

AGENDA

CANBY CITY COUNCIL REGULAR MEETING

January 6, 2010

7:30 PM

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Richard Ares

Councilor Robert Bitter

Councilor John Henri

Councilor Brian Hodson

Councilor Jason Padden

WORK SESSION

6:00 P.M.

City Hall Conference Room

182 N Holly

This Work Session will be attended by the Mayor and City Council to receive information on the Public Works, Finance and Court Departments.

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 December 9, 2009 City Council Work Session & Special Meeting

B. Approval of Minutes of the December 16, 2009 City Council Work Session & Regular Meeting

C. New Off-Premises Sales Liquor License Application for Walgreens

7. RESOLUTIONS & ORDINANCES

- A. Res. 1051, Codifying and Compiling Certain Existing General Ordinances for the City of Canby Pg. 3
- B. Ord. 1323, Amending Canby Municipal Code Section 16.04.255 In Order that Residential Infill Standards No Longer Apply to the R-2 Zoning District Pg. 70
- C. Ord, 1324, Authorizing Purchase of Two (2) Vehicles for Canby Area Transit from Emmett Koelsch Coaches, Inc. Pg. 82
- D. Ord. 1325, Authorizing Contract with R & G Excavating, Inc. in the Amount of \$2,250,704.00 for Improvements to the City's Wastewater Treatment Facility Pg. 85

8. NEW BUSINESS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

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

13. 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 at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City's web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.

Memo

To: Mayor Thompson & Members of City Council
From: Lt. Jorge Tro, Acting Chief of Police
CC: Kim Scheafer, General Administration
Date: December 9, 2009
Re: Liquor License Application / Walgreens #10893

I have reviewed the attached liquor license application completed by the applicant, Mitch Oldham, Walgreens #10893, located at 1080 SW 1st Avenue, Canby, Oregon.

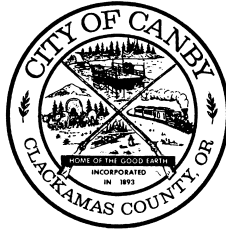
I had telephone conversation with the applicant, Mitch Oldham. We discussed laws involving the sale of alcoholic beverages. Mr. Oldham told me that he would be working closely with OLCC as it relates to training for his employees on pertinent laws involving alcohol related violations and crimes.

I recommend that the Canby City Council recommend approval of this application to the Oregon Liquor Control Commission (OLCC).

30-0010406993



City Council Packet 2 of 94



MEMORANDUM

DATE: DECEMBER 28, 2009
TO: MAYOR THOMPSON AND CANBY CITY COUNCIL
FROM: KIM SCHEAFER, CMC, CITY RECORDER
RE: RESOLUTION #1051

Issue: This Resolution is brought before the Council so that supplement pages to the Canby Municipal Code can be formally adopted.

Background: The last supplement that was codified for the Canby Municipal Code was done in December 2008. Since that time, several ordinances have passed that affect the municipal code. In order to keep the code up-to-date, these ordinances were sent to American Legal Publishing who prepared a 2009 supplement for ordinances passed through November 18, 2009 (Ordinances 1297-1321).

Recommendation: *Staff recommends approval of Resolution 1051, which formally adopts 2009 supplement pages to the Canby Municipal Code.*

RESOLUTION NO. 1051

A RESOLUTION CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES FOR THE CITY OF CANBY.

WHEREAS, on February 15, 2006 the Canby City Council adopted Ordinance 1200 which adopted a revised code of the City of Canby entitled the “Canby Municipal Code”. Since that time the Council has adopted Resolution 956 and 1012 codifying supplements.

WHEREAS, since that time Ordinances have been adopted affecting the Canby Municipal Code, causing the present general and permanent ordinances of the City to be inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of Oregon empower and authorize the City to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the League of Oregon Cities, Ordinance Services Program, in its efforts to promote better and more efficient municipal governing, is willing to undertake the codification of the City’s ordinances;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby that the City hereby authorizes a general compilation, revision and codification of the ordinances of the City of a general and permanent nature and publication of such ordinances in book form, at a cost according to the standard rates and billing procedures for services under the program. A copy of the 2009 supplement (codifying ordinances 1297-1321) is attached hereto as Exhibit “A”.

This resolution will take effect on January 6, 2010.

ADOPTED this 6th day of January 2010, by the Canby City Council.

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

Exhibit "A"
CANBY, OREGON
Instruction Sheet
2009 S-3 Supplement

REMOVE OLD PAGES

Title Page

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CITY OF CANBY, OREGON

CODE OF ORDINANCES

2009 S-3 Supplement contains:

Local legislation current through Ord. 1319, passed 11-18-2009

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CHARTER OF THE CITY OF CANBY

A CHARTER

To provide for the government of the City of Canby, Clackamas County, Oregon; and to repeal all Charter provisions of the City enacted prior to the time that this Charter takes effect.

BE IT ENACTED by the people of the City of Canby, Clackamas County, Oregon:

CHAPTER I

NAMES AND BOUNDARIES

Section 1. TITLE OF ENACTMENT. This enactment may be referred to as the City of Canby Charter of 1983, and as revised on July 1, 2009.

Section 2. NAME OF CITY. The municipality of Canby, Clackamas County, Oregon, shall continue to be a municipal corporation with the name "City of Canby".

Section 3. BOUNDARIES. The corporate limits of the City shall include all territory encompassed by its boundaries as they now exist or hereafter are modified by a majority of the voters. Unless mandated by law, annexations, delayed or otherwise, to the City of Canby, may only be approved by a majority vote among the electorate. The Recorder shall keep at the City Hall at least two copies of this Charter in each of which shall be maintained an accurate, up-to-date description of the boundaries. The copies and descriptions shall be available for public inspection at anytime during regular office hours of the Recorder.
(Amendment passed at election November 4, 1997)

CHAPTER II

POWERS

Section 1. POWERS OF THE CITY. The City shall have all powers which the Constitutions, statutes and common law of the United States and of this State expressly or impliedly grant or allow

municipalities, as fully as though this Charter specifically enumerated each of those powers.

Section 2. CONSTRUCTION OF CHARTER. In this Charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the City would have if this particular power were not mentioned. The Charter shall be liberally construed to the end that the City may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to State laws and the municipal home rule provisions of the State Constitution.

Section 3. POWER TO LICENSE, TAX AND REGULATE. The City Council shall have power to license, tax and regulate for the purpose of City revenue, all businesses, callings, trades, employments and professions as the Council may require to be licensed, and which are not prohibited by the laws of the State of Oregon.

Section 4. INITIATIVE AND REFERENDUM POWERS. The power to enact or amend the Charter of the City of Canby and all other rights guaranteed to the people of this City under the Initiative and Referendum Provisions of Section 1-a, Article IV of the Constitution of the State of Oregon are hereby reserved and guaranteed to the people of the City of Canby by this Charter, and the Council shall provide the method of carrying into effect the initiative and referendum power of the people.

CHAPTER III

FORM OF GOVERNMENT

Section 1. WHERE POWERS VESTED. Except as this Charter provides otherwise, all powers of the City shall be vested in the Council.

Section 2. COUNCIL. The Council shall be composed of six Councilmembers elected from the City at large.

Section 3. COUNCILMEMBERS. The Councilmembers in office at the time this Charter

takes effect shall continue in office, until the end of their term as fixed by the Charter of the City in effect at the time this Charter is adopted. At each biennial general election after this Charter takes effect, three Councilmembers shall be elected, each for a term of four years; and at each biennial general election the number of Councilmembers required to fill vacancies pursuant to Chapter VII, Section 2, of this Chapter shall also be elected.

Section 4. MAYOR. At each biennial general election a Mayor shall be elected for a term of two years.

Section 5. ADMINISTRATOR, JUDGE, CITY ATTORNEY, AND OTHER OFFICERS. Additional officers of the City shall be a City Administrator, Municipal Judge, and City Attorney, each of whom the Council shall appoint, and such other officers as the Council deems necessary. Appointed officers shall hold their office during the pleasure of the Council or until their successors are appointed and qualified. Appointed officers are subject to removal at any time by the Council with or without cause and may be suspended in accordance with the provisions of Chapter V, Section 2(c)(3). The duties of all officers not defined in this Chapter may be prescribed by the Council. The Council may combine any two or more appointive offices.

Section 6. SALARIES. The compensation for the services of each City officer and employee shall be the amount fixed by the Council.

Section 7. QUALIFICATIONS OF OFFICERS. No person shall be eligible for an elective office of the City unless at the time of election such person is a qualified elector within the meaning of the State Constitution and has resided in the City during the 12 months immediately preceding the election. The Council shall be final judge of the qualifications and election of its own members.

CHAPTER IV

COUNCIL

Section 1. MEETINGS. The Council shall hold a regular meeting in the City at least once each month at a time and place which it designates. It shall adopt rules for the government of its members and proceedings. The Mayor may, or at the request of three members of the Council shall, by giving notice thereof to all members of the Council then in the City and public notice to all interested persons, call a special meeting of the Council for a time not earlier than twenty-four nor later than forty-eight hours after the notice is given. Special meetings of the Council may also be held at any time by the common consent of all the members of the Council and after twenty-four hours reasonable notice to the public. Emergency meetings of the Council may be called by the Mayor, or the President of the Council in the absence of the Mayor, for an actual emergency, and notice thereof shall be given by telephone calls to the press and interested persons.

Section 2. QUORUM AND CONTROL OF CONDUCT. A majority of the members of the Council shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in the manner provided by Ordinance. The Council may reprimand any member for disorderly conduct at any meeting or for refusing or neglecting to attend any regular meeting without sufficient excuse therefor, and may, by unanimous vote of all other Council members, expel a member for good cause.

Section 3. RECORD OF PROCEEDINGS. The Council shall cause a record of its proceedings to be kept. Upon the request of any of its members, the ayes and nays upon any question before it shall be taken and entered in the record.

Section 4. PROCEEDINGS TO BE PUBLIC. No action by the Council shall have legal effect unless the motion for the action and the vote by which it is disposed of take place at proceedings open to the public.

Section 5. MAYOR'S FUNCTIONS AT COUNCIL MEETINGS. The Mayor shall be chairperson of the Council and preside over its deliberations and shall have no vote on any questions before it except in the case of tie. The Mayor shall have authority to preserve order, enforce the rules of the Council and determine the order of business under the rules of the Council.

Section 6. PRESIDENT OF THE COUNCIL. At its first meeting after this Charter takes effect and thereafter at its first meeting of each odd-numbered year, the Council by vote shall elect a President from its membership. In the Mayor's absence from a Council meeting, the President shall preside over it. Whenever the Mayor is unable to perform the functions of the office, the President shall act as Mayor.

Section 7. VOTE REQUIRED. Except as this Charter otherwise provides, the concurrence of a majority of the members of the Council present at a Council meeting at which a quorum is present shall be necessary to decide any question before the Council.

Section 8. SUPERVISION OF CITY EMPLOYEES. Neither the Council nor any of its members shall give orders or directives to any subordinate or City employee, other than officers of the City, either publicly or privately, except to and through the City Administrator.

CHAPTER V

POWERS AND DUTIES OF OFFICERS AND PROFESSIONAL CONTRACTORS

Section 1. MAYOR. The Mayor shall appoint the committees provided by the rules of the Council; and shall sign all records of proceedings approved by the Council. The Mayor shall have no veto power. In the Mayor's absence, the President of the Council shall sign all Ordinances passed by the Council within five days after their passage. After the Council approves a bond of a City officer or a bond for a

license, contract or proposal, the Mayor shall endorse the bond.

Section 2. CITY ADMINISTRATOR. (a) **Qualifications.** The City Administrator shall be the administrative head of the government of the City and shall be appointed by the Council without regard to political considerations and solely with reference to executive and administrative qualifications. A City Administrator need not be a resident of the City of Canby or the State at the time of appointment, but promptly thereafter shall become and remain a resident of the City during the term of the office. Before taking office, the City Administrator shall give a bond in such amount and with such surety as may be approved by the Council. The premiums on such bond shall be paid by the City.

(b) **Term.** The Administrator shall be appointed for an indefinite term and may be removed at the pleasure of the Council.

(c) **Powers and Duties.** The powers and duties of the Administrator shall be as follows:

(1) Devote full time to the discharge of official duties, attend all meetings of the Council unless excused therefrom by the Council or the Mayor, keep the Council advised at all times of the affairs and needs of the City, and make reports annually, or more frequently if requested by the Council, of all the affairs and departments of the City.

(2) See that all Ordinances are enforced and that the provisions of all franchises leases, contracts, permits and privileges granted by the City are observed.

(3) Hire or remove all City employees and have general supervision and control over them and their work, with power to transfer an employee from one department to another. The Administrator shall supervise the departments to the end of obtaining the utmost efficiency in each of them. He shall have the power to suspend an appointed City Officer pending review and final action of the Council.

(4) Act as purchasing agent for all departments of the City.

(5) Be responsible for preparing and submitting to the Budget Committee the annual budget estimates and such reports as that body requests.

(6) Supervise the operation of all public utilities owned and operated by the City excepting the electric utility department for which the Canby Utility Board has exclusive jurisdiction, control and management as provided in the following Chapter X. The City Administrator shall have general supervision over all City property.

(7) Perform such other duties as may be prescribed from time to time by the Council.

Section 3. MUNICIPAL JUDGE. The Municipal Judge shall hold within the City a court known as the Municipal Court for the City of Canby, Clackamas County, Oregon. All areas within the City shall be within the territorial jurisdiction of the Court. The Municipal Judge shall exercise original and exclusive jurisdiction of all offenses defined and made punishable by the Ordinances of the City and of all actions brought to recover or enforce forfeitures or penalties defined or authorized by Ordinances of the City. The Municipal Judge shall have authority to issue process for the arrest of any person accused of an offense against the Ordinances of the City, to commit any such person to jail or admit to bail pending trial, to issue subpoenas, to compel witnesses to appear and testify in Court on the trial of any cause, to compel obedience to such subpoenas, to issue any process necessary to carry into effect the judgments of the Court, and to punish witnesses and others for contempt of Court. When not governed by Ordinances or this Charter, all proceedings in the Municipal Court for the violation of a City ordinance shall be governed by the applicable general laws of the State governing Justices of the Peace and Justice Courts, except that the Municipal Court shall not exercise any civil jurisdiction.

Section 4. CITY ATTORNEY. The City Attorney is a legal adviser of the officials of the City of Canby and shall be retained by the Council. It shall be the duty of such Attorney to attend all regular Council meetings and such special meetings as may be required unless excused therefrom by the Council. The City Attorney shall represent and defend the City in all suits, actions at law and all matters and things in

which the City of Canby may be legally interested. The City Attorney, or a deputy appointed by him, shall also represent the City in the Municipal Court including violations of any City Ordinances or for the violation of all other laws under which the Municipal Court has jurisdiction.

Section 5. AUTHORITY TO CONTRACT FOR PROFESSIONAL SERVICES. The Council shall have authority to contract for the professional services of those whose professional skills, training and knowledge may be required at any time or from time to time for the administration of City affairs and municipal government.

CHAPTER VI

ELECTIONS

Section 1. STATE LAW. City elections must conform to state law except as this charter or ordinances provide otherwise. All elections for City offices must be nonpartisan.

Section 2. QUALIFICATIONS.

(a) The Mayor and each Council Member must be a qualified elector under state law, and reside within the City for at least one year immediately before election or appointment to office.

(b) No person may be a candidate at a single election for more than one City office.

(c) Neither the Mayor nor a Council Member may be employed by the City.

