

# **AGENDA**

## **CANBY CITY COUNCIL REGULAR MEETING**

**August 5, 2009**

**7:30 PM**

**Council Chambers**

**155 NW 2<sup>nd</sup> Avenue**

*Mayor Melody Thompson*

*Council President Walt Daniels*

*Councilor Robert Bitter*

*Councilor Tony Helbling*

*Councilor John Henri*

*Councilor Wayne Oliver*

*Councilor Jason Padden*

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### **WORK SESSION**

**6:00 P.M.**

**City Hall Conference Room**

**182 N Holly**

This Work Session will be attended by the Mayor, City Council, and Planning Commission to review roles and responsibilities of the City and neighborhood associations. Pg. 1

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### **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 July 9, 2009 City Council Work Session

B. Approval of Minutes of the July 15, 2009 City Council Work Session & Regular Meeting

**7. PUBLIC HEARING**

- A. Amendment to Canby Municipal Code Authorizing Sidewalk Cafés and Repealing and Amending Conflicting Municipal Code Provisions Pg. 42

**8. RESOLUTIONS & ORDINANCES**

- A. Res. 1037, Amending Canby's Sanitary Sewer, Transportation, and Storm Drainage SDCs to Account for Inflation Pg. 13
- B. Ord. 1315, Amending Canby Municipal Code Chapter 16.08 and 16.49 for the Purpose of Regulating Temporary Vendor Activity on Private Property Pg. 18
- C. Ord. 1316, Authorizing Sidewalk Cafés, Establishing a Policy for Permits and Uses of Sidewalk Cafés, Repealing Section 12.12.035 of the Canby Municipal Code, Amending Section 9.24.060 of the Canby Municipal Code Pg. 43
- E. Ord. 1317, Authorizing Contract with Eagle-Elsner, Inc. for the 2009 Street Maintenance Program Pg. 57

**9. NEW BUSINESS**

- A. Suspension of Canby Area Transit's Saturday Service Pg. 67
- B. City Council Vacancy Notice

**10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS**

- A. Appointment of City Representative to Clackamas County Library Service District Advisory Board Pg. 69

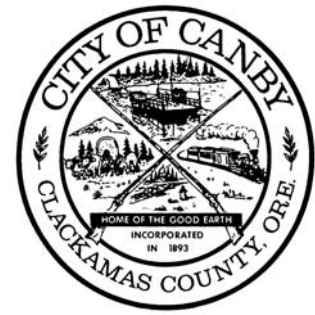
**11. CITIZEN INPUT**

**12. ACTION REVIEW**

**13. EXECUTIVE SESSION: ORS 192.660(2)(e) Real Property and ORS 192.660(2)(h) Pending Litigation**

**14. ADJOURN**

\*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer 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](http://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.



# MEMORANDUM

**TO:** *Honorable Mayor Thompson, City Council  
and Planning Commission*

**FROM:** *Matilda Deas, AICP, Long Range Planner*

**DATE:** *July 27, 2009*

**THROUGH:** *Mark C. Adcock, City Administrator*

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Issues:

1. Types of support municipalities provide for Neighborhood Associations.
2. Roles and responsibilities of Neighborhood Associations and City.

Synopsis: Oregon municipalities that officially recognize neighborhood associations vary widely in their level of support for those associations, primarily based on budget and staff constraints. As one might suspect, expectations regarding roles and responsibilities also become more complex commensurate with increased funding availability.

Rationale: Staff contacted several municipalities that recognize neighborhood associations and inquired as to the type of support each municipality provided to their neighborhood associations. As you might expect larger municipalities provided more support services, though the mix of in-kind, cash, and staff varied widely. I've attached a brief overview of the types of support the municipalities I contacted currently provide to their neighborhood associations. I've also included the support services the City of Canby currently provides to our neighborhood associations.

Also attached is a chart of roles and responsibilities previously developed by staff through discussions with community members and other municipalities.

Several municipalities have established Citizen Involvement Committees/Citizen Advisory Committees to address State Land Use Goal #1. When there are also established neighborhood associations, the CIC's/CAC's are the coordinating bodies between the City, Neighborhood Associations, civic groups etc. Canby's Planning Commission is our official CIC.

Attachments:

- A. Examples of the types of support offered by various municipalities.
- B. Chart of Roles and Responsibilities
- C. State Land Use Goal #1
- D. Canby's Municipal Code Re: Neighborhood Associations
- E. Map of Canby's Neighborhood Associations

## A Brief Sampling of Oregon Cities with Neighborhood Associations

### City of Gresham:

16 associations

- ✦ Computer station for notices, flyers, newsletters
- ✦ Copy machine
- ✦ Meeting space in City Hall
- ✦ Leadership skills & training workshops
- ✦ Resource library
- ✦ Agenda and packet co-ordination
- ✦ Neighborhood notices at City Hall
- ✦ Posts notices to the media of meetings
- ✦ Neighborhood Association Manual
- ✦ Staff liaison(s)
- ✦ Web pages
- ✦ Two membership mailings per year
- ✦ E-newsletter

### Oregon City:

- ✦ Budgets \$35,000 a year from general fund.
- ✦ Publish newsletters (no editing)
- ✦ Mail packets
- ✦ Uses Room Tax for substantial amount of funding
- ✦ Staff liaison (CIC) funded through police department (about 1/3 of job time)
- ✦ Web pages
- ✦ Neighborhood Association manual

### Keizer:

- ✦ 6 neighborhood association: only 2 “active”
- ✦ City provides help booklet
- ✦ Web sites
- ✦ \$4,500 budgeted for communication tools...no editing of printed content by City
- ✦ To remain recognized and active, NA must submit annual report to Council.
- ✦ NA's have space in City newsletter

### West Linn:

- ✦ Budget line item per neighborhood association
- ✦ Eligible activities only—as determined by the City.
- ✦ Reimbursement of expenses (debit account) or in some circumstances will bill the city.

