
<b>Unique Visitors</b>	755	877
Page Views	1209	1545
Page/Visit	1.32	1.44
Bounce Rate	82.31%	77.61%

Note: October visitors have increased most likely due to school starting up again and summer vacations coming to an end.

New Vs. Returning Visitors	<u>September</u>	<u>October</u>
New	60.58%	61.47%
Returning	39.42%	38.53%

### Browser & Operating System Top 5 Browsers Used (Sept/Oct 2013):

Internet Explorer Internet Explorer

Safari Safari

Google Chrome Google Chrome

Firefox Firefox

Android Browser Android Browser

Overview (Technology)	<u>September</u>	<u>October</u>
Deeldee	74 000/	70.400/

<u>September</u>

Mobile Devices (top 3)

 Desktop
 74.89%
 76.12%

 Mobile
 17.36%
 16.04%

 Tablet
 7.75%
 7.84%

Note: Desktop use continues to increase slightly since declining somewhat during the summer months

**October** 

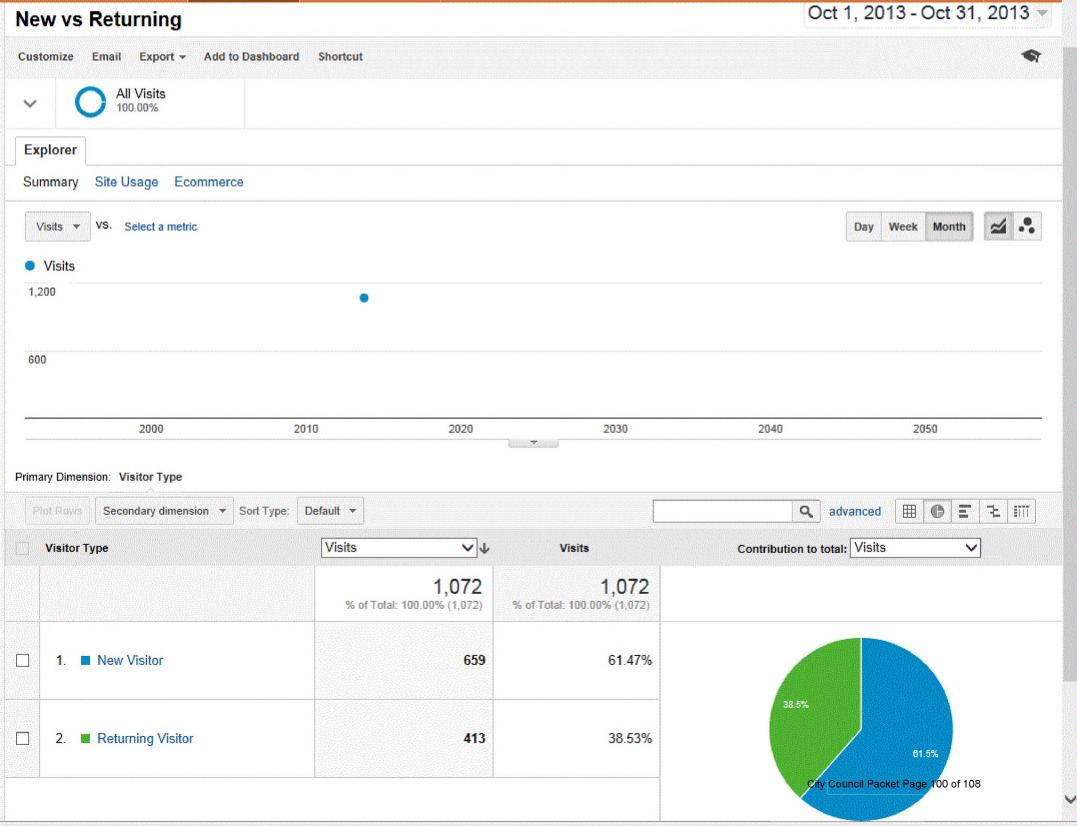
Canby Library Board

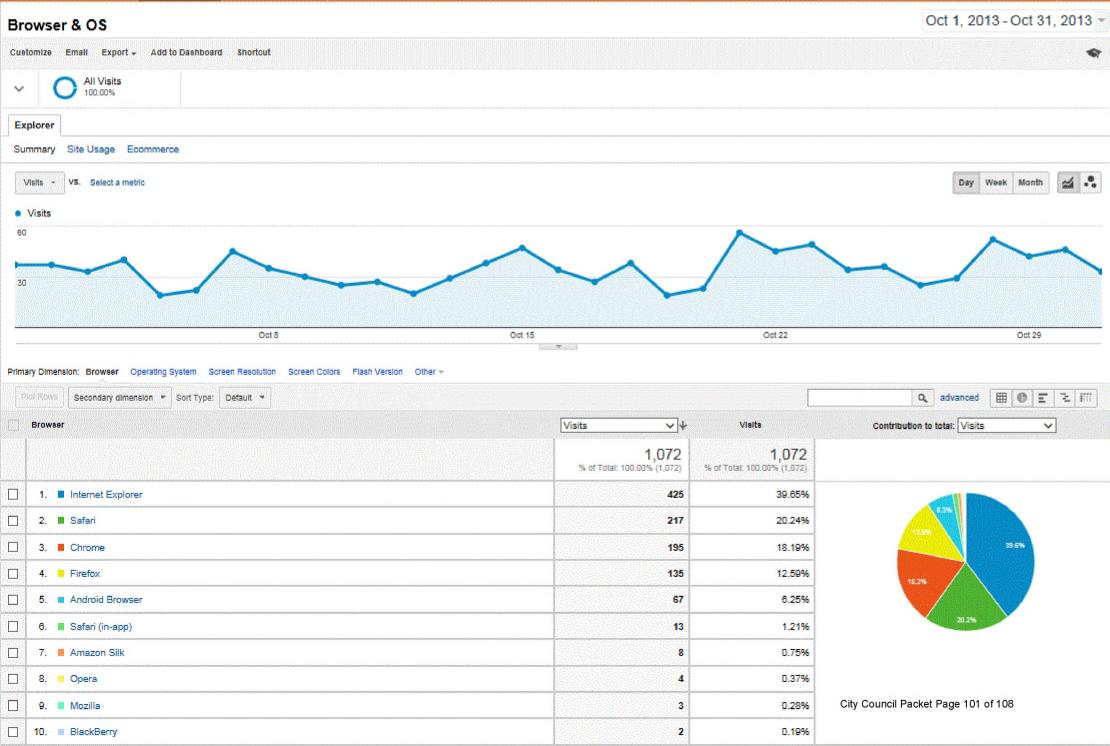
	iPhone	iPhone
	iPad	iPad
	iPod	iPod
Pages Visited (top 5)	<u>September</u>	<u>October</u>
	Canby Library	Canby Library
	Development Services	Development Services
	Municipal Code/Chap 16	Municipal Code/Chap 16
	Planning Forms	PW/Stormwater Master Plan