(d) The Council is the final judge of the election and qualifications of its members.

Section 3. NOMINATIONS. The Council must adopt an ordinance prescribing the manner for a person to be nominated to run for Mayor or a City Council Member position.

Section 4. TIE VOTES. In the event of a tie vote for candidates for an elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the Council.

Section 5. TERMS. The term of a person elected at a general election begins immediately after the first regular council meeting after the first of the year following the election, and continues until the successor qualifies and assumes the office.

Section 6. OATH OF OFFICE. Before entering upon the duties of the office, each officer shall take an oath or shall affirm support of the Constitutions and Laws of the United States, the State of Oregon and the City of Canby and to faithfully perform the duties of the office.

CHAPTER VII

VACANCIES IN OFFICE

Section 1. WHAT CREATES VACANCY. An office shall be deemed vacant upon the incumbent's death, adjudicated incompetence, conviction of a felony or other offense pertaining to the office, unlawful destruction of public records, resignation, recall from office, ceasing to possess the qualifications for the office, failure of a person elected or appointed to an office to qualify therefor within ten days after the term of office commences, or in the case of a Mayor or Councilmember, upon their absence from the City for 30 days without the consent of the Council or because of absence from meetings of the Council for 60 days without like consent, and upon a declaration by the Council of the vacancy.

Section 2. FILLING OF VACANCIES. Vacant elective offices in the City shall be filled by appointment by a majority vote of the Council. The appointee's term shall begin immediately upon the appointment and shall continue until the beginning of the year following the next general biennial election and until a successor is elected and qualified. The successor for the unexpired term shall be elected at the next general biennial election after said appointment. During the temporary disability of any elected officer or during their absence temporarily from the City for any cause, the offices may be filled pro tem in the manner provided for the filling of vacancies in office permanently.

CHAPTER VIII

ORDINANCES

Section 1. ENACTING CLAUSE. The enacting clause of all ordinances hereafter enacted by the Council shall be: "THE CITY OF CANBY ORDAINS AS FOLLOWS:".

Section 2. MODE OF ENACTMENT. All ordinances shall be read at two meetings of the Council. If approved by the Council the first reading may be by title only and a brief outline covering the purpose of the ordinance. The second reading may be by title only unless any person present requests to have the ordinance or any part thereof read in full. Immediately following the first reading of a proposed ordinance, it shall be signed and published by the Recorder at least once at full length in a newspaper published in Canby; provided, however, that the Council may order instead that the proposed ordinance be posted in three public and conspicuous places in said City for a period of 5 days prior to the passage of said ordinance. Whenever the Council proposes to take final action on any proposed ordinance at a special meeting, notice thereof, giving the time of such meeting, shall be published or posted along with the ordinance. In any event, before final action has been taken on any proposed ordinance, there shall be filed by or with the Recorder proof by affidavit of the publication or posting of the proposed ordinance.

Section 3. REQUIREMENT TO PASS ORDINANCES. It shall require the majority vote of all members of the Council as then constituted to pass an ordinance on its final reading.

Section 4. WHEN ORDINANCES TAKE EFFECT. An Ordinance enacted by the Council shall take effect on the 30th day after its enactment; however, when the Council deems it advisable, an ordinance may provide a different time for it to take effect, and, in case of emergency, it may take effect immediately.

Section 5. RECORDING VOTE AND SIGNING ORDINANCE. Upon the final vote on an ordinance, the ayes and nays of the Councilmembers shall be taken and entered in the record of the proceedings and also on the ordinance. Upon enactment of the ordinance, the Mayor shall sign it with the date of its final passage and it shall be attested by the signature of the Recorder.

CHAPTER IX

PUBLIC IMPROVEMENTS

Section 1. CONDEMNATION. Any necessity of taking property for the City by condemnation shall be determined by the Council and declared by a Resolution of the Council describing the property and stating the uses to which it shall be devoted. Taking of property for the City by condemnation shall be in accordance with provisions of the Oregon Constitution and Oregon Law.

Section 2. IMPROVEMENTS. The procedure for making, altering, repairing, vacating or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by the applicable general laws of the State. Action on any proposed public improvement, except a sidewalk or other improvement unanimously declared by the Council to be needed at once because of an emergency, shall be suspended for six months upon a remonstrance thereto by the owners of the land to be specially assessed therefor. The number of owners necessary to suspend the action will be determined by ordinance. In this Section, "owner" shall mean the record holder of legal title, or where land is being purchased under a recorded land sale contract verified to the Recorder in writing by the record holder of legal title to the land, the purchaser shall be deemed the "owner".

Section 3. SPECIAL ASSESSMENTS. The procedure for levying, collecting and enforcing the payment of special assessments for public improvements or other services to be charged against real property shall be governed by general ordinances.

Section 4. BIDS. Public contracting shall be done in compliance with the provisions of Oregon's Public Contracting Code, the rules and regulations promulgated thereunder and with all local contracting rules established by the City.

Section 5. MUNICIPAL SEWER SYSTEM. The City shall continue to own and operate a municipal sewer system and in addition to the other methods provided by Charter, the Council may, when in its discretion it is deemed advisable, provide by Ordinance for the construction or reconstruction either by contract or City construction method or the combination of both and for the maintenance, extension, operation or enlargement of sewers, sewer systems, pumping stations, sewage treatment or disposal plant, together with all appurtenances necessary, useful or convenient for the collection, treatment and disposal of sewage and for such purposes may acquire by gift, purchase, grant or condemnation, the necessary lands and rights of way therefor, either within or without the corporate limits of the City of Canby, all or any part of the foregoing being hereinafter referred to as the facilities. The City Council may construct or reconstruct that part of the foregoing facilities consisting of a treatment plant, outfall sewers, trunk sewers, main sewers and pumping plants as an entire unit or as separate units in order to continue to provide the City of Canby with a basic sanitary sewage system; and the Council may provide that the same or that part so constructed will be paid for by all of the residents of the City or property owners therein regardless of whether their property is to be actually connected with or presently served by said systems or units.

CHAPTER X

UTILITIES

Section 1. UTILITY DEPARTMENTS: There is hereby created a utility department of electric service of the City of Canby and a utility department of water service of the City of Canby. Each department shall be responsible for the development, production, purchase and distribution of all water or electric revenue producing utilities of the City.

Section 2. WATER DEPARTMENT. The City Council shall have jurisdiction, control and management of the Water Department and all of its operations and facilities. The City Council shall have all the powers and duties necessary to construct, acquire, expand and operate the water system, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economical and businesslike administration of the Water Department. The City Council may assign or delegate all or a portion of its powers and duties over the Water Department to the Canby Utility Board; provided, however, that the City Council shall retain ultimate jurisdiction, control and management of the Water Department and its operations and facilities.

Section 3. UTILITY BOARD. There is hereby created the Canby Utility Board of the City (hereinafter referred to as the Board), which shall have exclusive jurisdiction, control and management of the Electric Department and all its operations and facilities. The Board shall have all the powers and duties possessed by the City to construct, acquire, expand and operate the electric system, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economical and businesslike administration of the electric system. The Board shall operate as a separate unit of City government and except as provided in this Charter, both the Board and the Electric Department shall be free from the jurisdiction, direction and control of other City Officers and of the City Council. The Board may sue and be sued in its own name. All damage claims arising from the operation of the Board and the Electric Department shall be the responsibility of and be liquidated by the Board.

Section 4. ORGANIZATION OF THE CANBY UTILITY BOARD. (a) **Number and Qualification of Board Members.** There shall be five (5) members of the Canby Utility Board appointed by the Mayor and confirmed by a majority of the Canby City Council. They shall hold office until their successors are appointed and qualified. They are

subject to removal at any time by the Mayor and with the approval of a majority of the Council members with or without cause and with or without notice. At the first Council meeting after the first of the next month after this Charter takes effect, two (2) Board members shall be appointed to serve terms of three years, two (2) Board members shall be appointed to serve terms of two years, and one (1) Board member shall be appointed to serve a term of one year. Their successors shall be appointed for terms of three years. No Board member may serve more than two successive terms. No person shall be eligible for appointment as a Board member or entitled to hold such office unless at the time of appointment and continuing thereafter, such person is a qualified elector within the meaning of the State Constitution and has resided in the City of Canby during the six months immediately preceding appointment and continues to reside in the City for the term of the appointment. The City Council shall be the final judge of the qualifications and appointment of Board members, but no Councilmember or Mayor (during their term of office) shall be eligible to appointment as a member of that Board.

(b) **Vacancies.** Vacancies shall be filled for the unexpired term by the Council. No vacancy in the Board shall impair the right of remaining Board members to exercise all the powers of the Board to transact its business.

(c) **Compensation.** The compensation for the services of each Board member shall be whatever amount the Board fixes.

(d) **Organization of the Board.** Within ten (10) days after their appointment and at its first meeting in January each year thereafter, the Board members shall elect one of their number as Chairman. If the Chairman is absent at any meeting, a pro-tem shall be appointed by the members present. The Chairman shall preside over all meetings of the Board and in doing so, shall, so far as possible, follow Roberts Rules of Order. The Chairman shall, with the approval of the Board, sign all Resolutions and Orders of the Board and all notes, contracts, deeds, mortgages, bonds, and other agreements of the Board. No action shall be taken by the Board except by the affirmative vote of the majority of the members.

(e) **Quorum.** Three (3) Board members shall constitute a quorum.

(f) **Secretary-Clerk.** The Board shall appoint and fix the compensation of a Secretary-Clerk who is not a member of the Board and who shall serve at the pleasure of the Board and is subject to removal at any time and for any reason. Before entering upon the duties of the office, the Secretary-Clerk shall post a bond in such amount and with such surety or sureties as the Board may approve and to assure the faithful performance of duties. The Secretary-Clerk shall attend all meetings of the Board unless excused therefrom by the Board, keep an accurate record of its proceedings in a book provided for that purpose, sign the approved minutes of its meetings and may, with approval of the Board, sign or cosign checks for disbursement of funds.

(g) **Meetings.** The Board shall hold a regular meeting at least once a month at a time and place to be fixed by the Board. Special meetings may be called by the Chairman of the Board, or by two members of the Board. Notice of all meetings shall be given by the Secretary-Clerk in the manner and for the time required for public meetings by ORS 192.640. All regular or special meetings of the Board shall be open to the public.

Section 5. ORGANIZATION OF THE ELECTRIC DEPARTMENT. (a) **Employees.** The Canby Utility Board shall have the authority to employ a General Manager and such supervisors, bookkeepers, attorneys, laborers, mechanics and other employees, as may be determined, and fix compensation thereof, and discharge the same at pleasure, and for any reason.

(b) **Compensation.** The Board shall have the authority to fix compensation of the Clerk and other employees of the Board and change the same from time to time.

Section 6. POWERS AND DUTIES OF THE CANBY UTILITY BOARD. (a) **Real Estate and Contracts.** The Board, in the efficient and economical operation of the Electric Department, both inside and outside the City limits, may:

(1) purchase and sell electric power and energy and services to public and private corporations and to other consumers;

(2) construct plants, transmission lines and other facilities;

(3) purchase real estate and franchises in its name; and

(4) enter into all contracts, leases and agreements in furtherance thereof.

(b) **Extension of Services.** The Board may adopt regulations governing extension of services of the Electric Department both inside and outside the City limits. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the Electric Department whether on public or private property. The Board may provide for the form of refunds where advances by the persons benefited are necessary to make extensions compensatory.

(c) **Joint Operations with Others.** The Board may contract with any public or private corporation or any individual, both inside and outside the City limits:

(1) for the joint use of poles and other property belonging either to the Electric Department or to the other contracting party or jointly to both parties;

(2) for the joint acquisition of real property and franchises and the joint financing, construction and operation of plants, transmission lines and other facilities, whereby any property acquired may become the property of both the Electric Department and the other contracting party; and

(3) for the purchase of energy.

(d) **Eminent Domain.** The Board may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain on behalf of the City whenever public necessity or convenience requires.

(e) **Use of Thoroughfares for Utility Installations.** Canby Utility may use the ground over, under or along any road, railroad, highway, street, sidewalk, thoroughfare or alley in the operation of the Electric Department, but shall in all cases and subject to the applicable general regulation of the City, cause the surface of the public way to be restored in its usual condition.

(f) **Rates.** The Board shall fix rates to be charged for electricity sold and services rendered by the Electric Department. Rates shall be fair, reasonable and compensatory and shall be uniform for all consumers within the same class, but different rate schedules may be applied to different classes of consumers as determined by the Board. Rates shall be sufficient to pay all operating and maintenance costs of the Electric Department and its operations and all bond interest and bond redemption costs. The Board may require reasonable deposits for security for payment of charges for electric services and may provide for the return of deposits when satisfactory consumer credit has been established. Any proposed change in rates and the notice of a public hearing thereon shall be advertised once a week for two successive weeks in a newspaper having a general circulation in the City of Canby. Such notice shall state the proposed rate change, the reasons therefor and the time and place of the public hearing which shall be held within ten (10) days after the last publication of such notice. At the public hearing the Board shall discuss the matter and consider any objections or recommendations. The Board is not bound, however, by any public remonstrances or objections to its proposed rate change.

(g) **Authority for Expenditures.** No money shall be drawn from the funds of the Department nor shall any obligation for the expenditure of money be incurred except as authorized by the Board. No claim against the Department shall be paid unless evidenced by a voucher approved by the General Manager or by some other employee designated by him.

(h) **Bond Issues.** The Board may authorize the sale and issuance of revenue bonds necessary to finance the acquisition, construction, reconstruction, improvements and extensions of the utility system. The Board has the power to provide funding for the operation, maintenance or expansion of existing facilities. A vote of the registered voters will be required for any exploration, construction or development of energy sources over the amount of that department's gross revenues for the preceding fiscal year.

(i) **Short Term Loans.** The Board may borrow money for periods not to exceed five (5) years and may issue negotiable notes, payable from the revenues of the Electric Department, as evidence of the loans. Total loans outstanding at any one time for the Electric Department shall not exceed fifty percent (50%) of that department's gross revenue for the preceding fiscal year.

(j) **No Power to Tax.** The Board shall have no power or authority to levy ad valorem taxes on any taxable property; however, the City Council may, when in its judgment it is deemed necessary or advisable, levy such taxes for the use and benefit of said Board or for the joint use and benefit of the City and said Board.

Section 7. ANNUAL ACCOUNTING AND BUDGET. The Canby Utility Board shall prepare a budget for each fiscal year and file a copy of such budget with the City Council prior to July 1. The Board shall make an annual accounting to show the financial condition of the Electric Department prepared according to generally accepted public utility accounting principles, and file a copy of the same with the City Council each year.

Section 8. GENERAL PROVISIONS. (a) Disposition of Public Utilities. The Canby Utility Board shall have no authority to cease to operate or to sell, lease or abandon, or in any other way dispose of the electric utility system and department controlled by it, without the prior express written approval of the City Council and the approving vote of a majority of the votes cast by the registered voters of the City at a general or special election called by the Council and held for that purpose.

(b) **Existing Obligation.** Contracts, obligations and bond issues relating to the electric utility system of the City legally incurred, approved or authorized prior to the taking effect of this Charter provision shall not be impaired and shall be binding upon the Board insofar as they apply to the Electric Utility Department.

CHAPTER XI

MISCELLANEOUS PROVISIONS

Section 1. DEBT LIMIT. City indebtedness may not exceed debt limits imposed by state law. A charter amendment is not required to authorize City indebtedness.

Section 2. TORTS. Tort liability of the City of Canby shall be set by limits imposed under Oregon law and shall follow all procedures set forth thereunder.