### City of Tigard:

- ✦ Has 12 “Neighborhood Networks”
- ✦ Individual web sites provided
- ✦ Working on Steering Committee for the networks

Troutdale:

Has a 11 person Citizen Advisory Committee to meet Goal 1, but no official Neighborhood Associations.

City of Tualatin:

- ↳ Informal agreement to help with copying, etc , but no formal commitment of support. They have 5 associations.

City of Canby:

- ↳ Web site
- ↳ Technical assistance (training workshops, etc.)
- ↳ Staff liaison (s)
- ↳ Information sharing
- ↳ Notification of hearings and meetings

Bend, Salem, Portland, and Corvallis offer “full meal deals”, but are so much larger than Canby that the comparison is less helpful.

\* In general, according to several municipalities I spoke with, Neighborhood Associations cost Municipalities 1% of the budget.

\*\* Cities meet State Land Use Goal #1 either through Citizen Involvement Committees, Citizen Advisory Committees, and a combo of CIC. CAC and NA's. CIC's and CAC's usually coordinate NA's. The Planning Commission is Canby/s designated CIC.

## ROLES AND RESPONSIBILITIES

	Neighborhood Association	Staff Liason	Community Livability Coalition
<b>GENERAL</b>	Independently organize	Represent City	Represent Community
	Neighborhood focal point	Facilitate communication between the City and the Neighborhood Associations	Facilitate communication between the City and the Neighborhood Associations
	Self-initiate projects	Link Neighborhood Associations with appropriate City staff	Link Neighborhood Associations with appropriate City staff
	Promote neighborhood involvement/ participation	Promote community involvement/ participation	Promote community involvement/ participation
	Work for community-based solutions Provide local input and recommendations on issues to Boards, Commissions, and the City Council	Provide information on City processes Clarify City Information	Promote understanding of City processes Clarify City information
<b>MEETINGS</b>	Set meeting schedule	Attend one Neighborhood Association meeting each month	Attend Neighborhood Association Meetings
	Make space arrangements		
	Make arrangements for speakers	Assist neighborhood with arranging for speakers	Assist neighborhood with arranging speakers Provide resource assistance for speakers
	Conduct meetings	Participate in meetings / discussions	Participate in meetings/discussions
	Distribute materials	Provide materials when requested	
	Appoint key people to follow up on issues	Initiate follow up from City on issues Provide assistance when requested	Provide resource assistance
<b>AGENDAS/MINUTES</b>	*Set agendas, provide to City *Do own minutes. Provide to City *Distribute agenda/minutes	Receive copies of agendas and minutes Make copies of agenda and minutes	
<b>OTHER</b>	Do research on issues	Periodic assistance and reference Coordinate with other departments for technical assistance	Provide assistance on issues/understanding
	*Develop own correspondence *Provide copies of correspondence and other materials for files to City	Awareness	
	Communicate roster changes and meeting date/time/location changes to City	Awareness and/or assistance with roster and meeting information Maintain mailing lists of neighborhoods	Awareness/assistance

	Neighborhood Association	Staff Liason	Community Livability Coalition
OTHER	Appoint newsletter editor; responsible for articles, layout, final review	Awareness of newsletter progress Post on City website	Awareness of newsletter progress Resource assistance
	Request Board orientation materials	Awareness of Board orientations Supply orientation materials for neighborhood associations	Awareness of Board orientations Resource assistance
	Complete forms for Neighborhood Association review and appear at Planning Commission	Awareness	Awareness of Neighborhood Association annual review Resource assistance
	*Pick up City Budgets, CIPs, City materials etc., from City Hall *Distribute materials	Assemble materials from Finance etc., for distribution	
	Create flyers for special events	Awareness of special events etc.	Awareness of special events Resource assistance
CLARIFICATIONS	The Neighborhood Association provides a local forum in which residents may deliberate on issues which are important to them, and it provides a recognized vehicle for communicating residents' views on these issues to the City.	The Liason does not provide legal opinions, advocate for the Neighborhood Association's position or drive the issues that the Associations deal with. Liaisons provide support and communication between the City and the Neighborhood Associations and vice versa.	The CLC assists Associations in understanding City processes and how to communicate effectively with the City.

Attachment "B"

# Oregon's Statewide Planning Goals & Guidelines

## GOAL 1: CITIZEN INVOLVEMENT

### OAR 660-015-0000(1)

**To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies, and special- purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

**1. Citizen Involvement -- To provide for widespread citizen involvement.**

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for

citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.



**2. Communication -- To assure effective two-way communication with citizens.**

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

**3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.**

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

**4. Technical Information -- To assure that technical information is available in an understandable form.**

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

**5. Feedback Mechanisms -- To assure that citizens will receive a response from policy-makers.**

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The rationale used to reach land-use policy

decisions shall be available in the form of a written record.

**6. Financial Support -- To insure funding for the citizen involvement program.**

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

**A. CITIZEN INVOLVEMENT**

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and committee appointments should be well publicized.

**B. COMMUNICATION**

Newsletters, mailings, posters, mail-back questionnaires, and other

available media should be used in the citizen involvement program.

### **C. CITIZEN INFLUENCE**

**1. Data Collection** - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the plans.

**2. Plan Preparation** - The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

**3. Adoption Process** - The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

**4. Implementation** - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

**5. Evaluation** - The general public, through the local citizen

involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

**6. Revision** - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

### **D. TECHNICAL INFORMATION**

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

### **E. FEEDBACK MECHANISM**

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

### **F. FINANCIAL SUPPORT**

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

## NEIGHBORHOOD ASSOCIATIONS

**2.70.010 Purpose.** The purpose of these sections is to establish a means for formally recognizing neighborhood associations and to provide for neighborhood association communication with the City. This is an additional form of communication, and is not intended to inhibit other citizens or groups from communication with the City.

**2.70.020 Neighborhood Association.**

A “neighborhood association” means any group of people organized within a geographical area for the purpose of acting on issues affecting neighborhood and community livability. A recognized neighborhood association is one that satisfies the standards of section 270.030.