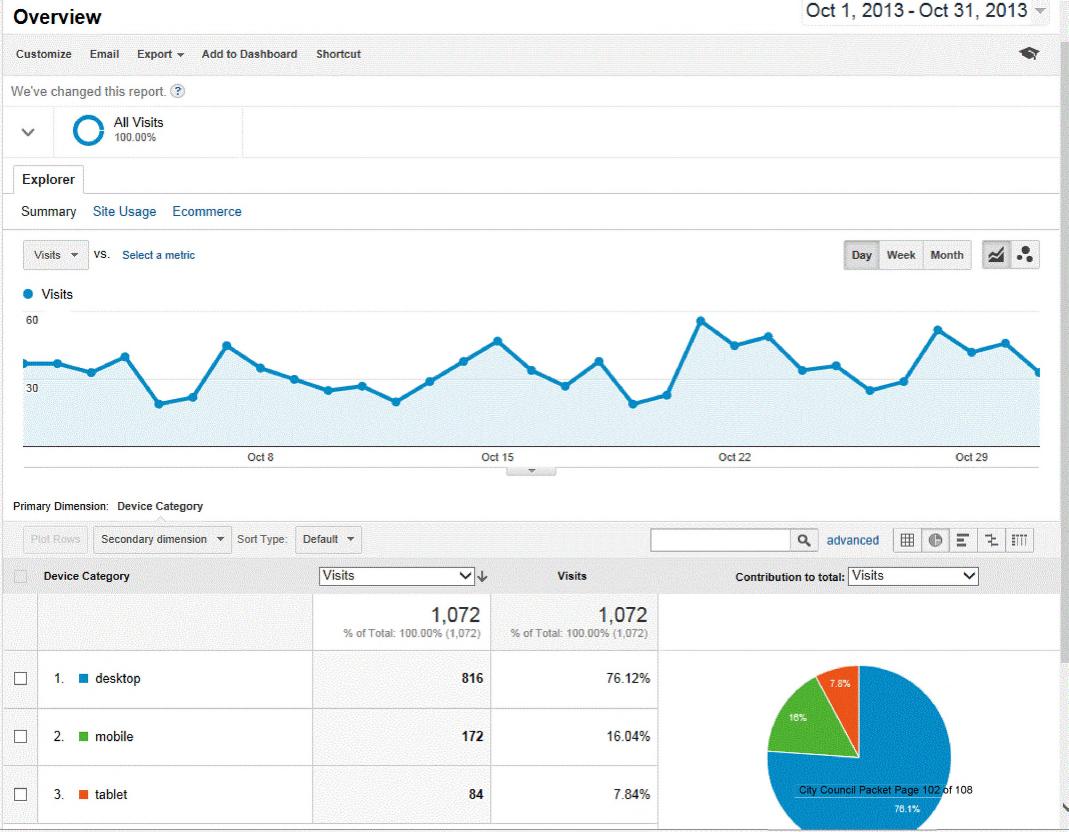
Canby Library Board

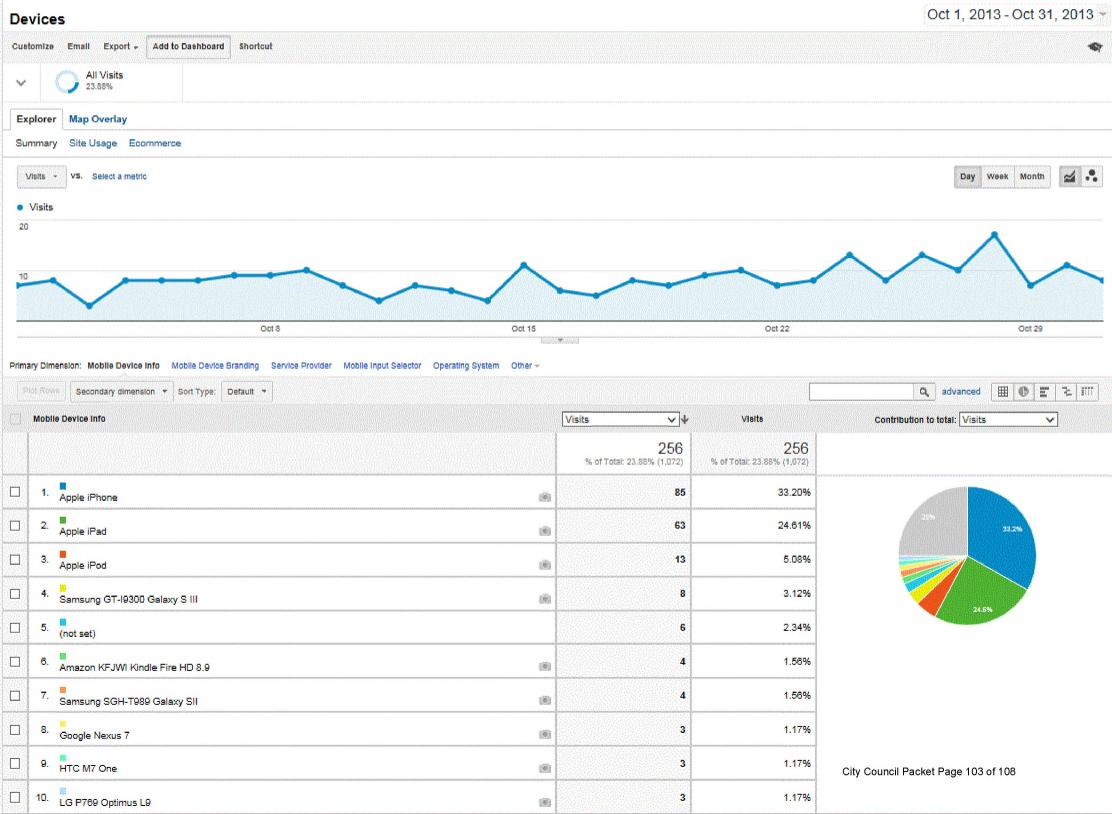
Note: Even though the Library has it's own website, visitors may still be getting to it by going through their browser bookmark which first takes them to the City site



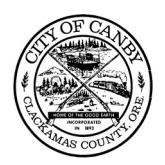








## City of Canby Bi-Monthly Report Department: Transit



For: the months of September & October, 2013

Date: November 4, 2013 Prepared by: Julie Wehling

Through: Greg Ellis, City Administrator

### 1) Funding Issues:

- a) Monthly Elderly and Disabled transportation reports were submitted to TriMet.
- b) Quarterly reports and reimbursement requests were submitted to ODOT.