Section 3. EXISTING ORDINANCES CONTINUED. All ordinances of the City consistent with this Charter and in force when it takes effect shall remain in effect until amended or repealed.

Section 4. CONTRACTUAL OBLIGATIONS. Except gifts of money to the City for specified purposes, expenditures of sums not budgeted and expenditures of budgeted funds for a single purchase or contract in excess of \$50,000.00 shall be authorized by an ordinance; and the City shall not be bound by any such contract in excess of \$50,000.00, unless the same is in writing and signed by the Mayor or City Administrator and attested to by the Recorder on behalf of the City.

Section 5. REPEAL OF PREVIOUSLY ENACTED PROVISIONS. All Charter provisions of the City enacted prior to the time that this Charter takes effect are hereby repealed.

Section 6. SEPARABILITY OF PROVISIONS. The Sections and Subsections of this Charter are declared to be separable; and in the event that any one or more Sections, Subsections or parts of this Charter are declared unconstitutional, it shall not affect the validity of other provisions of the Charter.

Section 7. TIME OF EFFECT OF CHARTER. This Charter shall take effect July 1, 2009.

Charter

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CHAPTER 2.04: COUNCIL MEETINGS

Section

- 2.04.010 Regular meetings.
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§ 2.04.010 Regular meetings.

Regular meetings of the Council shall be held on the first and third Wednesdays of every month at 7:30 p.m. in the council chambers of the City Hall. In the event that the first or third Wednesday of the month is a holiday, the Council meeting shall be held on the following day.

§ 2.04.020 Special meetings.

Special meetings of the Council may be called by the Mayor or at the request of any 3 members of the Council on 24 hours' reasonable notice to the public and at least 24 hours' actual notice to the Council members.

CHAPTER 2.05: PETITIONS

Section

- 2.05.010 Filing deadline for initiative petitions
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§ 2.05.010 Filing deadline for initiative petitions.

No later than the 180 days after the initiative is approved for circulation, an initiative petition relating to a city measure or Charter amendment shall be deposited with the City Recorder for signature verification. All other procedures for an initiative shall follow the requirements set forth in the State of Oregon election laws.

(Ord. 1303, passed 2-4-2009)

§ 2.05.020 Chief petitioners for initiative, referendum, or recall petitions to be electors of the City of Canby.

No petition for initiative, referendum, or recall filed with the city shall be valid unless all Chief Petitioners are electors of the city at the time of filing and remain electors of the city through the entire initiative, referendum, or recall process, including the election.

(Ord. 1303, passed 2-4-2009)

CHAPTER 2.10: CANDIDATE NOMINATIONS FOR ELECTIVE OFFICE

Section

- 2.10.010 Nominations.

§ 2.10.010 Nominations.

A. A petition nominating a qualified elector to be a candidate for election to the Canby City Council or to the office of Mayor shall be signed by not fewer than 50 electors. No elector shall sign more than 1 nomination petition for each office to be filled. No elector shall sign more than 1 nomination petition for the office of Mayor. If an elector signs more nomination petitions than permitted by this division, the elector's signature shall be valid only on the first petition filed for the office.

B. The form of petition for nomination for all candidates for elective positions within the city shall substantially conform to the form designated by the Secretary of State.

C. All pages comprising a petition for nomination shall be assembled and filed with the City Recorder as 1 instrument in the manner provided by the Secretary of State not less than 75 days before the election. The City Recorder shall make a record of the exact time at which each petition for nomination is filed and shall take and keep on file the name and address of the person by whom it is filed.

D. Within 5 days after the filing, the City Recorder shall notify the nominee and the person who filed the petition for nomination whether or not the petition is valid. If it is found insufficient, the City Recorder shall return it immediately to the person who filed it, with a statement certifying that the petition for nomination is insufficient and stating the reason(s).

E. Within the time allowed for the filing of petitions for nomination, an insufficient petition may be amended and filed again as a new petition, or a different petition may be filed for the same nominee. Any qualified elector for whom a valid petition for nomination has been filed shall have his or her name printed on the ballot for the election if, within 5 days after the City Recorder notifies the nominee of a valid nomination, an acceptance of nomination is filed with the City Recorder on the nominee's behalf.

F. The petition for nomination for a nominee who is successfully elected shall be filed in the office of the City Recorder until the expiration of the term of office for which the nominee is elected.
(Ord. 1312, passed 7-15-2009)

§ 2.16.020 Temporary rules.

There is hereby adopted by the city for the purpose of establishing temporary rules governing public contracts in the city, the Model Rules of the Oregon Attorney General for Public Contracting to be effective on March 1, 2005. These temporary rules shall remain in effect until the time that the City Contract Review Board adopts, by resolution, rules to supersede any portion or all of the temporary rules.
(Ord. 1170, passed 2-16-2005)

§ 2.16.030 Conduct of business.

The City Council acting as the City Contract Review Board shall conduct its business in a manner consistent with the requirements of this chapter and in the same manner as it conducts other Council business. The requirements of this section may be modified at the time that the Board adopts rules to supersede the Board's temporary rules adopted by § 2.16.020.
(Ord. 1170, passed 2-16-2005)

CHAPTER 2.16: CONTRACT REVIEW BOARD

CHAPTER 2.20: PUBLIC LIBRARY

Section

Section

- 2.16.010 Established.
- 2.16.020 Temporary rules.
- 2.16.030 Conduct of business.

- 2.20.010 Establishment.
- 2.20.020 Governing body.
- 2.20.030 Library Board.
- 2.20.040 Term of office; vacancies.
- 2.20.050 Officers.
- 2.20.060 Powers and duties.
- 2.20.070 Gifts and bequests.
- 2.20.080 Librarian.
- 2.20.090 Meeting place and time.
- 2.20.100 Damaging library property.

§ 2.16.010 Established.

Pursuant to O.R.S. Chapter 279, the City Council is hereby designated as the City Contract Review Board. Relative to contract concerns of the city, the Contract Review Board shall have all the powers granted by Oregon law under the Oregon Attorney General's Public Contracting Manual.
(Ord. 1170, passed 2-16-2005)

§ 2.20.010 Establishment.

A municipal public library in and for the city is established under the provisions of O.R.S. 357.400 through 357.621, and its location shall be at 292 N. Holly, Canby, or at such other place as the Council

may subsequently direct. It shall be known as the Canby Public Library. The Council proposes to finance the library by an annual tax levy.

§ 2.20.020 Governing body.

The city's public library as established by § 2.20.010 shall be governed by the City Council. A Library Board shall be appointed to serve in an advisory role to the Council.

§ 2.20.030 Library Board.

The Library Board shall consist of 5 members appointed by the City Council upon recommendation of the Board Chairperson and the City Council liaison to the Library Board. The Mayor may vote only to break a tie, if necessary. Not less than 3 members of the Board shall be residents of the city. No member of the Library Board shall have any financial interest, either directly or indirectly, in any contracts to which the library is a party, nor shall any member receive a salary or any payment for any materials or for any services rendered the Board. Board members may be reimbursed for expenses incurred in the performance of their duties.

(Am. Ord. 1137, passed 4-21-2004)

§ 2.20.040 Term of office; vacancies.

Appointees shall hold office for 4-year terms from July 1 in the year of their appointment. At the expiration of the term of a Board member, the City Council shall appoint a new member or may reappoint a member for a term of 4 years. If a vacancy occurs, the City Council shall appoint a new member to complete the unexpired term. Procedure for all appointments by the City Council shall follow § 2.20.030 above. Any Board member failing to attend 3 consecutive Board meetings without approval of the Board chairperson may be removed by the City Council and a new member appointed to complete the unexpired term. Library Board members serve at the pleasure of the City Council and are subject to removal at any time by the Council with or without cause.

(Am. Ord. 1137, passed 4-21-2004)

§ 2.20.050 Officers.

At the first meeting of each year, the Board shall elect a Chairperson and a Vice-Chairperson who shall serve for a term of 1 year. The librarian shall serve as Secretary to the Board and keep the record of its action. Three members of the Board shall comprise a quorum. The Board shall have authority to make and alter rules, with approval of the City Council, for its government and procedures.

§ 2.20.060 Powers and duties.

The duties of the Library Board shall include:

- A. Keeping informed about current trends in the library services and administration;
- B. Studying library growth and needs in the city and its vicinity;
- C. Developing long-range plans for library service and facilities, consistent with city priorities and with state, regional and national goals pertinent to libraries;
- D. Recommending types of library service for the city and its vicinity;
- E. Investigating sources of funding for library service and facilities;
- F. Recommending policies for the acceptance and use of gifts for library purposes;
- G. Participating in the annual budgetary process of the city as that process pertains to the library;
- H. Recommending policies and procedures conducive to efficient and effective operation of the library;
- I. Reviewing and recommending terms for contracts and working relationships with other public agencies regarding library service;
- J. Encouraging widespread public support and use of the library;
- K. Submitting an annual report to the City Council and the state library; and
- L. Performing other duties as authorized by the City Council.

§ 2.20.070 Gifts and bequests.

The Board may solicit and receive gifts and bequests and real or personal property or funds (other than fees and fines) to benefit the library. All

property or funds shall be held in the name of the city, and each donation shall be administered in accordance with its terms. Funds donated to the library shall be turned over to the City Treasurer immediately upon receipt and be placed in the library trust account with a line item budgeted for expenditure in accordance with the terms and conditions of the gift or bequest. Donated funds shall be used for improvements in

CHAPTER 8.04: GARBAGE COLLECTION AND DISPOSAL

Section

8.04.010	Definitions.
8.04.020	Business recycling required.
8.04.030	Garbage containers required.
8.04.040	Burning of garbage; unauthorized accumulations.
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8.04.090	Disposal of garbage by private person.
8.04.100	Collection by contractor.
8.04.110	Penalty.
8.04.120	Outdoor burning of certain types of waste.

§ 8.04.010 Definitions.

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

Business means any entity or 1 or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational or other activity that is non-residential in nature, including public bodies. This definition does not apply to home based businesses.

Contractor means a person or persons, corporation, partnership or other entity who is a party to a garbage collection contract with the city.

Garbage means all refuse and solid wastes, including ashes, rubbish, tin cans, debris generally, dead animals, street cleanings and industrial wastes, and things ordinarily and customarily discarded and dumped for the purpose of promoting the cleanliness and health of the city and its residents, but not including sewage and body waste.

Premises means land, buildings or other structures, vehicles, watercraft or parts thereof upon or in which garbage is stored.

Source-separated or source-separate means that the person who last uses recyclable material separates the recyclable material from other solid waste.
(Am. Ord. 1319, passed 11-18-2009)

§ 8.04.020 Business recycling required.

All businesses within the city shall comply with waste prevention, recycling and composting requirements as set forth in this chapter.

A. Businesses will source-separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.

B. Businesses will ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored or both.

C. Businesses will post accurate signs:

1. Describing the location where recyclable materials are collected, stored or both;
2. Identifying the materials the business must source-separate for reuse or recycling; and
3. Providing recycling instructions.

D. Persons and entities that own, manage or operate premises with business tenants and that provide garbage collection service to those business tenants, shall provide recycling collection systems adequate to enable the business tenants to comply with the requirements of divisions A., B. and C. of this section.

(Ord. 1319, passed 11-18-2009)

§ 8.04.030 Garbage containers required.

It shall be unlawful for any person in possession, charge or in control of any dwelling, apartment house, trailer camp, restaurant, place of business or manufacturing establishment where garbage is created or accumulated to fail at all times to keep portable cans or containers of standard type and construction and to deposit the garbage therein; provided, however, that stiff paper products and wooden or metal waste matter may remain outside of cans or containers, if neatly and orderly stored. The cans or containers shall be strong, water-tight, rodent-proof, insect-proof and comply with the current garbage franchise. The cans or containers shall be kept tightly closed at all times except when being emptied or filled

and shall be kept and maintained at a place or places reasonably accessible to garbage haulers at first floor or ground level.

§ 8.04.040 Burning of garbage; unauthorized accumulations.

It shall be unlawful for any person to burn, dump, collect, remove or in any other manner accumulate or dispose of garbage upon any street, alley, public place or private property within the city, otherwise than as provided in this chapter. Any unauthorized accumulation of garbage on any premises is declared to be a nuisance and is prohibited. Failure to remove any existing accumulation of garbage within 30 days after the effective date of the ordinance codified in this chapter shall be deemed a violation of this chapter.

§ 8.04.050 Hauling garbage.

It shall be unlawful for any person to haul garbage upon the streets and public thoroughfares of the city, except as otherwise provided in this chapter. It shall be unlawful for any person to haul garbage to any place in the city other than that designated by the City Council.

§ 8.04.060 Garbage dumping ground.

The City Council has fixed or shall fix and designate by ordinance from time to time a garbage dumping ground, at which designated place all garbage produced or accumulated in the city shall be dumped, except garbage to be used for agricultural and feeding purposes. All persons depositing garbage on the garbage dumping grounds shall follow rules and regulations established by the City Council and pay dumping fees as established by the City Council. The rules, regulations and fees shall be reasonable and not discriminatory.

§ 8.04.070 Service rates.

The rates and compensation for the service rendered by the contract garbage hauler shall be reasonable and uniform and shall not be in excess of a schedule of charges and compensation to be fixed by the contract. The rates and charges may be changed from time to time after negotiations with the contractor.

§ 8.04.080 Proper disposal of garbage required.

All persons in the city are required to dispose of all perishable garbage before the same shall have become offensive; to dispose of all nonperishable garbage promptly and not permit the same to accumulate on or about the premises; to dispose of the same by burning, burying or in a manner as shall not create a nuisance and as permitted by this chapter, or by hauling or causing the same to be hauled to the garbage dump designated by the City Council.

§ 8.04.090 Disposal of garbage by private person.

Any person may transport garbage produced by himself or herself of itself upon the streets of the city, provided that the garbage must be hauled in a manner as to prevent leakage or litter upon the streets and must be deposited upon the designated dumping grounds or as permitted by this chapter. The manner and place of dumping shall be as designated by the person in charge of the dumping ground. Any person dumping garbage pursuant to this section shall pay a dumping fee, which shall be reasonable and uniform and shall not be in excess of a schedule of charges to be adopted from time to time by resolution of the City Council.

§ 8.04.100 Collection by contractor.

Except as provided in this chapter, it shall be unlawful for any person, firm or corporation other than a person, firm or corporation under contract with the city to collect, gather and haul garbage over the streets of the city.

§ 8.04.110 Penalty.

Any person violating any of the terms of this chapter shall, upon conviction in the municipal court or upon a plea of guilty before the court, be subject to a fine not exceeding \$500.

§ 8.04.120 Outdoor burning of certain types of waste.

A. Prohibited. No person shall kindle, maintain or allow to be maintained an open outdoor fire, bonfire, rubbish fire or garbage fire; nor shall any person kindle, maintain or allow to be maintained a

fire for the purpose of burning grass, wet garbage, plastics, wire insulation, automobile parts, asphalt, petroleum products, including gasoline, petroleum treated materials, rubber products, animal remains or animal and vegetable matter resulting from the handling, preparation, cooking or service of food or any other material which normally emits dense smoke or nauseous odors.

B. Accumulation of Combustible Material a Nuisance. No person shall accumulate or allow to accumulate combustible materials which in the judgment of the Fire Marshal constitute a fire hazard. Any such accumulation is a nuisance and subject to abatement as provided in this code.

C. Enforcement. Any burning in violation of this section may be extinguished by the Fire Department or Police Department. Fire Department or Police Department personnel may enter upon the property of persons in order to extinguish any fire burning in violation of this section.