**2.70.030 Standards.**

In order to be recognized by the city, neighborhood associations must satisfy the standards as listed herein. The City Council is authorized to determine when an association has met these standards.

- (1) Membership. The membership of a neighborhood association shall not be limited by race, creed, color, sex, age, heritage, national origin or income. Any resident, business owner or owner’s representative, nonprofit organization’s representative or property owner who resides, owns property or maintains a business within the recognized boundary of a neighborhood association shall be entitled to membership.
- (2) Boundaries. The boundaries of a neighborhood association shall be drawn by the association membership. These boundaries must be mutually exclusive of other formally recognized associations and must remain within or coincide with the boundaries of a single neighborhood district, if necessary to avoid creation of an area that is excluded from neighborhood association representation.
- (3) Bylaws. In order to be considered for recognition by the city, a neighborhood association must first adopt written bylaws that provide for the following:
  - (a) That the officers be elected on a regular schedule, at least bi-annually;
  - (b) That meetings be conducted in conformation with public meetings law when the association meets to act in an advisory capacity of the city. Advisory capacity exists when the city requests or the association on its own accord seeks to act in an advisory capacity to the city. That written minutes as required by open meetings law also be required to show minority opinions and a list of all those voting, and that copies of approved minutes and sign-in lists be available to the city for public review.

- (c) That a current map of the association boundaries and a current list of the association officers and their addresses be provided to the city annually;
- (d) That a minimum of one general neighborhood association meeting be held each calendar year, and the time, place and purpose be well publicized throughout the neighborhood prior to the meeting;
- (e) That the association provide for representatives to its neighborhood district if one exists;
- (f) That the city be informed of any updates or amendments to the neighborhood association's bylaws; and
- (g) That procedures are developed describing the number of members required for a quorum, how notes are taken and recorded, and the action necessary to file an appeal.

#### **270.040 Responsibility of City.**

The city shall provide recognized neighborhood associations with the following:

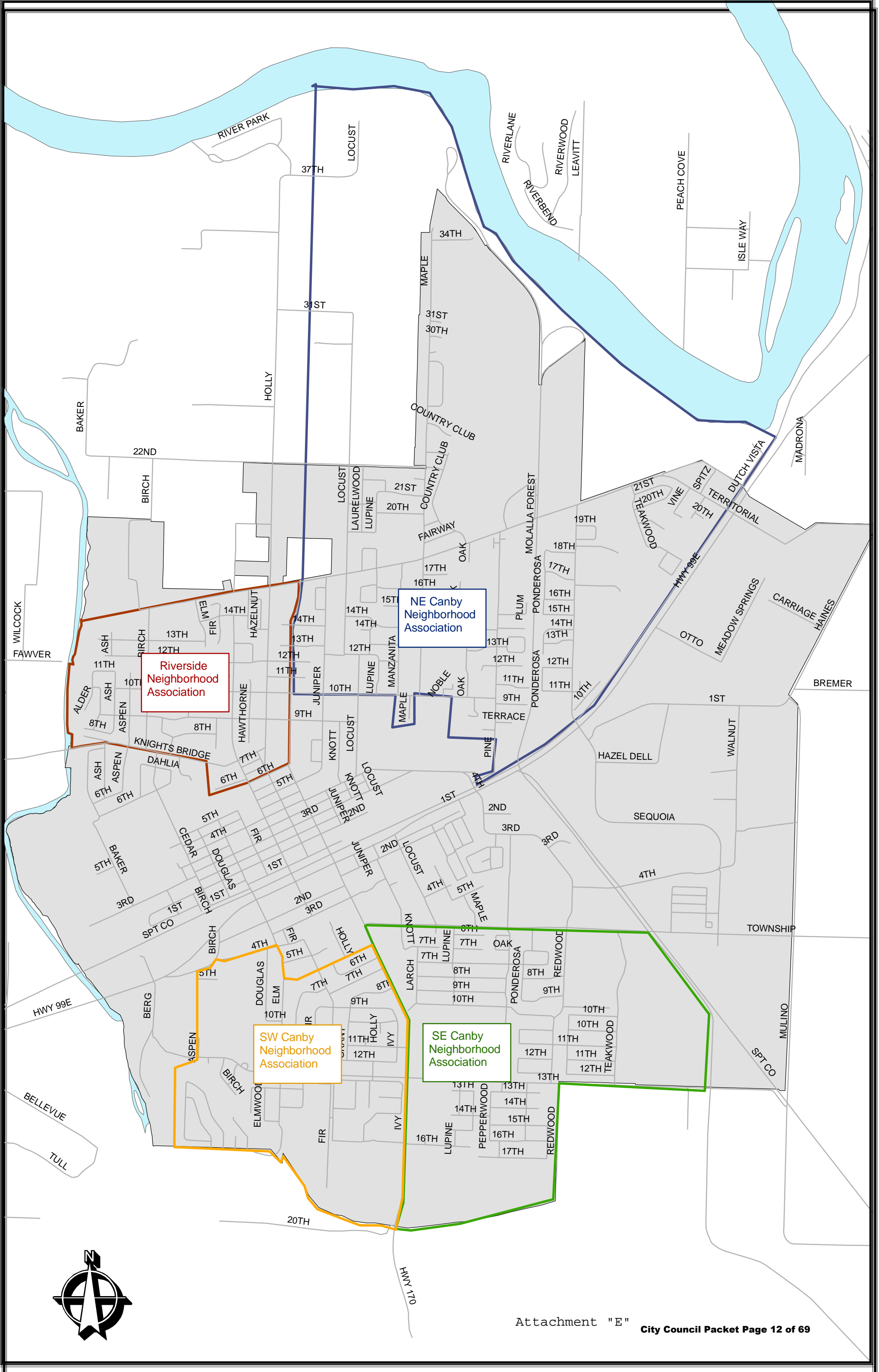
- (1) Timely notification of meetings of the council, and the planning commission, and upon request, any council advisory board or commission whose decisions may affect the neighborhood;
- (2) General information regarding city services and activities.