### 2) Ridership:

Ridership for FY 2013-14 is down by 26.76 % as compared to the previous fiscal year. During this report period CAT provided:

- a) 7,870 rides in September (30.74% fewer than September of 2012).
  - 1,390 demand responsive rides (Shopping Shuttle & Dial-A-Ride). This is 2 rides (.0144 %) more than were provided during September of 2012.
  - 4,686 to Oregon City (34.30% fewer rides than September of 2012).
  - 1,794 to Woodburn (36.74% fewer rides than September of 2012)
- b) 9,816 rides in August (10.52% fewer rides than October of 2012).
  - 1,732 demand responsive rides (Shopping Shuttle & Dial-A-Ride). This is 9.48 % more rides than were provided during October of 2012.
  - 5,940 to Oregon City (11.66% fewer rides than October of 2012)
  - 2,144 to Woodburn (19.52% fewer rides than October of 2012).

The ridership decline remains consistent with the 25-40 percent drop that is usually expected when a fare is implemented or increased. October 1<sup>st</sup> is the anniversary of the \$1 fare implementation so the October numbers from 2012 and 2013 provide the first opportunity to make this comparison with a fare in place.

### 3) <u>Updates:</u>

- a) Cory Flagg and Mollie Hauck were selected as the riders of the month for September & October. Each rider was given CAT memorabilia and a free pass of their choice.
- b) Effective October 1<sup>st</sup> Kathy Linstrom became the interim General Manager for MV Transportation at CAT. The previous General Manager, Dell Donoho, is out on extended family medical leave.

- c) CAT began operating from its new office space On October 14<sup>th</sup>. The move went smoothly and service was not impacted.
- d) The search for adequate adjacent parking for the entire fleet of CAT buses is still underway.

### 4) Collisions

- a) No collisions in September or October
- 5) <u>Training/Meetings/Conferences Attended:</u> City staff, contractors and/or volunteers represented CAT at:
  - a) On September 19<sup>th</sup> and October 17<sup>th</sup> the Transit Advisory Committee held regular meetings. The October meeting was held in the new CAT office space.
  - b) On September 20<sup>th</sup> Julie Wehling represented the City of Canby and CAT at an ODOT Region 1 meeting hosted by the ODOT Public Transit Division to acquaint other ODOT departments and TriMet with the services provided by the small local public transit providers.
  - c) Along with other city representatives Julie Wehling participated in a Clackamas County Event Center focus group on October 23<sup>rd</sup>.



# City of Canby Bi-Monthly Report Department: Wastewater Treatment Plant For Months of: September & October 2013

To: The Honorable Mayor Hodson & City Council

From: Dave Conner, Lead Operator Through: Greg Ellis, City Administrator

Date: November 5, 2013

### **Facility Operations & Maintenance**

The water quality for the months of September and October remained excellent with no violations or interruption of services. Plant Operators maintain daily operations of the plant as we come to the end of our summer compliance monitoring.

Plant personnel are keeping up with all preventative maintenance, operations, laboratory testing and FOG abatement which include some of the following:

- Replaced windows and siding on the shop.
- Removed and replaced windows and siding on Lab.
- Repaired and installed wash tank pump.
- Replaced alignment sensor on the Ashbrook belt press.
- Installed econo blocks in Biosolids building for Heard Farms.
- Rebuilt and installed south Ras pump.
- Down loaded and calibrated temperature monitors.
- Calibrated effluent flow meter.
- Generator annual maintenance.
- Vactored filament out the North and South basins.
- Daily plant check, lab, and process control.
- Routine daily maintenance, repairs, and cleaning of plant.

### FOG (fats, oils and grease) program

### September

Pump Outs: 25Inspections: 4

### October

Pump Outs: 23Inspections: 8

### **Biosolids Program:**

- Belt ran 19 days in September
- 4 loads to landfill/ 3 loads to Heard Farms/total of 145 wet tons.
- Belt ran 19 days in October.
- 8 loads to Heard Farms/total of 218 wet tons.

### **Daily Lab Activity**

### **Monthly / Weekly NPDES Permit Tests**

- TSS
- BOD
- CBOD
- Ammonia
- E-coli
- Alkalinity
- Hq
- Total Flow
- UV Dosage

### Monthly / Weekly Lab

- TSS
- Nitrite / Nitrate
- UV Transmittance
- Biosolids Testing

### **Meetings and Training Attended**

These meetings, conference's or training were completed by either one or more of the wastewater treatment plant personnel (Dave Conner, Don Steiner, Bob Wengert, Bruce Shelquist or Dave Frahm)

- Microscope calibration training.
- In House Operations Training.
- Online hazmat training.
- PW Staff Safety Meeting.