D. Penalty. Any person, firm or corporation convicted of a violation of this section shall be punished by a fine not to exceed \$500, to be imposed by the Municipal Judge of the city.
(Ord. 975, passed 8-20-1997)

CHAPTER 8.12: NUISANCES

Section

- 8.12.010 Definitions.
- 8.12.020 Communicable diseases in animals or birds.
- 8.12.030 Nuisances affecting public health.

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forthwith cause the carcass to be buried or other disposition made of the same.

§ 9.24.040 Posted notices.

No person shall wilfully deface or tear down any notice, bulletin or sign before its date of expiration.

§ 9.24.060 Drinking in public places.

No person shall drink or consume alcoholic liquor in or on a street, alley, sidewalk, mall, public or private parking lot or parking structure, motor vehicles, public grounds or other public places unless the place has been licensed for that purpose by the Oregon Liquor Control Commission and the owner of the OLCC licensed premises has obtained a permit from the City of Canby to operate a sidewalk café. (Am. Ord. 1316, passed 8-19-2009)

§ 9.24.070 Public indecency.

No person shall, while in or in view of a public place, including public streets, perform an act of urination or defecation, except in toilets provided for that purpose.

CHAPTER 9.32: DRUG PARAPHERNALIA

Section

9.32.010	Purpose.
9.32.020	Definitions.
9.32.030	Determination of objects as drug paraphernalia.
9.32.040	Offenses and penalties.
9.32.050	Exemption.
9.32.060	Nuisance.
9.32.070	Infraction procedure.

§ 9.32.010 Purpose.

The City Council finds that certain items designed or marketed for use with illegal drugs enhance the appeal of and contribute to the illegal use of controlled substances among its young people. It therefore desires to ban the sale and display of these items and to limit the distribution of illegal drug paraphernalia to individuals. This chapter is based

upon the Model Drug Paraphernalia Act authorized by the Drug Enforcement Administration of the United States Department of Justice.

§ 9.32.020 Definitions.

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

Controlled Substance means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. §§ 811 to 812.45 modified under O.R.S. 475.035.

Deliver or Delivery means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

Drug Paraphernalia means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act of this state. It includes but is not limited to:

1. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

3. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

5. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

6. Diluents and adulterants such as quinine hydrochloride, mannitol, mannite, dextrose and lactose used, intended for use or designed for use in cutting controlled substances;

7. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

8. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

10. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

11. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

12. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons, and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs; and

m. Ice pipes or chillers.

Marijuana means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin

extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Medical Practitioner means licensed pharmacist; licensed and regulated members of a health care service providing organization able to administer controlled substances to patients under Oregon law.

§ 9.32.030 Determination of objects as drug paraphernalia.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

A. Statements by an owner or by anyone in control of the object concerning its use;

B. Prior convictions, if any, of an owner or of anyone in control of the object, under any municipal, state or federal law relating to any controlled substance;

C. The proximity of the object in time and space to a direct violation of this chapter of the State Uniform Controlled Substance Act;

D. The proximity of the object to controlled substances;

E. The existence of any residue of controlled substances on the object;

F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of municipal or state law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

G. Instructions, oral or written, provided with the object concerning its use;

H. Descriptive materials accompanying the object which explain or depict its use;

TITLE 12: STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter

12.04 STREET NAMING

12.08 STREET EXCAVATIONS

12.12 SIDEWALK DISPLAYS

12.13 SIDEWALK CAFÉS

12.16 SIDEWALK MAINTENANCE

12.20 ENCROACHMENT PERMITS

12.24 CITY PARKS

12.28 CITY CEMETERY

12.32 TREE REGULATIONS

12.36 TELECOMMUNICATIONS FACILITIES

**12.40 BICYCLES, SKATEBOARDS, SCOOTERS AND ROLLER
BLADES**

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intersection of U.S. 99E shall be named N.E. 4th Avenue.

§ 12.04.090 Northeast area: Streets extending north and south.

Thoroughfares in the northeast area of the city which extend north and south and commencing with the first street east of Ivy Street are named consecutively as follows:

- N. Juniper Court;
- N. Juniper Street;
- N. Knott Street;
- N. Locust Street;
- N. Lupine Court (N. Ellen Drive);
- N. Manzanita Street (Aneta Street);
- N. Maple Lane;
- N. Maple Street (N. Amrine Street);
- N. Noble Street (Florence Street);
- N. Oak Street; and
- N. Pine Street (N. Neff Street).

§ 12.04.100 Southwest area: Streets extending east and west.

Thoroughfares now in the southwest area of the city which extend east and west shall be named consecutively commencing with the first avenue (Highway 99E) south of the Southern Pacific Company right-of-way as follows:

- S.W. 1st Avenue;
- S.W. 2nd Avenue;
- S.W. 3rd Avenue;
- S.W. 4th Avenue;
- S.W. 5th Avenue;
- S.W. 6th Avenue;
- S.W. 7th Avenue; and
- S.W. 13th Avenue (S.W. Mundorff Road).

§ 12.04.110 Southwest area: Streets extending north and south.

Thoroughfares in the southwest area of the city which extend north and south and commencing with and including Ivy Street are named consecutively as follows:

- S. Ivy Street;
- S. Holly Street;
- S. Grant Street;
- S. Fir Street;

- S. Elm Street;
- S. Douglas Street;
- S. Birch Street;
- S. Aspen Street (S. Ash Street); and
- S. Berg Parkway.

§ 12.04.120 Southeast area: Streets extending east and west.

Thoroughfares in the southeast area of the city which extend east and west and commencing with the first avenue (Highway 99E) south of the Southern Pacific Company right-of-way are named consecutively as follows:

- S.E. 1st Avenue;
- S.E. 2nd Avenue;
- S.E. 4th Avenue;
- S.E. Township Road; and
- S.E. 13th Avenue (S.E. Mundorff Road).

§ 12.04.130 Southeast area: Streets extending north and south.

Thoroughfares in the southeast area of the city which extend north and south and commencing with the first street east of Ivy Street are named consecutively as follows:

- S. Juniper Street;
- S. Knott Street; and
- S. Locust Street.

§ 12.04.140 N.W. Baker Drive.

The thoroughfare which extends north and south immediately east of the Molalla River shall be named N.W. Baker Drive.

§ 12.04.150 Street signs.

The City Superintendent is directed to procure, erect and maintain, within the limits of funds budgeted annually for those purposes, appropriate name signs for all public city thoroughfares in the city. These signs shall be known as street signs, which term shall include the name sign, post, column or standard and supporting brackets and hardware.

§ 12.04.160 Defacing or damaging street signs.

Any person who maliciously, wantonly or wilfully destroys, defaces or damages in any manner any street sign shall be punished, upon conviction, by

a fine of not more than \$500. Any person acting as informer, in case of conviction under this section, is entitled to ½ of the fine imposed.

§ 12.04.170 Naming of new thoroughfares.

New public thoroughfares hereafter constructed in the city (including those in platted subdivisions where names are suggested by the subdivider and recommended by the City Planning Commission) shall be assigned names or numbers in accordance with §§ 12.04.030 and 12.04.040, and except names of new thoroughfares, which are shown in a subdivision plat approved by the Planning Commission, all new thoroughfare names shall be designated by resolution of the City Council after considering the recommendations of the Planning Commission.

§ 12.04.180 Linking together of 2 thoroughfares.

On the linking together of 2 thoroughfares bearing different names, 1 name only shall designate the entire length of the thoroughfare, and that name shall be designated by the Planning Commission.

CHAPTER 12.08: STREET EXCAVATIONS

Section

12.08.010	Permission to make excavation.
12.08.020	Authorized official.
12.08.030	Permit applications.
12.08.040	Applicant's verification.
12.08.045	Exemptions from requirements.
12.08.050	Construction schedule.
12.08.060	Construction permit fee.
12.08.070	Issuance of permit.
12.08.080	Notice of construction.
12.08.090	Compliance with permit.
12.08.100	Noncomplying work.
12.08.110	Completion of construction.
12.08.120	As-built drawings.
12.08.130	Restoration of public rights-of-way and city property.
12.08.140	Filing of bond.
12.08.150	Specifications for work.

12.08.160 Acceptance or rejection of replacement work.

12.08.170 Responsibility for underground utilities.

12.08.180 Claims for defective work.

12.08.190 Water seepage.

12.08.200 Penalty.

§ 12.08.010 Permission to make excavation.

No person, firm or corporation, nor any employee, agent or representative of any person, firm or corporation shall dig any hole or make any excavation in or upon any rights-of-way, street or alley of the city; change, alter or destroy the surface of any street or alley; obstruct the reasonable use of pedestrian travel over and upon the rights-of-way, street or alley; or cause or attempt to cause any or all of the same to be done by any other person, firm or corporation, employee, agent or representative whosoever, without first having applied to the City Council and having first received from the City Council, or its duly appointed and authorized official, its written consent and permission for the activity. (Ord. 1035, passed 11-3-1999; Am. Ord. 1313, passed 7-15-2009)

§ 12.08.020 Authorized official.

The City Administrator is designated and appointed as the authorized official referred to in § 12.08.010 who is delegated with full power and authority to act for the City Council in the matter of the consent and permission. (Ord. 1035, passed 11-3-1999)

§ 12.08.030 Permit applications.

Applications for permits to make excavations within rights-of-way or street cuts within the city shall be submitted upon forms to be provided by the city and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations;

B. That the facilities will be constructed in accordance with a franchise agreement, if applicable;

C. The location and route of all facilities to be installed aboveground or on existing utility poles;

D. The location and route of all new facilities on or in the public rights-of-way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights-of-way. Existing facilities shall be differentiated on the plans from new construction;

E. The location of all of applicant's existing underground utilities, conduits, ducts, pipes, mains, and installations which are within the public rights-of-way along the underground route proposed by the applicant. A cross-section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right-of-way; and

F. The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public rights-of-way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

(Ord. 1035, passed 11-3-1999; Am. Ord. 1313, passed 7-15-2009)

§ 12.08.040 Applicant's verification.

Unless exempted under § 12.08.045 of this code, all permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. (Ord. 1035, passed 11-3-1999)

§ 12.08.045 Exemption from requirements.

A. The City Administrator or designee may exempt applications for permits from the requirements of §§ 12.08.040 and 12.08.120 through 12.08.160, when in his or her discretion:

1. The amount of work to be done in city streets does not warrant the imposition of these requirements; and

2. The public interest in the city's streets and ways is adequately safeguarded.

B. The City Administrator may develop administrative regulations and policies to implement the provisions of this section.

(Ord. 1035, passed 11-3-1999)

§ 12.08.050 Construction schedule.

All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city.

(Ord. 1035, passed 11-3-1999)

§ 12.08.060 Construction permit fee.

Unless otherwise provided in a franchise agreement, if applicable, prior to issuance of a construction permit, the applicant shall pay a permit fee of \$100, or as otherwise determined by resolution of the City Council. The fee shall be designed to defray the costs of city administration of the requirements of this chapter.

(Ord. 1035, passed 11-3-1999)

§ 12.08.070 Issuance of permit.

If satisfied that the applications, plans and documents submitted comply with all requirements of this code and the franchise agreement, if applicable, the city shall issue a permit authorizing construction of the facilities, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the city may deem necessary or appropriate.

(Ord. 1035, passed 11-3-1999)

§ 12.08.080 Notice of construction.

Except in the case of an emergency, the permittee shall notify the city not less than 2 working days in advance of any excavation or construction in the public rights-of-way.

(Ord. 1035, passed 11-3-1999)

§ 12.08.090 Compliance with permit.

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The city and its representatives shall be provided access to the work site and any further information as they may require to ensure compliance with the requirements.

(Ord. 1035, passed 11-3-1999)

§ 12.08.100 Noncomplying work.

All work which does not comply with the permit, the approved or corrected plans and specifications for the work or the requirements of this chapter shall be removed at the sole expense of the permittee.
(Ord. 1035, passed 11-3-1999)

§ 12.08.110 Completion of construction.

The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights-of-way and other public and private property. All construction work within the city rights-of-way, including restoration, must be completed within 120 days of the date of issuance of the construction permit, unless an extension or an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by § 12.08.050 above.
(Ord. 1035, passed 11-3-1999)

§ 12.08.120 As-built drawings.

If requested by the city, the permittee shall furnish the city with 2 complete sets of plans drawn to scale and certified to the city as accurately depicting the location of all facilities constructed pursuant to the permit. These plans shall be submitted to the City Engineer or designee within 60 days after completion of construction, in a format mutually acceptable to the permittee and the city.
(Ord. 1035, passed 11-3-1999)

§ 12.08.130 Restoration of public rights-of-way and city property.

A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights-of-way or city property, he or she shall, at his or her own expense, promptly remove any obstructions therefrom and restore the ways or property to good order and condition unless otherwise directed by the city and as determined by the City Engineer or designee.

B. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. This temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required

permanent restoration when the weather or other conditions no longer prevent the permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the city.

C. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding 30 days to restore the rights-of-way or property. If, after the notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause the restoration to be made at the expense of the permittee.

D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of the work in or affecting the rights-of-way or property. A permittee shall also take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public.

E. For a period of 12 months following the completion of the work and the restoration of a street, the person who opened the street shall be responsible for the condition of the fill and replacement, and of the resurfacing. Should the trench settle during this period, it is the responsibility of the permittee to bring the street back to proper grade, notwithstanding the fact the work may have previously been approved and the bond canceled.

(Ord. 1035, passed 11-3-1999)

§ 12.08.140 Filing of bond.

Any person, firm or corporation making an application for excavations or a street cut shall, at the time and place of filing of the application and before a permit is issued, file with the City Recorder a bond executed by a surety company authorized to transact surety business in this state, or by 1 or more sufficient personal sureties approved by the City Administrator.

A personal surety must be a resident of this state. The bond shall be for the security and benefit of the city and shall be conditioned upon the applicant faithfully performing the excavation or street cut work in a careful, good and workmanlike manner to the satisfaction of the Superintendent of Public Works and within the time limit as prescribed by the permit. The amount of the bond shall be set by the City Administrator, but in no event shall it be less than \$1,000. In setting the amount of the bond, the City Administrator shall consider the nature and extent of the work to be done, the location of the street, usual traffic, kind and use of adjoining property, and probable costs to the city for replacement and restoration. The bond shall remain in force until 12 months after substantial completion of the work as determined by the city.

(Ord. 1035, passed 11-3-1999)

§ 12.08.150 Specifications for work.

All portions of an excavation or street cut which lie within the curb lines of the street or other actual traveled portion of the street as designated by the City Administrator shall be back-filled according to standard public works specifications. On streets having asphaltic paving and/or impregnated surfaces, a minimum of 4 inches of compacted hot-mix asphaltic concrete shall be placed in the upper portions of the pavement cut and rolled and/or tamped to the grade of the surrounding pavement. The same standards shall be applied to sidewalks except when the sidewalk is composed of poured concrete, in which case the sidewalk, where cut, shall be replaced with concrete. On surfaced streets and on the shoulders of paved and surface streets, the permittee shall place a minimum of 8 inches of compacted crushed rock having a gradation of 1 minus, which shall be rolled and/or tamped to the grade of the surrounding surfacing. If the full depth of the cut exceeds 8 inches, it shall be entirely filled with a granular material of 1 minus gradation and rolled and/or tamped to the grade of the surrounding surfacing. All backfilling and resurfacing shall be inspected and approved by the Superintendent of Public Works.