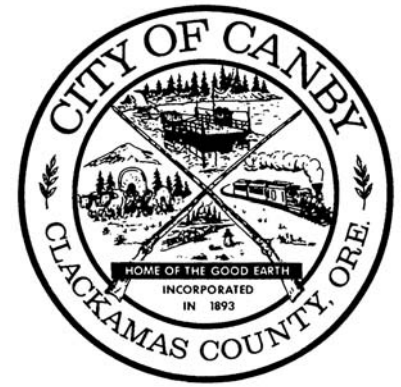
#### **2.70.050 Appeals.**

Formally recognized neighborhood associations may appeal land use decision made by the planning director or planning commission to the appropriate bodies without cost if the planning director finds:

- (a) Canby Planning and Development Code Appeal Procedures Section 16.89.030 through 16.89.050 are followed;
- (b) The association submits a copy of the membership minutes and vote taken supporting the appeal;
- (c) The neighborhood association appeal is related to the property within the association's recognized boundaries.

In addition, an association may appeal without cost on behalf of an individual or group with standing who is not represented by a recognized association if (a) and (b) above are met and the neighborhood association finds the issue(s) are of city-wide concern related to the Canby Comprehensive Plan or the Canby Planning and Development Code.





# MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*

**FROM:** *Bryan C Brown*

**THROUGH:** *Mark C. Adcock, City Administrator*

**DATE:** *July 20, 2009*

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Issue: Update of System Development Charges.

Synopsis: The Council has requested annual updates to the System Development Charges to compensate for increased costs. The proposed increase is 4.8 percent.

Recommendation: Staff recommends that the City Council **approve Resolution 1037, a resolution amending Canby's system development charges to account for inflation.**

Rationale: The Council has requested that the charges be updated annually to avoid large increases. Specifically, Resolution 748 (approved June 2001) states that the annual update shall be based on the changes in the Engineering News Record Construction Index (ENR Index). In the past year, the index has registered an increase of 4.8 percent, similar to last year's 4.2%. Thus, staff has prepared this resolution with that percentage increase. For a new single-family house the charges will increase as shown below:

	<u>Current rate</u>	<u>Proposed rate</u>
Sanitary Sewer	\$2,337	\$2,489
Transportation	\$2,440	\$2,517
Storm Drainage	\$96	\$96

The City's parks SDC is managed separately and is not part of the current proposal.

Options:

1. Based on the resolution adopted in 2001, the Council should adopt the new fees as proposed. Adoption of different rates would require a new plan for updating the SDCs. Frequent updates will ensure that we will not have to double or triple rates in the future, as we did in 2001.

Attached:

1. Resolution 1037.




## Construction Economics

ENR publishes both a Construction Cost Index and Building Cost index that are widely used in the construction industry. This website contains an explanation of the indexes methodology and a complete history of the 20-city national average for the CCI and BCI. Both indexes have a materials and labor component. In the second issue of each month ENR publishes the CCI, BCI, materials index, skilled labor index and common labor index for 20 cities and the national average. The first issue also contains an index review of all five national indexes for the latest 14 month period.

[Click here for more on using ENR Indexes](#)

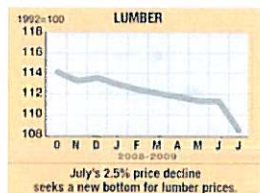
## Current Cost Indices

Construction Costs	Building Costs	Materials Cost			
 <p>Despite a 0.1% increase in the CCI this month, the annual rate of increase for the index fell from 5.3% to 4.8%.</p>	20-CITY: 1913 = 100	JULY 2009 INDEX VALUE	% CHANGE MONTH	% CHANGE YEAR	
	CONSTRUCTION COST	8566.14	-0.1	+3.3	
	COMMON LABOR	18201.18	0.0	+5.6	
	WAGE \$/HR.	34.58	0.0	+5.6	

[View Complete Construction Economics Report](#) [July 20, 2009]

## Materials Trends

[View all Materials Trends »](#)



### Lumber Prices Seek Bottom

The depressed housing market is still pushing lumber prices down. ENR's 20-city average price for the most commonly used species of 2X4s fell another 2.5% this month, pushing prices 5.2% below a year ago. In part, this reflects the 4.8% decline in the mill price reported for May by Random Lengths, Eugene, Ore. Random Lengths' composite mill price index for framing lumber rebounded 12% in June, but that is still 17% below June 2008's level and 48% below June 2004's peak. Random Lengths' composite price for panels, including plywood and OSB panels, is down 22% for the year and 45% from 2004's peak.

[View Complete Construction Economics Report](#) [July 20, 2009]

## Historical Indices

[View all Historical Indices »](#)

### Construction Cost Index History

200 hours of common labor at the 20-city average of common labor rates, plus 25 cwt of standard structural steel shapes at the mill price prior to 1996 and the fabricated 20-city price from 1996, plus 1.128 tons of portland cement at the 20-city price, plus 1,088 board-ft of 2 x 4 lumber at the 20-city price.

### Building Cost Index History

68.38 hours of skilled labor at the 20-city average of bricklayers, carpenters and structural ironworkers rates, plus 25 cwt of standard structural steel shapes at the mill price prior to 1996 and the fabricated 20-city price from 1996, plus 1.128 tons of portland cement at the 20-city price, plus 1,088 board-ft of 2 x 4 lumber at the 20-city price.

## Cost Index History Tables by City

The building and construction cost indexes for ENR's individual cities use the same components and weighting as those for the 20-city national indexes. The city indexes use local prices for portland cement and 2 X 4 lumber and the national average price for structural steel. The city's BCI uses local union wages, plus fringes, for carpenters, bricklayers and iron workers. The city's CCI uses the same union wages for laborers.