(Ord. 1035, passed 11-3-1999)

§ 12.08.160 Acceptance or rejection of replacement work.

All bonds filed by applicants shall be retained by the city until the City Administrator gives approval of the replacement. The City Administrator shall, within 45 days of the completion date stated on the permit or any extension thereof, if an extension is granted, either approve or reject the replacement. If the replacement is rejected, the permittee shall be informed in writing of the rejection and must, within 30 days of the notification, correct the replacement to the standards in effect. If the permittee fails to make the necessary corrections, his or her bond will be forfeited to the city to apply on its costs, and the city will proceed to make the necessary correction either by contract or city construction method, or a combination of both. In either case, the permittee shall be responsible for paying the city's costs of making or having corrections made, including engineering and any legal publication costs.

(Ord. 1035, passed 11-3-1999)

§ 12.08.170 Responsibility for underground utilities.

The permittee shall inform himself or herself as to the existence and location of all underground utilities and protect the same against damage. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewers, gas pipes, electric conduits or other utility facilities.

(Ord. 1035, passed 11-3-1999)

§ 12.08.180 Claims for defective work.

Acceptance or approval by the city of any excavation work and the replacement thereof and resurfacing, if any, shall not prevent the city from asserting a claim against the permittee for incomplete or defective work, if discovered within 12 months from the completion of the work.

(Ord. 1035, passed 11-3-1999)

§ 12.08.190 Water seepage.

It shall be unlawful for any person owning, controlling, using or operating any water main, irrigation or drainage pipeline or ditch, flume or other structure to permit any water from the water main,

pipeline, ditch, flume or other structure to flow, waste or seep into any street or alley of the city in a manner as to damage or injure the street or alley, or as to interfere with traffic thereon.

(Ord. 1035, passed 11-3-1999)

§ 12.08.200 Penalty.

Any person violating the provisions of this chapter, upon conviction, shall be punished by a fine not to exceed \$500.

(Ord. 1035, passed 11-3-1999)

CHAPTER 12.12: SIDEWALK DISPLAYS

Section

- 12.12.010 Space for displays.
- 12.12.020 Shelves to be removed during nighttime.
- 12.12.030 Obstructions prohibited.
- 12.12.040 Penalty.

§ 12.12.010 Space for displays.

It shall be unlawful for any person or persons in business or otherwise within the corporate limits of the city to cause or permit any display of groceries, vegetables or merchandise of any character whatsoever to occupy a space of more than 14 inches on the inside of the sidewalks. A display shall be not less than 2 feet in height, as measured from the sidewalk surface, so as not to create a tripping hazard. When a display is placed in front of a window, such display shall be no greater than three feet in height, as measured from the sidewalk surface, to ensure that windows are not blocked above that height.

(Am. Ord. 1296, passed 10-15-2008)

§ 12.12.020 Shelves to be removed during nighttime.

It shall be unlawful for any person to allow display shelves to remain upon the sidewalks after the displays are removed within the places of business,

during the night, unless the shelves are on hinges and can be dropped against the sides of the buildings when not used without extending or protruding so as to make them dangerous.

(Am. Ord. 1296, passed 10-15-2008)

§ 12.12.030 Obstructions prohibited.

It shall be unlawful for any person to wholly or partially obstruct the sidewalks with displays, boxes, tables and the like which interfere with pedestrians passing along the sidewalks, except in the case of temporary construction authorized pursuant to a building permit or as otherwise provided in this chapter.

(Am. Ord. 1296, passed 10-15-2008)

§ 12.12.040 Penalty.

Any person or persons violating or failing to comply with any of the provisions of this chapter shall be deemed guilty of an infraction and upon conviction thereof may be fined up to \$100 per each day of the violation.

(Am. Ord. 1296, passed 10-15-2008)

CHAPTER 12.13: SIDEWALK CAFÉS

Section

- 12.13.010 Purpose.
- 12.13.020 Permit required.
- 12.13.030 Definitions.
- 12.13.040 Permit fee.
- 12.13.050 Permit application.
- 12.13.070 Location rules and review criteria.
- 12.13.080 Liability and insurance.
- 12.13.090 Forms and conditions of permit.
- 12.13.100 Denial, revocation or suspension of permit.
- 12.13.110 Consumption of alcoholic beverages.
- 12.13.120 Penalties.

§ 12.13.010 Purpose.

The purpose hereof is to permit and encourage sidewalk vending that is compatible with other uses of the City of Canby public sidewalks. The city finds that sidewalk cafés encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce.

(Ord. 1316, passed 8-19-2009)

§ 12.13.020 Permit required.

Private commercial use of public sidewalks for the purpose of operating a sidewalk café in the city is prohibited unless a permit is obtained from the City Administrator or designee as provided herein.

(Ord. 1316, passed 8-19-2009)

§ 12.13.030 Definitions.

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

Abutting property owners and occupants means any owner or occupant of property which abuts the subject sidewalk café site excluding public right-of-way.

Accessible route means a continuous unobstructed path of travel connecting all publicly accessible elements and spaces of a building or facility.

Adjacent sidewalk area means that portion of the public sidewalk between the curb line and the property line demarcated by extending the side building lines of the premises until they intersect the curb.

Clearances as referenced in this section are measured horizontally from the outside edge of the sidewalk café delineation to any obstruction on the ground greater than one-half inch in height, or to an adjacent projection such as tree limbs, tree wells, banners, signs, bike racks, lamp posts, or any other fixtures. Accessible route clearances shall be no less than 4 feet in width and no less than 7 feet in height for the entire length of the accessible route. Radiuses along an accessible route shall be no less than 4 feet in width.

Operate a sidewalk café means serving food or beverage from a restaurant to patrons seated at tables located within the adjacent sidewalk area, including, in the case of a permittee in possession of a valid

license for the sale of alcohol beverages covering such sidewalk area, the service of such beverages, or providing seating for patrons in the adjacent sidewalk area.

Substantiated means witnessed and recorded by city staff.

Tree well means a defined area adjacent to a required street tree which provides a buffer for protection of the tree. The grade level surface of the tree well may contain movable tree pavers, steel grates, wood, dirt or other materials. With respect to measuring clearances, the area and surface materials within the tree well shall not be included. Any clearance shall be measured horizontally from the outside edge of the tree well, and/or projecting tree limbs.

Vision clearance triangle is that area which abuts streets, alleys or driveway intersections whether on the subject property or the abutting property. The vision clearance triangle is determined by measuring the appropriate distance in both directions from the intersecting curb lines along the edge of the right-of-way and/or the edge of driveways and alleyways as determined by the zoning district and type of intersecting roadways as indicated within the Land Development and Planning Ordinance.

(Ord. 1316, passed 8-19-2009)

§ 12.13.040 Permit fee.

A. Applicants for a sidewalk café shall pay a permit fee and a rental fee for the use of the public right-of-way.

B. The fee for the permit and the rental fee as described in § 12.13.020 shall be as specified in a resolution adopted by the Canby City Council. Fees are annual and shall be payable upon renewal date. An initial non-refundable permit fee is payable upon application. The initial right-of-way rental fee is payable upon permit issuance.

(Ord. 1316, passed 8-19-2009)

§ 12.13.050 Permit application.

A. Application for a permit to operate a sidewalk café shall be made to the City of Canby on a form provided by the City Administrator or designee. Application for a permit will minimally contain:

1. A completed application;
2. A scaled plan of the proposed public sidewalk area for sidewalk café use, with dimensions shown to include at a minimum:
 - a. total square foot area of outside café area,
 - b. café entrance location and size,
 - c. ADA clearances into and throughout the café,
 - d. all clearances to fixtures, lights, tree wells, signs, news racks, bike racks, planters and any other obstructions,
 - e. size and location of tables and chairs, and
 - f. location of outdoor café waste receptacles;
3. If requested by the applicant any delineation must meet city standards and application must also contain:
 - a. location and type of café delineation,
 - b. cross section of any fence or other delineation showing the construction materials and heights,
 - c. if applicable, details reflecting approved method of semi-permanent fence anchoring to the sidewalk or building; and
4. A certificate of insurance and endorsement form;
5. A copy of the alcohol control plan filed with the OLCC.

B. Information shall be provided as required by the City Administrator or designee to carry out the purpose hereof.
(Ord. 1316, passed 8-19-2009)

§ 12.13.070 Location rules and review criteria.

A. The City Administrator or designee shall review the application for compliance with the following criteria:

1. The operation of a sidewalk café shall be located such that there is at least a minimum of 4 feet of clear and unobstructed accessible route to a height of 7 feet measured vertically from grade between the sidewalk café delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any

other fixtures or obstructions. Radiuses along an accessible route shall be no less than 4 feet in width.

2. Additional restroom facilities may be required if the additional seating capacity created by a sidewalk café causes an increase in the required fixtures under Chapter 29 of the Oregon Structural Specialty Code.

3. The location of the sidewalk café operation shall be approved by the City Administrator or designee.

4. Accessible routes into, throughout, and adjacent to a sidewalk café shall be maintained in accordance with Chapter 11 of the Oregon Structural Specialty Code.

5. The operation of a sidewalk café requires that trash containers be provided on site.

B. The City Administrator or designee will forward all applications for review by the Planning Director, Public Works Director and Police Chief or their designees for any business who holds a valid liquor license, or in which alcoholic beverages are intended to be served.

1. The Planning Director, Public Works Director and the Police Chief or their designees upon review of the application will sign the application for concurrence with granting the license, or,

2. Submit a memorandum of concerns to be forwarded to City Council for consideration, signing the application in a location that acknowledges review of application.

(Ord. 1316, passed 8-19-2009)

§ 12.13.080 Liability and insurance.

A signed statement that the permittee shall hold harmless the city, its officers and employees, and shall indemnify the city, its officers and employees for any claims for damages to property or injury to persons which may occur in connection with an activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, liquor liability, food products liability, and property damages insurance as will protect permittee and city from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than the

amount of municipal tort liability under the Oregon Tort Claims Act. The permittee shall name the City of Canby as an additional insured by attaching an endorsement to the certificate of insurance (provided by the city). Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insured the city, its officers, and employees, and shall further provide that the policy shall not terminate or be canceled prior to the expiration of the permit without 30 days written notice to the city.

(Ord. 1316, passed 8-19-2009)

§ 12.13.090 Forms and conditions of permit.

The permit issued shall be in a form deemed suitable by the City Administrator or designee. In addition to naming the permittee and other information deemed appropriate, the permit shall contain the following minimum conditions.

A. Requirements for all sidewalk cafés.

1. Each permit issued shall terminate 1 year after the anniversary date.

2. The permit issued shall be personal to the permittee only and is not transferable in any manner without first obtaining permission from the City Administrator or designee. The permittee will be responsible for compliance with all conditions of approval.

3. The permit may be temporarily suspended by the City Administrator or designee if the public interest requires use of the right-of-way for a public event, construction, repair, or any other purpose.

4. The permit is specifically limited to the area approved or as modified by the City Administrator or designee, and will include a site plan as required by § 12.13.050 indicating the area approved for the sidewalk café and the location of the tables and materials permitted to be in the right-of-way. If requested by applicant, each business operating a sidewalk café shall utilize an approved method in accordance with city standards, to clearly delineate the café.

5. The operation of a sidewalk café shall be located such that there is at least a minimum of 4 feet of clear and unobstructed accessible route

between the café delineation and tree wells, tree limbs, bike racks, lamp posts, sign posts and any other fixtures or obstructions, to a height of 7 feet measured vertically from grade. Radiuses along an accessible route shall be no less than 4 feet in width.

6. The sidewalk and all things placed thereon shall at all time be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored in the public right-of-way when the sidewalk café is not in operation. The operation of a sidewalk café requires that trash containers be provided on site.

7. All required building modifications or parking improvements shall be completed prior to the commencement of the operation of the sidewalk café.

8. No signs shall be attached to any furniture or any other structure related to the operation of the sidewalk café.

9. The permittee shall notify the City Administrator or designee in writing when operation of the sidewalk café commences.

10. No use of city fixtures will be allowed.

11. Sidewalk cafés shall not occupy or obstruct the visual clearance triangle.

12. Council has the right to repeal or amend this chapter and thereby terminate or modify all sidewalk café operations. No permittee shall obtain any property right in the continued private commercial use of the public sidewalk.

13. Sidewalk café hours of operation will discontinue by 11:00 p.m. nightly.

B. Businesses which intend to serve alcoholic beverages at the sidewalk café must additionally meet the following requirements:

1. The business shall provide verification that they hold a valid Oregon Liquor Control Commission liquor license.

2. Except for bottles, pitchers, and carafes that are being served to customers of the café, storage of all other containers must be kept inside the business. No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed outside on the sidewalk.

3. Sidewalk cafés where alcoholic beverages are served and consumed require supervision by employees of the licensed business, as

required by the Oregon Liquor Control Commission liquor license.

4. If requested by the applicant, each business serving alcoholic beverages at the sidewalk café shall utilize an approved method in accordance with city standards, to clearly delineate the café.

5. All service and consumption of alcoholic beverages at sidewalk cafés will discontinue by 11:00 p.m. nightly.

6. All alcoholic beverage service providers must also provide food service in the licensed area.

7. Sidewalk cafés shall designate 1 access/exit point for the exterior service area and this point shall be located near a business entrance; and shall post signage at the access/exit point prohibiting the removal of alcoholic beverages from the licensed sidewalk café area.

(Ord. 1316, passed 8-19-2009)

§ 12.13.100 Denial, revocation or suspension of permit.

A. The City Administrator or designee may deny, revoke, or suspend the permit upon finding that any provision herein or condition of approval will be or has been violated.

B. Upon denial, revocation, or suspension, the City Administrator or designee shall give notice of such action to the applicant or permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective immediately, but the applicant or permittee may make written request, within 10 calendar days after the notice is issued, for a hearing by the City Administrator or designee. Upon hearing the matter, the City Administrator or designee shall render a final decision concerning the permit.

(Ord. 1316, passed 8-19-2009)

§ 12.13.110 Consumption of alcoholic beverages.

The provisions of § 9.24.060 of the CMC notwithstanding, patrons, while seated at a sidewalk café licensed to sell alcoholic beverages, may possess and consume such beverages.

(Ord. 1316, passed 8-19-2009)

§ 12.13.120 Penalties.

In addition to the remedies set out below, violations of the provisions of this section may be subject to other appropriate legal or equitable actions to restrain, correct, or abate the violations. These remedies are intended to be cumulative and not exclusive. The following violations are infractions punishable by a penalty in accordance with this section. Any violation of this section may be prosecuted as a Class A infraction under the procedures of O.R.S. Chapter 153 and Canby Municipal Code § 1.08.010. The City Administrator or designee is authorized to issue a citation or written notice of violation to any person violating the provisions herein. In addition:

A. Any sidewalk café operating without a valid permit for the year shall be notified by the city that it is in violation of this section, and will be allowed up to 10 business days to file an application. If no application is filed within 10 days, the operator of the café shall be notified and a civil penalty of \$500 per day shall be levied.

B. Any sidewalk café operating with a valid license, but found by the city to have a substantiated instance of failing to be in compliance with the other provision of this section of the Canby Municipal Code shall be given up to 2 written notices per year, warning that it is operating out of compliance and in violation of this section. On the third investigated and substantiated instance of non-compliance, notice of the non-compliance may be delivered and penalties may be levied as follows:

1. first levy (third substantiated violation) \$500;
2. second levy (fourth substantiated violation) \$1,000;
3. third levy (fifth substantiated violation) \$1,500.

4. Penalties shall continue to accrue in \$500 increments for each additional substantiated violation.

C. In accordance with § 12.13.100, the City Administrator or designee may deny, revoke, or suspend the permit upon finding more than 3 separate instances of substantiated violations that result in fines.

D. Levies of civil penalties and revocations of permits may be appealed to the municipal court judge within 10 days of date written notice of the levy of penalty or revocation is deposited in the United States Mail with first class postage addressed to the café or delivered to an employee of the café or posted at the café. If no appeal is filed within 10 days of the notice, the levy of penalty shall be final and failure to pay the levy shall be a separate violation of this section.

E. Any appeal must be in writing, signed by the owner or operator of the café, and must state the grounds for the appeal. The appeal must be accompanied by a deposit in the amount of the levy and an appeal fee of \$50. The appeal must be filed with the municipal court. The appeal must be served upon the City Attorney. Failure to comply with any of these requirements within 10 days of the date of notice shall result in a dismissal of the appeal, a forfeiture of the appeal fee, and entry of judgment in the amount of the levy by the municipal court in its register.

F. Rules of conduct for hearing and final order. The Municipal Judge shall develop any rules, procedures or regulations that may be necessary for the proper conduct of the appeal. The only issue to be decided by the Municipal Judge is a determination of whether or not the café was in violation of CMC § 12.13.120(1) or (2) as alleged in the notice of penalty. If the Municipal Judge finds that it is more likely than not that the café was in violation as specified in the notice of penalty, the Municipal Judge shall issue an order affirming the levy of penalty and enter a judgment for the amount of the levy of penalty into the register of the Municipal Court. The order and judgment shall contain a provision for court costs to be paid by the violator in the amount of \$250. If the Judge finds that it is more likely than not that the café was in compliance and not in violation as specified in the notice of penalty, the Judge shall void the notice of penalty. The Judge's order is final and is not subject to appeal. It shall not be a defense that the café owner or operator did not receive notice of the penalty if mailed to the address of the café or delivered to an employee of the café. It shall not be a defense that the café owner or operator was not aware of the permit requirements.

G. Failure to pay levy penalty. Unless the full amount of the levy of penalty is paid within 10 days after notice of penalty or the order becomes final by operation of law, or after appeal, each day that the penalty is not paid shall constitute a further violation. (Ord. 1316, passed 8-19-2009)

CHAPTER 12.16: SIDEWALK MAINTENANCE

Section

- 12.16.010 Responsibility of landowners.
- 12.16.020 Permit to make repairs.
- 12.16.030 Notice to make repairs.

Canby - Streets, Sidewalks and Public Places

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

§ 12.32.060 Care of trees.

A. Authority. The city may plant, prune, maintain and remove park and street trees as may be necessary to ensure public safety, or to preserve or enhance the appearance of public lands. The city may remove or cause to be removed, at the expense of the abutting landowner, a tree or part of a tree which is in an unsafe condition, which by reason of its nature is injurious to public improvements, or is affected with any injurious fungus, insect or pest. This section does not prohibit the planting of street trees by abutting property owners, provided that the selection, location and planting of the trees is in accordance with the list of acceptable species and the other sections of this chapter.

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

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

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

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

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

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

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

§ 12.32.070 Duties of private property owners.

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

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

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

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

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

§ 12.32.080 Interference with the city.

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

§ 12.32.090 Service of orders.

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

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

1. By making personal delivery of the order to the person responsible;
2. By leaving the order with some persons of suitable age and discretion upon the premises;
3. By affixing a copy of the order to the door of the entrance of the premises in violation;
4. By mailing a copy of the order to the last known address of the owner of the premises by certified mail; or
5. By publishing a copy of the order in the Canby Herald once a week for 2 successive weeks.

§ 12.32.100 Compliance.

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

§ 12.32.110 Appeal.

A person to whom an order under this chapter is directed shall have the right within 14 days of the service of the order to appeal to the City Council, which shall review the order at its next regular meeting or special meeting called for that purpose.

Unless the order is revoked or modified by the City Council, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with the order within 30 days after an appeal shall have been determined.

§ 12.32.120 Failure to comply.

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

§ 12.32.130 Special assessment.

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

§ 12.32.140 Penalty.

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

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. |

REFERENCES TO OREGON REVISED STATUTES

<i>O.R.S. Section</i>	<i>Code Section</i>
8.665	12.24.050
Ch. 10	1.16.030
10.050	1.16.070
30.315	8.20.110
Ch. 34	13.16.077
34.010 to 34.100	4.04.100, 12.24.060
Ch. 88	2.40.090
Ch. 131 through 133	9.04.020
133.005(1)	9.50.020
133.005(3)	12.24.060
133.455	9.50.040
Ch. 135 through 138	9.04.020
Ch. 153	9.04.020, 9.32.070, 10.04.010, 12.13.120, 12.24.050
Ch. 156 through 157	9.04.020
Ch. 162 through 167	9.04.010
Ch. 163	5.16.060
Ch. 164	5.16.060
164.805(2)	6.08.040
Ch. 165	5.16.060
Ch. 166	5.16.060
Ch. 174	1.04.080
190.240	12.36.030
Ch. 197	4.32.010
197.015	3.30.060
199.430	2.40.010
199.460 to 199.534	2.40.010
Ch. 223	4.12.080, 4.20.110, 4.24.220, 13.12.030
223.205 through 223.300	4.04.120
223.297 to 223.314	4.20.150
223.405 through 223.490	4.04.180
223.505 through 223.595	12.16.05
223.510 through 223.595	15.16.090
267.380	3.24.010, 3.24.080
267.385	3.24.160
Ch. 279	2.16.010
283.140	12.36.030
Ch. 316	3.24.010

Canby - Parallel References

O.R.S. Section

Code Section

319.210	3.40.140
319.280 through 319.320	3.40.200
357.400 through 357.621	2.20.010
390.005 through 390.124	12.24.010
Ch. 401	2.52.040, 2.52.080
401.025	12.36.030
Ch. 426	9.12.010, 9.50.020, 9.50.040
Ch. 446	3.20.130
446.003(26)	3.20.130
457.010	2.68.010
457.045(3)	2.68.030
Ch. 471	5.16.020, 5.16.050, 9.04.010
Ch. 475	9.04.010
475.035	9.32.020
527.620	8.14.030
Ch. 619	10.04.100
Ch. 674	4.32.020
Ch. 743	10.04.010
759.005(1)	12.36.030
759.010	12.36.030
806.010	10.12.010, 10.12.030
806.080	10.12.010

REFERENCES TO ORDINANCES

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
975	8-20-1997	8.04.120
—	11-4-1997	Charter, Chapter 1
982	1-7-1997	4.24.010 - 4.24.080
984	2-18-1998	4.24.010
989	4-1-1998	2.32.010 - 2.32.030
992	5-6-1998	2.48.020, 2.48.030, 2.48.090
996	6-17-1998	T.S.O. I
1000	7-15-1998	T.S.O. I
1001	7-15-1998	T.S.O. I
1005	8-19-1998	4.12.080
1012	12-2-1998	T.S.O. I
1014	1-20-1999	T.S.O. I
1017	4-7-1999	T.S.O. I
1032	10-6-1999	2.68.010 - 2.68.050
1035	11-3-1999	12.08.010 - 12.08.200
1036	11-3-1999	12.36.010 - 12.36.090
1031	11-24-1999	4.28.010
1040	11-17-1999	T.S.O. I
1053	7-19-2000	T.S.O. I10549-6-200012.20.010 - 12.20.070
1081	11-21-2001	3.24.010 - 3.24.250
1082	11-21-2001	12.40.010 - 12.40.080
1085	1-2-2002	15.04.010 - 15.04.050
1091	2-20-2002	4.04.110
1093	3-20-2002	2.36.010
1108	1-8-2003	15.20.010 - 15.20.280
1109	11-20-2002	2.70.010 - 2.70.050
1110	2-5-2003	12.24.060, 12.24.065
1113	2-19-2003	4.24.150 - 4.24.240
1133	2-18-2004	2.56.020 - 2.56.080
1136	4-21-2004	2.64.020, 2.64.030
1137	4-21-2004	2.20.030, 2.20.040
1151	8-18-2004	13.08.150
1160	10-20-2004	4.24.200, 4.24.220
1165	12-1-2004	4.32.010 - 4.32.090
1166	1-5-2005	9.44.010, 9.44.060 - 9.44.110
1169	2-2-2005	T.S.O. I
1170	2-16-2005	2.16.010 - 2.16.030

Canby - Parallel References

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
1200	2-15-2006	Adopting Ordinance
1208	6-7-2006	T.S.O. I
1219	9-6-2006	4.24.220
1261	1-2-2008	3.40.020 - 3.40.270
1262	1-16-2008	3.30.010 - 3.30.110
1279	6-18-2008	15.12.010 - 15.12.190
1292 § 1.1	9-3-2008	13.16.001
1292 § 1.2	9-3-2008	13.16.002
1292 § 1.3	9-3-2008	13.16.003
1292 § 1.4	9-3-2008	13.16.004
1292 § 2.1	9-3-2008	13.16.015
1292 § 2.2	9-3-2008	13.16.016
1292 § 2.3	9-3-2008	13.16.017
1292 § 2.4	9-3-2008	13.16.018
1292 § 2.5	9-3-2008	13.16.019
1292 § 2.6	9-3-2008	13.16.020
1292 § 2.7	9-3-2008	13.16.021
1292 § 2.8	9-3-2008	13.16.022
1292 § 2.9	9-3-2008	13.16.023
1292 § 3.1	9-3-2008	13.16.035
1292 § 3.2	9-3-2008	13.16.036
1292 § 3.3	9-3-2008	13.16.037
1292 § 3.4	9-3-2008	13.16.038
1292 § 3.5	9-3-2008	13.16.039
1292 § 3.6	9-3-2008	13.16.040
1292 § 3.7	9-3-2008	13.16.041
1292 § 3.8	9-3-2008	13.16.042
1292 § 4.1	9-3-2008	13.16.055
1292 § 4.2	9-3-2008	13.16.056
1292 § 4.3	9-3-2008	13.16.057
1292 § 4.4	9-3-2008	13.16.058
1292 § 4.5	9-3-2008	13.16.059
1292 § 4.6	9-3-2008	13.16.060
1292 § 4.7	9-3-2008	13.16.061
1292 § 4.8	9-3-2008	13.16.062
1292 § 5.1	9-3-2008	13.16.075
1292 § 5.2	9-3-2008	13.16.076
1292 § 5.3	9-3-2008	13.16.077
1292 § 5.4	9-3-2008	13.16.078
1292 § 5.5	9-3-2008	13.16.079
1292 § 5.6	9-3-2008	13.16.080
1292 § 5.7	9-3-2008	13.16.081

References to Ordinances

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
1292 § 5.8	9-3-2008	13.16.082
1292 § 6.1	9-3-2008	13.16.090
1292 § 6.2	9-3-2008	13.16.091
1292 § 6.3	9-3-2008	13.16.092
1292 § 6.4	9-3-2008	13.16.093
1292 § 6.5	9-3-2008	13.16.094
1292 § 6.6	9-3-2008	13.16.095
1292 § 6.7	9-3-2008	13.16.096
1292 § 6.8	9-3-2008	13.16.097
1292 § 6.9	9-3-2008	13.16.098
1292 § 6.10	9-3-2008	13.16.099
1292 § 6.11	9-3-2008	13.16.100
1292 § 6.12	9-3-2008	13.16.101
1292 § 6.13	9-3-2008	13.16.102
1292 § 6.14	9-3-2008	13.16.103
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1292 § 13.1	9-3-2008	13.16.210
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<i>Ord. No.</i>	<i>Date Passed</i>	<i>Code Section</i>
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1292 § 13.4	9-3-2008	13.16.213
1292 § 14.1	9-3-2008	13.16.230
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MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *Bryan Brown, Planning Director*
Melissa Hardy, Associate Planner
THROUGH: *Amanda Klock, Interim City Administrator*
DATE: *January 06, 2010*
RE: *DEVELOPMENT CODE AMENDMENT: Application No. TA 09-03;
A Canby Municipal Code Amendment specifically amending the Land
Development & Planning Ordinance (Title 16), in order that residential infill
standards only apply to the R-1 and R-1.5 zoning districts, but no longer
apply to the R-2 zoning district.*

Summary:

The Planning Commission initiated this code amendment application for the purpose of changing the “Infill Homes” requirements so that they only apply to development in the R-1 (Low Density Residential) and R-1.5 (Medium Density Residential) zoning districts, and no longer apply in the R-2 (High Density Residential) zoning district. The intent of the change is to make it easier for residential development in the R-2 zone to meet applicable single-family and two-family design standards, and also more importantly, easier to meet the minimum R-2 density standard of 14 dwelling units per acre.

The proposed code amendment will change Canby Municipal Code (CMC) Section 16.04.255 as follows: (Added text illustrated in **red underlined font**.)

16.04.255 Infill homes.

Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that **are located in an R-1 or R-1.5 zoning district, and that** have existing homes on two adjacent sides. Each adjacent home must be within 25 feet of the common lot line with the infill homes and have pre-existed for at least 5 years (dated from the existing homes final building permit approval).

Approval Criteria:

A Title 16 text amendment is a legislative land use action. In judging whether or not Title 16 should be amended, the Planning Commission and City Council shall consider the following approval criteria:

1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A public need for the change;
3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;
4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community; and
5. Statewide planning goals.

Recommendation:

Based upon the findings in the December 14, 2009, staff report, which were supported by testimony received during the December 14, 2009, public hearing, the Planning Commission voted 6-0 to forward a recommendation for approval of this text amendment to City Council.

Recommended Motion: *“I move that the City Council approve Text Amendment No. TA 09-03 as presented, based on the findings in this staff report, including all attachments hereto, and the recommendation of the Planning Commission, and direct staff to present Council with an ordinance to codify this amendment.”*

Alternatives:

If the City Council wants to modify the proposed text amendment, or deny the proposed text amendment, the Council may approve a motion to either:

- hold a public hearing at the next City Council meeting concerning such changes, or
- remand the matter back to Planning Commission with guidance, so that Commission can re-open the public hearing to discuss such changes.

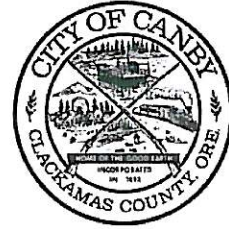
Discussion:

History. The Planning Commission held a work session on August 10, 2009, to discuss the issue of residential infill standards. At that time the Commission heard from a residential developer, who told the Commission that he has found it difficult to develop R-2 zoned property to meet the minimum required density, while still meeting the required residential design standards and the infill standards. The Planning Commission continued their discussion of infill standards at their regular meeting on August 24, 2009, and initiated a code amendment, directing staff to prepare a code amendment that would eliminate infill standards in the R-2 zoning district, but keep them in the R-1 and R-1.5 zoning districts. A public hearing was then scheduled for December 14, 2009, so that Planning Commission could receive public testimony concerning the proposed amendment. Notice of the December 14th public hearing was posted at City Hall and at the Canby Public Library on December 04, 2009. Notice of the public hearing was also published in the December 09, 2009, Canby Herald.

Public Hearing Summary. Staff presented a staff report to the Planning Commission at the Public Hearing. Testimony was received from Mr. Jason Bristol, who spoke in favor of the proposed amendment. The Planning Commission then closed the public hearing on December 14, 2009, and following favorable deliberations, voted 6-0 to forward a recommendation of approval to City Council for the proposed code amendment. Their recommendation is based on the findings in the December 14, 2009, staff report (*see Attachment A – Planning Commission Staff Report*), together with supporting testimony received at the Public Hearing (*see Attachment B – Draft Planning Commission Minutes*).