### ENR Cost Indexes in 20 Cities 1978-2009

<a href="#">Atlanta, GA</a>	<a href="#">Baltimore, MD</a>	<a href="#">Birmingham, AL</a>	<a href="#">Boston, MA</a>
<a href="#">Chicago, IL</a>	<a href="#">Cincinnati, OH</a>	<a href="#">Cleveland, OH</a>	<a href="#">Dallas, TX</a>
<a href="#">Denver, CO</a>	<a href="#">Detroit, MI</a>	<a href="#">Kansas City, MO</a>	<a href="#">Los Angeles, CA</a>
<a href="#">Minneapolis, MN</a>	<a href="#">New Orleans, LA</a>	<a href="#">New York, NY</a>	<a href="#">Philadelphia, PA</a>
<a href="#">Pittsburgh, PA</a>	<a href="#">San Francisco, CA</a>	<a href="#">Seattle, WA</a>	<a href="#">St. Louis, MO</a>

### ENR Cost Indexes in Canadian Cities 1978-2009

<a href="#">Montreal</a>	<a href="#">Toronto</a>
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## Quarterly Cost Reports

[View all Quarterly Cost Reports >>](#)

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And get a Bonus Report: "The Infrastructure Boom Market!"

### Gain Quick Access to ENR's Historical Cost Index Tables

Find ENR's Award-Winning Building Material Price Data (published later than March 1, 2005). Monthly tables on 75 different building materials! [Click here.](#)

### Order ENR's Historical Prices For 75 Different Materials

Our tables for cement and concrete and aggregate prices are published in print editions in the first issue of every month; pipe prices in the second; lumber and drywall prices the third, and steel prices in the fourth. For information on how to order data sets prior to March, 2005, [click here.](#)

### Construction Outlook 2009 Spring Update



A 14 page report on industry trends and detailed forecasts affecting the construction industry in 2009.

[Purchase your copy today »](#)

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SDC Worksheet													7/27/2009				
	2000 (start)	2002 update (actual)	2002 update (adopted)	2003 (actual)	2003 (adopted)	2004 (actual)	2004 (adopted)	2005 (actual)	2005 (adopted)	2006 (actual)	2006 (adopted)	2006 amend	2007 (actual)	2007 (Adopted)	2008 (Actual)	2008 Corrected	2009 (Actual)
ENR index	6286	6512		6694		7109		7421		7721			8007		8293		8566.14
ENR #		1.036		1.028		1.062		1.044		1.040			1.037		1.036		1.033
Sanitary Improvement Fee	<b>\$550</b>	<b>\$570</b>	\$570	<b>\$586</b>	\$586	<b>\$622</b>	\$622	<b>\$649</b>	\$649	<b>\$678</b>	\$678	\$568	<b>\$589</b>	\$589	<b>\$610</b>	\$612	<b>\$632</b>
Sanitary Reimbursement	<b>\$1,235</b>	<b>\$1,279</b>	\$1,280	<b>\$1,315</b>	\$1,315	<b>\$1,397</b>	\$1,397	<b>\$1,458</b>	\$1,458	<b>\$1,522</b>	\$1,522	\$1,667	<b>\$1,578</b>	\$1,667	<b>\$1,727</b>	\$1,798	<b>\$1,857</b>
TOTAL	\$1,785	\$1,849		\$1,901		\$2,019		\$2,107		\$2,200	\$2,200	\$2,235	\$2,296	\$2,296	<b>\$2,337</b>	<b>\$2,410</b>	<b>\$2,489</b>
Transportation Improvement	<b>\$177</b>	<b>\$183</b>	\$183	<b>\$188</b>	\$188	<b>\$200</b>	\$200	<b>\$209</b>	\$209	<b>\$218</b>	\$218		<b>\$226</b>		<b>\$234</b>		<b>\$242</b>
Transportation Reimbursement	<b>\$16</b>	<b>\$16</b>	\$16	<b>\$17</b>	\$17	<b>\$18</b>	\$18	<b>\$18</b>	\$18	<b>\$19</b>	\$19		<b>\$20</b>		<b>\$21</b>		<b>\$21</b>
TOTAL	\$192	\$199		\$205		\$218		\$227		\$237			\$246		<b>\$255</b>		<b>\$263</b>
Storm Improvement	<b>\$5</b>	<b>\$5</b>	\$5	<b>\$5</b>	\$5	<b>\$6</b>	\$6	<b>\$6</b>	\$6	<b>\$6</b>	\$6		<b>\$6</b>		<b>\$7</b>		<b>\$7</b>
Storm Reimbursement	<b>\$2</b>	<b>\$2</b>	\$2	<b>\$2</b>	\$2	<b>\$2</b>	\$2	<b>\$2</b>	\$2	<b>\$2</b>	\$2		<b>\$3</b>		<b>\$3</b>		<b>\$3</b>
TOTAL	\$7	\$7		\$7		\$8		\$8		\$9			\$9		<b>\$10</b>		<b>\$10</b>
<a href="http://enr.construction.com/features/coneco/subs/recentindexes.asp">http://enr.construction.com/features/coneco/subs/recentindexes.asp</a>																	

## RESOLUTION NO. 1037

### **A RESOLUTION AMENDING CANBY'S SANITARY SEWER, TRANSPORTATION, AND STORM DRAINAGE SYSTEM DEVELOPMENT CHARGES TO ACCOUNT FOR INFLATION.**

**WHEREAS**, Resolution 748, adopted June 2001, specified that the City will review inflationary cost impacts to system development charges annually and update the charges by resolution when appropriate; and

**WHEREAS**, Resolution 748 specified that inflationary calculations are to be based upon changes in the Engineering News Record Construction Index; and

**WHEREAS**, The ENR index has increased 4.8% since the SDCs were last adjusted in 2008; and

**WHEREAS**, ORS 310.145 requires that a governing body, when adopting or amending a fee resolution imposing new rates, may include a provision classifying said fees as subject to or not subject to the limitations set in Section 11 (b), Article XI of the Oregon Constitution; now therefore it is hereby