Attachments:

- A. Planning Commission Staff Report
- B. Draft Planning Commission Minutes



MEMORANDUM

TITLE: A CANBY MUNICIPAL CODE AMENDMENT, specifically amending the Land Development & Planning Ordinance (Title 16) in order that residential infill standards no longer apply to the R-2 (High Density Residential) zoning district.

APPLICANT: City of Canby

FILE #: TA 09-03

STAFF: Melissa Hardy, Associate Planner

HEARING DATE: December 14, 2009

I. APPLICATION SUMMARY

The Planning Commission initiated this code amendment application on August 24, 2009, for the purpose of changing the "Infill Homes" requirements so that they only apply to development in the R-1 (Low Density Residential) and R-1.5 (Medium Density Residential) zoning districts, and not apply in the R-2 (High Density Residential) zoning district. The intent of the change is to make it easier for residential development in the R-2 zone to meet applicable single-family and two-family design standards, and also more importantly, easier to meet the minimum R-2 density standard of 14 dwelling units per acre.

An infill home is defined as an existing or new single-family dwelling, a manufactured home, a two-family dwelling, a duplex, or a triplex; on a lot that has existing homes on two adjacent sides, where the adjacent homes have pre-existed for at least 5 years, and are located within 25 feet of the common lot line with the infill home.

Infill standards include the following:

- An infill home exceeding one story cannot exceed a lot coverage of 35%.
- An infill home cannot exceed a building height of 28 feet.
- An infill home must have a front yard setback that is within 5 feet of the front yard setback for the closest adjacent home on the same side of the street (unless that home has a setback greater than 30 feet).
- Except on a flag lot, an infill home must meet garage standards that limit garages to a percentage of the street-facing façade or limit how far the garage can extend in front of the rest of the structure.
- An infill home must meet some minimum number of architectural design requirements, such as bay windows, pitched roof, recessed entry, etc.
- The exterior wall height of an infill home cannot exceed 10 feet at the interior and rear setback lines; and the building may increase in height by one foot vertically for each horizontal foot it is moved back from the setback lines.

The Planning Commission heard from a residential developer at their Work Session on August 10, 2009. The developer told the Commission that he has found it difficult to develop R-2 zoned property to meet the minimum required density, while still meeting the required residential design standards and infill standards; and that he believed it would be easier to build to the minimum density required in the R-2 zone if he did not have to meet the infill standards.

The residential infill standards were first created in 2002 (*Ord.No. 1107*), and were based on recommendations gathered from neighborhood meetings, from a residential design standards focus group, and from the Planning Commission. At that time the definition of an “infill home” was created to include single-family dwellings, manufactured homes, two-family dwellings, and duplexes, regardless of zoning district. Then in 2007, triplexes were added to the definition of an “infill home”, again regardless of zoning district, so that the infill standards would apply to triplexes too (*Ord.No. 1237*).

If the R-2 zone is exempted from the infill standards, then residential development in the R-2 zone will still be required to meet all single-family and two-family design standards, or multi-family design standards, whichever is applicable. The biggest impact from the code change will affect building height, lot coverage, and setbacks. Instead of the maximum 35% infill lot coverage limitation, the normal R-2 lot coverage limitations will apply: multi-family dwelling is 40% lot coverage, duplex or triplex is 60% lot coverage, and single-family dwelling is 70% lot coverage. And instead of the maximum 28 foot infill height limitation, the normal R-2 height limitation of 35 feet will apply. And the normal R-2 setbacks will apply instead of the infill step-up setback standards. This code change will provide less set-back protection to areas adjacent to R-2 zoned property in terms of how close structures can be built, size, height, and bulk. But this code change will also allow development of more building square footage on R-2 lots, which may, as the developer stated in the Work Session, make it easier for developers to meet the minimum R-2 density standard of 14 dwelling units per acre. It may have the effect of encouraging redevelopment of older R-2 areas, and because of the difficulty in assembling multiple lots, the nature of the redevelopment is more likely to be duplexes or triplexes rather than higher density multi-family construction which this zoning district was targeted to provide.

II. APPLICABLE CRITERIA

A Title 16 text amendment is a legislative land use action. In judging whether or not Title 16 should be amended, the Planning Commission and City Council shall consider the following approval criteria:

1. The Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A public need for the change;
3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;
4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community; and
5. Statewide planning goals.

III. PUBLIC COMMENT

Notice of the December 14th public hearing was posted at City Hall and at the Canby Public Library on December 04, 2009. Notice of the public hearing was also published in the December 09, 2009, Canby Herald. No public comments were received yet as of the date this staff report was prepared.

IV. FINDINGS

Staff recommends that Planning Commission consider the following findings in it's review of this proposed Text Amendment:

1. The proposed amendment complies with the Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, and will preserve functions and local aspects of land conservation and development.

Citizen Involvement: The proposed text amendment does not change the type or level of land use review that development in the R-2 zone is subject to. Multi-family development will still be subject to discretionary Site and Design Review approval, and single-family development will still be subject to ministerial Type I permit approval. Therefore, the type and level of citizen involvement in the land use review process is not affected by the proposed text amendment.

Furthermore, citizen involvement has been encouraged and facilitated by the City in it's review of this proposed text amendment, by providing notice of the public hearing in the newspaper, and by posting notice of the hearing at City Hall and the Canby Public Library.

Land Use Planning: The proposed text amendment does not change permitted uses in any of the zoning districts. It is anticipated, however, that eliminating the infill standards from the R-2 zone will help facilitate development of more residential building square footage on R-2 lots, which may make it easier for developers to meet the minimum R-2 density standard of 14 dwelling units per acre. This is in line with the Canby Comprehensive Plan land use policy that "Canby shall encourage a general increase in the intensity and density of permitted development as a means of minimizing urban sprawl."

Housing: It is anticipated that eliminating the infill standards from the R-2 zone will help facilitate development of more residential building square footage on R-2 lots, which may make it easier for developers to meet the minimum R-2 density standard of 14 dwelling units per acre. This is in line with the Canby Comprehensive Plan land use policy that "Canby shall encourage a gradual increase in housing density as a response to the increase in housing costs and the need for more rental housing."

2. There is a public need for the change. The current code requires single-family dwellings, manufactured dwellings, duplex dwellings, and triplex dwellings that meet the infill definition to conform with infill standards, regardless of which zoning district they are in. The infill standards therefore place restrictions on height and size of structures that can be built in the R-2 zone, over and above the standard development limitations in the R-2 zone, which then places a limit on the number of dwelling units that can be constructed on a property in the R-2 zone. The infill standards therefore have been found to be an unintended impediment to achieving the City's desired minimum residential density of 14 dwelling units per acre in the R-2 zone. In order to better facilitate residential development in the R-2 zoning district that meets, at a minimum, the desired density of 14 dwelling units per acre, the City finds that there is a public need to remove infill requirements from the R-2 zoning district.
3. The proposed change will serve the public need better than any other change which might be expected to be made. It is anticipated that the proposed elimination of infill standards from the R-2 zoning district will make it easier for developers to meet the minimum required density standards in the R-2 zone. An alternative might be to reduce the minimum residential density required in the R-2 zone, in order to accommodate lower building heights and greater setback areas required to meet the infill code. But reducing the minimum residential density requirement in the R-2 zone would be counter to the City's comprehensive plan goals of encouraging an increase in the intensity and

density of development to minimize sprawl, and encouraging an increase in housing density to address rising housing costs and the need for rental housing. The alternative of decreasing density requirements does not comply with the city's comprehensive plan, and is therefore not a reasonable solution. Therefore, removing infill requirements from the R-2 zone serves the public need better than any other change with might be expected to be made.

4. The proposed change will preserve and protect the health, safety, and general welfare of the residents in the community. Removing infill standards from the R-2 zone will mean that development therein must meet the normal development standards set forth in the R-2 zoning district regulations. And those normal development standards have been found to preserve and protect the health, safety, and general welfare of Canby residents. Furthermore, it is in the best interests of the general welfare of Canby residents to encourage and facilitate residential development in the R-2 zone that meets the community's desired density of 14 dwelling units per acre.
5. The proposed amendment complies with applicable Statewide Planning Goals, which are Goal #1 (Citizen Involvement) and Goal #2 (Land Use Planning). The proposed text amendment does not change the type or level of land use review that development in the R-2 zone is subject to. Multi-family development will still be subject to discretionary Site and Design Review approval, and single-family development will still be subject to ministerial Type I permit approval. Therefore, the type and level of citizen involvement in the land use review process is not affected by the proposed amendment. Furthermore, citizen involvement has been encouraged and facilitated by the City in its review of this proposed text amendment, by providing notice of the public hearing in the newspaper, and by posting notice of the hearing at City Hall and the Canby Public Library. This complies with the Statewide Planning Goal concerning citizen involvement.
The proposed text amendment implements both Canby's Comprehensive Plan land use policy that "Canby shall encourage a general increase in the intensity and density of permitted development as a means of minimizing urban sprawl," and housing policy that "Canby shall encourage a gradual increase in housing density as a response to the increase in housing costs and the need for more rental housing." And this therefore complies with the Statewide Planning Goal that the City should adopt implementation ordinances to control the use and development of land in order to implement the City's comprehensive plan goals.
The remaining Statewide Planning Goals are found to be not particularly applicable to this proposed amendment.

V. PROPOSED AMENDMENT

The proposed code amendment language is detailed below. Deleted text is illustrated in ~~strikeout font~~, while added text is illustrated in red underlined font.

Amend the following section in CMC Chapter 16.04...

16.04.255 Infill homes.

Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that are located in an R-1 or R-1.5 zoning district, and that have existing homes on two adjacent sides. Each adjacent home must be within 25 feet of the common lot line with the infill homes and have pre-existed for at least 5 years (dated from the existing homes final building permit approval).

VI. RECOMMENDATION

Based upon the findings stated in this staff report, and without benefit of a public hearing on the matter, staff recommends that the Planning Commission recommend approval of **TA 09-03** to the City Council.

Recommended Motion: *I move that the Planning Commission recommend that City Council approve TA 09-03, based on the record of the December 14th Planning Commission public hearing and findings in the December 14th Planning Commission staff report.*

VII. NEXT STEPS

1. Following close of public hearing, Planning Commission will make a recommendation to the City Council concerning adoption of the proposed text amendment, including recommended findings;
2. The City Council will make their decision based on the record of the Planning Commission's hearing and deliberations, but does not usually hold a new public hearing (though the Council may hold such a hearing if it so chooses).

MINUTES
CANBY PLANNING COMMISSION
7:00 PM – December 14, 2009
City Council Chambers – 155 NW 2nd Avenue

PRESENT: Chair Dan Ewert, Vice Chair Jan Milne, Commissioners Sean Joyce, Chuck Kocher, Misty Slagle and Jared Taylor

ABSENT: None

STAFF: Bryan Brown, Planning Director; Melissa Hardy, Associate Planner; and Jill Thorn, Planning Staff

OTHERS PRESENT: Jason Bristol, City Councilor/ Planning Commission Liaison Brian Hodson

1. CALL TO ORDER

2. CITIZEN INPUT None

3. PUBLIC HEARINGS

a. Text Amendment – Changing the “Infill Homes” definition so that infill standards only apply to development in the R-1 (low Density Residential) and R-1.5 (Medium Density Residential) zoning districts, and not apply in the R-2 (High Density Residential) zoning district. – TA 09-03.

Chair Ewert read the public hearing format. When asked if any Commissioner had a conflict of interest, none was expressed. When asked if any Commissioner had ex-parte contact, none was stated. No questions were asked of the Commissioners.

Melissa Hardy, Associate Planner presented the December 14, 2009 staff report for the record.

There were no questions for staff.

Jason Bristol – Mr. Bristol said he originally brought this issue to the attention of the Commission and spoke to the benefits of the amendment creating more opportunities for high density and affordable housing. He felt it would help with re-development of blighted areas. He said the infill standards are almost impossible to achieve in the R-2 zone, because they conflict with R-2 density standards, and result in much smaller dwelling units and not as high of quality of development.

Applicant: None

Proponents: None

Opponents: None

Neutral: None

Rebuttal: None

Chair Ewert closed the public hearing.

Commissioner Milne said it's important to note this item wasn't something the Planning staff or Commission just came up with, but it is an issue that was identified by Mr. Bristol, a developer who wants to redevelop blighted areas, and has been the subject of lots of discussion by the Commission in work sessions. She said the approval criteria are met and there is a public need for this amendment.

Commissioner Joyce said it will lead to fewer variance requests, is more in line with the density goals, and will eliminate developers having to use "creative" architecture in order to squeeze required dwelling units into tight building envelopes.

Commissioner Ewert said this is a housekeeping amendment.

Commissioner Joyce moved that the Planning Commission recommend that the City Council approve TA 09-03, based on the record of the December 14, 2009 Planning Commission public hearing and the findings in the December 14, 2009 Planning Commission staff report. It was seconded by Commissioner Taylor. The motion passed 6-0.

4. NEW BUSINESS **None**

5. FINAL DECISIONS **ANN 09-01 – Beck** – Commissioner Slagle moved to approve the Findings, Conclusions and Order for ANN 09-01. It was seconded by Commissioner Taylor. The motion passed 6-0.

6. MINUTES

November 23, 2009 - Commissioner Milne moved to approve minutes of November 23, 2009 as presented. Motion seconded by Commissioner Kocher and passed 6-0.

7. ITEMS OF INTEREST FROM STAFF Bryan Brown, Planning Director, gave a brief update on the Transportation System Plan update project, and modeling software that is being used to help make decisions for the plan.

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION **None**

9. ADJOURNMENT



MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *Bryan Brown, Planning Director*
Melissa Hardy, Associate Planner
THROUGH: *Amanda Klock, Interim City Administrator*
DATE: *January 06, 2010*
RE: *Ordinance No. 1323 - AN ORDINANCE AMENDING CANBY MUNICIPAL CODE SECTION 16.04.255 IN ORDER THAT RESIDENTIAL INFILL STANDARDS NO LONGER APPLY TO THE R-2 ZONING DISTRICT. (TA 09-03)*

Summary:

Attached is Ordinance No. 1323, which amends Title 16 of the Canby Municipal Code (CMC); Specifically amending CMC Section 16.04.255, for the purpose of codifying approved Text Amendment No. TA 09-03.

Recommendation:

Staff recommends that the City Council pass Ordinance No. 1323, attached hereto as Attachment 1.

Recommended Motion: *"I move to approve Ordinance 1323, an ordinance amending Canby Municipal Code Section 16.04.255 for the purpose of codifying approved Text Amendment TA-09-03, to come up for second reading on January 20, 2010."*

Background:

Planning Commission held a public hearing concerning text amendment application no. TA-09-03 on December 14, 2009. Following close of public hearing, the Planning Commission voted 6-0 to forward a recommendation of approval to City Council based on the findings in the December 14th staff report.

City Council then received the application, staff report, and draft Planning Commission minutes on January 06, 2010. The City Council approved Text Amendment TA 09-03 as presented, based on the findings in the Planning Commission staff report, and directed staff to present Council with an ordinance for adoption.

Alternatives:

1. The City Council may vote not to pass Ordinance No. 1323, in which case Text Amendment TA-09-03 will not be codified and CMC Section 16.04.255 will remain unchanged.

Attachments

1. Ordinance No. 1323

ORDINANCE NO. 1323

AN ORDINANCE AMENDING CANBY MUNICIPAL CODE SECTION 16.04.255 IN ORDER THAT RESIDENTIAL INFILL STANDARDS NO LONGER APPLY TO THE R-2 ZONING DISTRICT.

WHEREAS, the City of Canby initiated an application (application no. TA-09-03) for an amendment to the text of Title 16, in order that residential infill standards only apply to the R-1 and R-1.5 zoning districts, but no longer apply to the R-2 zoning district; and

WHEREAS, the Planning Commission held a public hearing concerning the text amendment application on December 14, 2009, and based on their determination that the proposed amendment met all required approval criteria, voted 6-0 to forward a recommendation of approval to City Council; and

WHEREAS, the City Council received the text amendment application and Planning Commission recommendation on January 06, 2010, and found that the proposed amendment complies with the Comprehensive Plan of the city, and the plans and policies of the county, state, and local districts, and will preserve functions and local aspects of land conservation and development; that there is a public need for the change; that the amendment will serve the public need better than any other change which might be expected to be made; that the amendment preserves and protects the health, safety, and general welfare of the residents in Canby; and that it complies with the Statewide Planning Goals; and

WHEREAS, the City Council voted _____ to approve Text Amendment No. TA 09-03 as presented, based on the findings in the Council staff report, including all attachments thereto, and directed staff to present Council with an ordinance to codify the amendment; and

WHEREAS, this ordinance is for the purpose of codifying Text Amendment No. TA 09-03 into law; now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Title 16 of the Canby Municipal Code (CMC), otherwise known as the “Land Development and Planning Ordinance of the City”, Section 16.04.255, is amended as follows:

(Added text is illustrated below in red underlined font.)

16.04.255 Infill homes.

Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that are located in an R-1 or R-1.5 zoning district, and that have existing homes on two adjacent sides. Each adjacent home must be within 25 feet of the common lot line with the infill homes and have pre-existed for at least 5 years (dated from the existing homes final building permit approval).

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, January 06, 2010, 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, January 20, 2010, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th of January, 2010, by the following vote:

YEAS_____

NAYS_____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

MEMORANDUM

Date: December 17, 2009

To: Honorable Mayor and City Council

From: Cynthia Thompson, Transit Director

Subject: Purchase 2 cutaway style Paratransit vehicles
for CAT's Dial-a-Ride service

Canby Area Transit (CAT) was granted \$131,894 in Federal Funding from the Elderly and Disabled Specialized Transit Program (49 U.S.C. Section 5310) to purchase two replacement vehicles. The grant will cover 89.73 percent of the purchase cost. This purchase was included in the Transit Fund budget for FY 09/10.

Once approved, the vehicles will be purchased through the Oregon Procurement Information Network (ORPIN) system and will be manufactured in Woodburn, OR at the EK Coaches factory. These vehicles will replace bus # 4 and # 6 in the current CAT fleet which have exceeded their useful life.

Although these buses are the same model as bus #17 (which was delivered in late September and put into service in early November of 2009) they are designed for the Dial-a-Ride program. So they are shorter (22') and will have 4 wheelchair stations and will seat a maximum of 17 passengers.

ORDINANCE NO. 1324

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO PURCHASE TWO (2) VEHICLES FOR CANBY AREA TRANSIT FROM EMMETT KOELSCH COACHES, INC. OF OREGON CITY.

WHEREAS, the City of Canby/Canby Area Transit (CAT) wish to purchase two (2) 17 passenger, 22' STARTRANS Senator Heavy Duty accessible transit vehicles; and

WHEREAS, based on Federal Transit Administration useful life standards bus #4 (VIN 1FDXE45F43HA17518) and bus # 6 (VIN# 1FDXE45F12HA18026) in CAT's current fleet have exceeded these standards; and

WHEREAS, the Federal program (49 U.S.C. 5310) provides capital assistance for the purpose of supporting public transportation.

WHEREAS, CAT received contract no. 26101 from ODOT – Public Transit Division for \$131,894 in (49 U.S.C. 5310) funds to provide 89.73% of the funding to purchase two (2) replacement vehicles; and

WHEREAS, the grants from the Federal Transit Administration and the proposed purchase of the vehicle are included in the approved fiscal year 2009/10 budget for the City of Canby; and

WHEREAS, the purchase will comply with ORS 279.820 - 279.855 and will be made utilizing Statewide Price Agreement number 9706 which was approved under Solicitation #ITB 102-1402-08 establishing multiple award price agreements for use by the State of Oregon and authorized Participants of the State of Oregon Cooperative Purchasing Program (ORCPP) to purchase American Disabilities Act (ADA) transit vehicles; and

WHEREAS, Emmett Koelsch Coaches, Inc. DBA EK Coaches of Oregon City has supplied a quote under Price Agreement 9706 for STARTRANS Senator Heavy Duty accessible vehicles in the amount of \$73,681 each, including all scheduled options.

WHEREAS, In accordance with Statewide Price Agreement 9706 all Purchase Orders accepted by EK Coaches shall create a separate Contract between parties. The City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed the Purchase Order and believes it to be in the best interest of the City to submit such Purchase Order for the vehicle purchase to EK Coaches; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

1. The Mayor and City Administrator are hereby authorized and directed to make, execute and declare in the name of the City of Canby (Canby Area Transit) and on its behalf, an appropriate Purchase Order (contract) with Emmett Koelsch Coaches, Inc. DBA EK Coaches of Oregon City, Oregon for two (2) 17 passenger, 22' STARTRANS Senator Heavy Duty accessible transit vehicle for the quoted amount of Seventy-three thousand, six hundred eighty-one dollars (\$73,681) each.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 6, 2010 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, January 20, 2010 commencing at the hour of 7:30 P.M. in the Council Meeting Chambers located at 155 NW 2nd Avenue in Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of January 2010, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

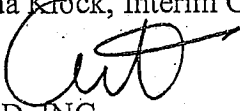
ATTEST:

Kimberly Scheafer, CMC
City Recorder

CURRAN-McLEOD, INC.
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210
PORTLAND, OREGON 97223

TO: Honorable Mayor and City Council
CITY OF CANBY
ATTN: Ms. Amanda Klock, Interim City Administrator

FROM: Curt McLeod, P.E. 
CURRAN-McLEOD, INC.

DATE: December 29, 2009

ISSUE: WASTERTWATER TREATMENT FACILITY IMPROVEMENTS
APPROVAL OF CONSTRUCTION CONTRACT ORDINANCE 1325

SYNOPSIS: On December 17th, 2009, the City of Canby solicited and received nine bids for the Wastewater Facility Improvements project. This staff report is to request Council approval for award of the contract to the low responsive bidder.

RECOMMENDATION:

That the Council approve Ordinance 1325 authorizing the Mayor and City Administrator to execute a contract with R&W Excavating, Inc. in the amount of \$2,250,704.00 for the Wastewater Treatment Facility Improvements project; and declaring an emergency.

RATIONALE:

Competitive bids were solicited in compliance with the City of Canby's Rules for Public Purchasing and the requirements of Oregon Revised Statutes. Of the bids received, all were responsible and responsive, with R&W Excavating, Inc. submitting the low responsible and responsive bid.

The low responsive bid of \$2,250,704.00 is within the amount of available funds held in the Wastewater Capital Reserve in anticipation of this project.

BACKGROUND:

This project is a continuation of the master planned improvements to the wastewater facility, primarily addressing solids handling and effluent disinfection.

Honorable Mayor & City Council
December 29, 2009
Page 2

FISCAL IMPACT:

This work is all eligible for System Development Charge Improvement Fee funding and has been included in the current budget.

ENCLOSURES:

- Ordinance Number 1325
- Exhibit 'A' Construction Contract
- Exhibit 'B' Bid Tabulation

ORDINANCE NO. 1325

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH R & G EXCAVATING, INC IN THE AMOUNT OF \$2,250,704.00, FOR IMPROVEMENTS TO THE CITY'S WASTEWATER TREATMENT FACILITY; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received nine (9) bids for the Wastewater Treatment Facility Improvements project; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on November 24, 2009; and

WHEREAS, bids were received and opened on December 17, 2009 at 4:00 pm in the Planning Department Conference Room of the Canby City Hall and the bids were read aloud:

WHEREAS, the bidders are as listed below and a detailed tabulation of all items is attached herein as Exhibit "B" and summarized as follows:

R&G Excavating, Inc.	\$2,250,704.00
Triad Mechanical	\$2,314,704.00
Contractors, Inc.	\$2,329,619.00
Pacific Excavation	\$2,368,000.00
TEK Construction, Inc.	\$2,414,696.96
Stettler Supply & Construction	\$2,489,550.00
McClure & Sons, Inc.	\$2,510,500.00
Schneider Equipment, Co.	\$2,585,000.00
Laskey-Clifton, Inc.	\$2,786,825.00

WHEREAS, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, January 6, 2010, and considered the bids and reports and recommendations of the City staff, including the staff recommendation that the low responsive bid be selected; and

WHEREAS, the Canby City Council determined that the low responsive bid was that of R&W Excavating, Inc; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and/or 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 contract with R&G Excavating, Inc. for the Wastewater Treatment Facility Improvements

project in the amount of \$2,250,704. A copy of the contract with R&G Excavating, Inc. is attached hereto and marked as Exhibit "A" and by this reference incorporated herein.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, 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 therefore on Wednesday, January 6, 2010; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, January 20, 2010, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of January 2010, by the following vote:

YEAS_____

NAYS_____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT is dated as of the ____ day of ____ in the year 20 ____ by and between

CITY OF CANBY

(hereinafter called OWNER) and

R & G EXCAVATING, INC.

(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents:

CITY OF CANBY

WASTEWATER TREATMENT FACILITY IMPROVEMENTS

The Work is generally described as follows:

- Biosolids drying system;
- In-vessel ultraviolet disinfection system;
- Fabric Disc Filter replacement materials; and
- Solids Receiving station improvements.

ARTICLE 2 - ENGINEER

The Project has been designed by CURRAN-McLEOD, INC., Consulting Engineers, who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

- 3.1 The Work will be substantially completed within 270 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date when the issuance of the Certificate of Substantial Completion including punch list items.
- 3.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER or the OWNER may withhold from amounts due the CONTRACTOR Two Hundred Fifty Dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1. for substantial completion until the Work is substantially complete and/or until Final Completion is achieved. Sundays and legal holidays shall be excluded in determining the number of days in default.

ARTICLE 4 - CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds by check, an amount totaling

Two Million Two Hundred Fifty Thousand Seven Hundred Four and no/100----- Dollars

(\$2,250,704.00) as shown in the attached Bid Proposal.

ARTICLE 5 - PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.

5.1.1 Prior to Substantial Completion progress payments will be in an amount equal to:

- (a) 95 % of the Work completed; and
- (b) 95 % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the value of the Contract Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02 of the General Conditions.

5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the value of the Contract Work completed, as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 6 - INTEREST

All monies not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with state statutes.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8 - CONTRACT DOCUMENTS

8.1 This Agreement

8.2 Exhibits to this Agreement.

8.3 Performance and other Bonds

8.4 Notice of Award.

8.5 General Conditions of the Construction Contract

8.6 Supplementary Conditions

8.7 Technical Specifications as listed in the Table of Contents.

8.8 Drawings bearing the following general title:

WASTEWATER TREATMENT FACILITY IMPROVEMENTS

8.9 Addenda numbers 1 & 2.

8.10 CONTRACTOR'S Bid

8.11 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this ARTICLE 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in the General Conditions).

ARTICLE 9 - MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically by without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 In the event a suit, arbitration or other legal action is required by either the OWNER or the CONTRACTOR to enforce any provisions of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon trial or subsequent appeal.

IN WITNESS WHEREOF, the parties hereto have signed four counterparts of this Agreement.

This Agreement will be effective on _____, 20_____.

OWNER:

CITY OF CANBY

182 North Holly Street

Canby, OR 97031

By _____

Name/Title _____

CONTRACTOR

R & G EXCAVATING. INC.

39300 Montgomery Drive

Scio, OR 97374

By _____

Name/Title _____

Attest _____

Address for giving notices

CITY OF CANBY

Project: Water System Improvements

Bid Date: 12/17/2009

EXHIBIT "B"

BID TABULATION		R & G Excavating, Inc.		Triad Mechanical, Inc.		Contractors, Inc.		Pacific Excavation		TEK Construction, Inc.		Stettler Supply & Construction Inc.		McClure & Sons, Inc.		Schneider Equipment Co.		Laskey-Clifton Corporation	
Basic Bid Items: Treatment Plant Improvements	Water	Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total		Unit / Total	
		Units		Units		Units		Units		Units		Units		Units		Units		Units	
1. Biosolids Drying System		1	LS	\$ 1,343,300.00	\$ 1,415,571.00	\$ 1,344,369.00	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,524,872.54	\$ 1,488,000.00	\$ 1,488,000.00	\$ 1,380,000.00	\$ 1,635,000.00	\$ 1,380,000.00	\$ 1,635,000.00	\$ 1,635,000.00	\$ 1,633,000.00	\$ 1,633,000.00	\$ 1,633,000.00
2. Ultraviolet Disinfection System		1	LS	\$ 1,343,300.00	\$ 1,415,571.00	\$ 1,344,369.00	\$ 1,500,000.00	\$ 1,500,000.00	\$ 1,524,872.54	\$ 1,488,000.00	\$ 1,488,000.00	\$ 1,380,000.00	\$ 1,635,000.00	\$ 1,380,000.00	\$ 1,635,000.00	\$ 1,635,000.00	\$ 1,633,000.00	\$ 1,633,000.00	\$ 1,633,000.00
3. Effluent Filtration System Modifications		1	LS	\$ 655,404.00	\$ 616,789.00	\$ 741,485.00	\$ 650,000.00	\$ 650,000.00	\$ 611,584.66	\$ 611,584.66	\$ 611,584.66	\$ 729,550.00	\$ 735,000.00	\$ 729,550.00	\$ 735,000.00	\$ 735,000.00	\$ 735,000.00	\$ 735,000.00	\$ 735,000.00
4. Solids Receiving Station		1	LS	\$ 23,000.00	\$ 19,381.00	\$ 31,833.00	\$ 25,000.00	\$ 25,000.00	\$ 29,747.84	\$ 29,747.84	\$ 29,747.84	\$ 27,000.00	\$ 31,000.00	\$ 27,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00	\$ 31,000.00
		1	LS	\$ 229,000.00	\$ 252,963.00	\$ 211,932.00	\$ 193,000.00	\$ 193,000.00	\$ 248,391.92	\$ 248,391.92	\$ 248,391.92	\$ 245,000.00	\$ 252,500.00	\$ 245,000.00	\$ 252,500.00	\$ 252,500.00	\$ 184,000.00	\$ 272,125.00	\$ 272,125.00
				\$ 229,000.00	\$ 252,963.00	\$ 211,932.00	\$ 193,000.00	\$ 193,000.00	\$ 248,391.92	\$ 248,391.92	\$ 248,391.92	\$ 245,000.00	\$ 252,500.00	\$ 245,000.00	\$ 252,500.00	\$ 252,500.00	\$ 184,000.00	\$ 272,125.00	\$ 272,125.00
TOTAL BASIC BID				\$2,250,704.00	\$2,314,704.00	\$2,329,619.00	\$2,368,000.00	\$2,368,000.00	\$2,414,696.96	\$2,414,696.96	\$2,414,696.96	\$2,489,550.00	\$2,510,500.00	\$2,510,500.00	\$2,510,500.00	\$2,585,000.00	\$2,786,825.00	\$2,786,825.00	\$2,786,825.00