**RESOLVED** that the system development charges for the City of Canby should be adjusted to the following rates to account for the 4.8 % increase in construction costs:

#### Sanitary Sewer

Improvement Fee: \$632.00 per EDU  
Reimbursement Fee: \$1,857.00 per EDU (equivalent dwelling unit)

#### Transportation

Improvement Fee: \$242.00 per ELNDT (equivalent length new daily trip)  
Reimbursement Fee: \$21.00 per ELNDT

#### Storm Drainage

Improvement Fee: \$7.00 per ELNDT  
Reimbursement Fee: \$3.00 per ELNDT

**BE IT FURTHER RESOLVED** that the Canby City Council hereby classifies the charges imposed herein as not being subject to the limitations imposed by Section 11(b), Article XI of the Oregon Constitution and that the City Recorder is hereby directed to publish notice in accordance with Oregon law.

This resolution is effective August 5, 2009.

**ADOPTED** by the Canby City Council on the 5<sup>th</sup> day of August 2009

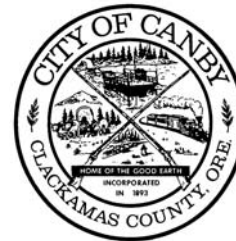
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Melody Thompson, Mayor

**ATTEST:**

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Kimberly Scheafer, CMC  
City Recorder



# **M E M O R A N D U M**

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Bryan Brown, Planning Director*  
*Melissa Hardy, Associate Planner*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**DATE:** *August 05, 2009*  
**RE:** *DEVELOPMENT CODE AMENDMENT ; Application No. TA 09-02*  
*A Canby Municipal Code Amendment, specifically amending the Land Development & Planning Ordinance (Title 16), for the purpose of regulating temporary vendor activity on private property.*

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## **Summary:**

The Planning Commission initiated this code amendment application on April 27, 2009, for the purpose of amending the Land Development and Planning Ordinance (Title 16) concerning temporary vendor activity on private property. At that time, Planning Commission requested that City Staff return to the Commission with draft code language to address a number of issues. The issues the Planning Commission wanted the new code regulations to address are as follows:

1. Temporary vendor applications should be processed administratively, and should include a site plan review and safety review to ensure conformance with all zoning and safety codes;
2. Permit should be granted for 90 days, and then vendor should be allowed to apply for one 90 day renewal, for a total of two 90-day periods on a site per year;
3. A temporary vendor who is on a site for not more than 2 hours in a 24-hour period should be exempt from the temporary vendor permit requirements;
4. Cannot displace minimum required parking spaces, and if a site is already nonconforming in terms of required parking spaces, or if a site was granted a parking exception and currently has less than the minimum # of parking spaces required, then temporary vendor is not allowed there;
5. Establish a set of approval criteria that includes screening of mechanical equipment and trash cans, prohibits renewal of a permit if there are previous police department complaints, and includes any applicable items that can be pulled and used from the Site and Design Review criteria;
6. Add a Temporary Vendor permit fee and a renewal fee to the Planning Dept fee schedule.

## **Recommendation:**

The Planning Commission, acting on a recommendation from staff to approve TA 09-02, voted to forward a recommendation for approval of this text amendment to City Council as drafted by staff.

Recommended Motion: *“I move that the City Council approve Text Amendment No. TA 09-02 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 for adoption.”*

**Alternatives:**

1. If the City Council wants to make any changes to the proposed amendment, the Council may approve a motion to reopen the public hearing at the next City Council meeting, and direct staff to return to Council at that time with changes as requested.
2. If the City Council wants to deny TA 09-02, the Council may approve a motion to reopen the public hearing at the next City Council meeting, and direct staff to return to Council at that time with appropriate findings to deny TA 09-02.

**Discussion:**

Background History. The Planning Commission held a work session on May 26, 2009, to review the draft code language that staff prepared. Then Planning Commission scheduled a public hearing on July 13, 2009, to receive public testimony concerning the proposed amendment. Notice of the July 13<sup>th</sup> public hearing was posted at City Hall and at the Canby Public Library on June 23, 2009. Notice of the public hearing was also published in the July 08, 2009, Canby Herald.

Major Amendment Provisions/Issues. Staff address each of the issues raised by the Planning commission in their work session within the proposed text amendment. The permit process is proposed as a Type I administrative permit. The proposed code includes a 90 day permit with a provision to allow one renewal. There is an exemption for temporary vendors that set up for less than 2-hours in a 24-hour period. The proposed code will prohibit displacing of required parking spaces. The proposed code includes screening requirements, and prohibits renewal in the event that public safety issues occur. Staff reviewed the City’s Site and Design Review criteria in Chapters 16.22, 16.35 and 16.49, and it does not appear that any of the criteria would be applicable to a temporary vendor activity. If this text amendment is approved, staff will return to City Council with a proposal to amend the planning department fee schedule in order to create an initial application fee that is comparable to the fee currently charged for other Type I Administrative permits, and a renewal fee that is slightly less, because it is anticipated that a renewal request would take approximately the same amount, or perhaps slightly less, time to process than an initial application.

Planning Commission Proceedings Summary. Staff presented a staff report to the Planning Commission at the Public Hearing. No public testimony was received for or against the proposed amendment. The Planning Commission then closed the public hearing on July 13, 2009, and discussed the issues of potential noise and whether there should be limits placed on the hours of temporary vendor activities. Since the City has a noise ordinance codified in Chapter 9.48 of the Municipal Code that temporary vendors would be subject to, as would anyone else, the Planning Commission decided that placing additional noise restrictions on temporary vendors is unnecessary. The Planning Commission then turned their discussion to hours of operation. They decided that because the City does not place restrictions on the hours of operation for other

commercial activities that are carried on in a permanent structure, it would be unnecessary to single out and restrict the hours of temporary vendor activities. Following deliberations, the Planning Commission voted 5-0 to forward a recommendation of approval of the proposed draft text amendment to City Council as presented. The recommendation is based on the approval criteria and staff findings attached to this report.

**Attachments:**

- A.** Proposed Amendment
- B.** Approval Criteria and Findings
- C.** Draft Planning Commission Minutes

## **ATTACHMENT A** **Proposed Amendment**

The proposal is to add a new Section 16.08.140 to the General Provisions Chapter to list all of the temporary vendor regulations, and also to amend Section 16.49.030 to exempt temporary vendors from Site and Design Review. The proposed code amendment language as it will read by ordinance is outlined below. Deleted text is illustrated in ~~strikeout font~~, while added text is illustrated in red underlined font. Normal text is existing wording.

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*Add the following section to CMC Chapter 16.08...*

### **16.08.140 Temporary vendor.**

Any person who exhibits goods or services for sale or for offer in a temporary manner on private property, from a vehicle, trailer, tent, canopy, shipping container, or other temporary structure, or from one's person or displayed on the ground or off the ground, shall first obtain permit approval in compliance with the following standards, and shall operate in compliance with this section and with all other applicable sections of the Canby Municipal Code.

**A. Exemptions.** The following temporary activities do not require a Temporary Vendor permit, and are exempt from the standards in this section:

1. Any person engaged in the mere delivery of any goods or services to a site, which were purchased from a regular place of business inside or outside the city;
2. Any person engaged in delivery, exhibition, sale or offering of food on a site for a period of time not to exceed 2 hours during any 24 hour period;
3. Any contractor who is engaged in constructing, maintaining, or repairing a structure, utility, equipment, or landscaping on a site; or
4. Any person conducting a garage sale per Section 5.04.020.

**B. Permit process.**

1. A request for a Temporary Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Temporary Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
2. An application for a Temporary Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Temporary Vendor's structures, equipment, furnishings, signage, and inventory.

3. The Temporary Vendor activity (e.g., retail, restaurant, etc) shall be an outright permitted use in the zoning district in which it is located; Or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Temporary Vendor permit.

4. A "Site and Design Review" permit is not required for a permitted Temporary Vendor.

5. Any signage displayed by the Temporary Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.

6. A Temporary Vendor must obtain a City of Canby business license.

C. Duration. A Temporary Vendor permit may be granted for a site for up to 90 consecutive calendar days, and then may be renewed once upon request for an additional 90 days, provided that the temporary vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the temporary vendor activity. In no case shall a site be permitted to host Temporary Vendor activity for more than 180 days in any 12 month period.

D. A Temporary Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.

E. A Temporary Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site.

F. Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way.

G. A Temporary Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Temporary Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.

H. A Temporary Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:

1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or

2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.



I. The property owner and the temporary vendor permit holder shall be jointly and severably responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-renewal of a temporary vendor permit, and may result in the denial of any future temporary vendor permit for the site upon which the violation occurred.

*Amend the following section in CMC Chapter 16.49...*

**16.49.030 Site and design review plan approval required.**

1. The following projects require site and design review approval, except as exempted in (2) below:

- a. All new buildings.
- b. All new mobile home parks.
- c. Major building remodeling above 60% of value.
- d. Addition of more than 5,000 square feet of additional gross floor area in a one year period.
- e. Construction activity which causes a decrease in pervious area in excess of 2,500 square feet in a one year period.

None of the above shall occur, and no building permit for such activity shall be issued, and no sign permit shall be issued until the site and design review plan, as required by this ordinance, has been reviewed and approved by the Board and their designees for conformity with applicable criteria.

2. The following are exempt from site and design review:

- a. Signs that are not a part of a reviewable development project. Signs that are a part of a reviewable development project, and that are proposed more than two (2) years beyond the final occupancy of the reviewed development.
- b. Alterations or remodeling that do not change the exterior of the building.
- c. Temporary public structures which will be removed within two (2) years of placement.
- d. Accessory structures under 500 square feet.
- e. Temporary commercial tent/canopy structures, which meet the Uniform building or Fire Code, and which will be removed within thirty (30) days of placement.
- f. Temporary Vendor activity permitted pursuant to Section 16.08.140.

~~f~~g. Parking lot or paving projects. If no buildings or structures are involved, paving or parking lot development in excess of 2,500 square feet of impervious surface is exempted from site and design review, except in the C-1 zone. In the C-1 zone, all

new parking lots that do not involve buildings or structures are subject to site plan review as required in Section 16.49. All new paved areas and parking lots in excess of 2,500 square feet must meet the requirements of Section 16.49.150.

**gh.** Single family or two-family dwellings, and any alterations or remodeling thereof.

**hi.** Minor public facilities.

**3.** Construction, site development and landscaping shall be carried out in substantial accord with the approved site and design review plan. Review of the proposed site and design review plan and any changes thereto shall be conducted in accordance with site and design review procedures.

**4.** No fence/wall shall be constructed throughout a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission.

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## **ATTACHMENT B**

### **Approval Criteria and Findings**

Sec.16.88.160 Amendments to Text of Title. A Title 16 text amendment is a legislative land use amendment. In judging whether or not Title 16 should be amended, the Planning Commission and City Council must consider the following five approval criteria:

Sec. 16.88.160(D)(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.

#### **Facts & Finding #1:**

*Citizen Involvement: The proposed text amendment establishes a Type I application review process for Temporary Vendor permits, and approval is based solely upon non-discretionary regulations. Because citizen involvement was provided for during the public hearing process when the regulations were created, and because there is no discretion involved in determining whether the regulations are met at the time of an application, it has been determined that direct citizen involvement is not necessary at the time that Temporary Vendor permit applications are processed. This is in line with the Canby Comprehensive Plan citizen involvement policy that "Canby shall strive to eliminate unnecessarily costly, confusing, and time consuming practices in the development review process."*

*Land Use Planning: The proposed text amendment provides a means for the permitting of temporary vendor activities only if the use (e.g., flower sales, fireworks sales, restaurant, etc.) is allowed within the particular zoning district. This is in line with the Canby Comprehensive Plan land use policy that "Canby shall guide the course of growth and development so as to separate conflicting or incompatible uses while grouping compatible uses."*

*Environmental Concerns: The proposed text amendment does not exempt temporary vendor activities from meeting applicable environmental regulations. They must meet all applicable regulations. This is in line with all of the Canby Comprehensive Plan land use policies regarding environmental concerns.*

*Transportation: The proposed text amendment requires that temporary vendor activities only be permitted on property that has adequate vehicular and pedestrian ingress/egress. This is in line with the Canby Comprehensive Plan transportation policies that "Canby shall work to provide an adequate sidewalk and pedestrian pathway system to serve all residents," and "Canby shall continue in its efforts to assure that all new developments provide adequate access for emergency response vehicles and for the safety and convenience for the general public."*

*Public Facilities and Services: This comprehensive plan element is not particularly applicable to the proposed text amendment, because the temporary vendor permit regulations are designed to insure that the activity is temporary in nature, and to insure that the activity does not impact water, wastewater, storm drainage, or transportation facilities and services.*

*Economic: The proposed text amendment provides a process for allowing temporary vendor activities, which is in line with the Canby Comprehensive Plan economic policy that "Canby shall encourage programs and projects which will lead to an increase in local employment*

opportunities.”

*Housing: This comprehensive plan element is not particularly applicable to the proposed text amendment, because permitting temporary vendor activities in zoning districts in which the use is allowed will not displace nor affect housing in the City.*

*Staff concludes that the facts indicate that the proposed amendment complies with this criterion.*

16.88.160(D)(2) A public need for the change.

Facts & Finding #2:

*The city currently does not have development standards specifically designed to regulate temporary vendor activities on private property. In order to ensure that temporary activities such as fireworks stands, holiday pumpkin lots or tree lots, food service, etcetera, are carried out in a manner that enhances the community and do not create negative impacts, the City finds that there is a public need to adopt and enforce standards for such activities. Staff concludes that the criterion has been met.*

16.88.160(D)(3) Whether the proposed change will serve the public need better than any other change which might be expected to be made.

Facts & Finding #3:

*The proposed change will serve the public need better than any other change which might be expected to be made. The permitting process and development standards proposed for temporary vendors are the best means of insuring that temporary vendor activities are carried out in a manner that enhances the community and do not create negative impacts. There is no other change which would better carry out these purposes. Therefore, staff concludes that the criterion has been met.*

16.88.160(D)(4): Whether the change will preserve and protect the health, safety and general welfare of the residents in the community.

Facts & Finding #4:

*The proposed change will meet this criterion by having a permitting process and standards in place to regulate and control temporary vendor activities, so that they are carried out in a manner that enhances the community and do not create negative impacts.*

16.88.160(D)(5): Statewide planning goals.

Facts & Finding #5:

*The applicable Statewide Planning Goals are Goal #1 (Citizen Involvement) and Goal #2 (Land Use Planning). The proposed text amendment establishes a Type I application review process for Temporary Vendor permits, and approval is based solely upon non-discretionary regulations. Because citizen involvement was provided for during the public hearing process when the regulations were created, and because there is no discretion involved in determining whether the regulations are met at the time of an application, it has been determined that direct citizen involvement is not necessary at the time that Temporary Vendor permit applications are processed. This complies with the Statewide Planning Goal concerning citizen involvement. The proposed text amendment provides a means for the*

*permitting of temporary vendor activities only if the use (e.g., flower sales, fireworks sales, restaurant, etc.) is allowed within the particular zoning district and meets the standards set forth. This 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. Therefore, staff finds that conformance with this criterion has been demonstrated.*

**ATTACHMENT C**  
**Draft Planning Commission Minutes**

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**MINUTES**  
**CANBY PLANNING COMMISSION**  
7:00 PM – July 13, 2009  
City Council Chambers – 155 NW 2<sup>nd</sup> Avenue

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

**ABSENT:** Commissioner Ishah Ahumada and Chuck Kocher

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

**OTHERS PRESENT:** Eric Wilson, Trent Warren, Ken Hostetler and Mike Wellman

**CALL TO ORDER**

**CITIZEN INPUT**                      **None**

**PUBLIC HEARINGS**

**a. Nonconforming Structure or Use** to replace two legal nonconforming wall signs with one new nonconforming wall sign – Napa – 505 SE 1<sup>st</sup> Avenue – NCS 09-01.

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 June 30, 2009 staff report for the record.

Commissioner Milne stated the sign being replaced is simply one light bar and felt it would tie the building together.

Commissioner Joyce asked what makes it a sign instead of a light. Ms Hardy responded that the code defined many things as signs, such as sculptures, symbols and graphics.

**Applicant:**                      **Eric Wilson** – stated that there was another previous sign that was about to fall down and he removed it for safety reasons. He felt the illuminated light bar would look better than the existing signs.

Commissioner Ewert asked if the bar came in other sizes. Mr. Wilson said they did, but he had already purchased this size before the sign code was changed, but had not been able to get it installed until now.

Commissioner Taylor asked why another standard type sign was not proposed. Mr. Wilson said it was all one building with the roof lines being different.

**Proponents:**                      **None**

**Opponents:               None**

**Neutral:                 None**

**Rebuttal:               None**

Chair Ewert closed the public hearing.

Commissioner Taylor stated that there was no reason to have a sign code and not enforce it. He stated he would oppose the application.

Commissioner Joyce stated the light bar did tie the building together and met the intent of the code. He felt it would hopefully eliminate confusion and was more pleasing.

Commissioner Slagle felt the proposal was more pleasing than what is there now and had no problem with the application.

Commissioner Milne stated she could not see making the owner spend more money. She felt an illuminated light bar was not a sign and it would tie the two buildings together.

Commissioner Ewert said he agreed with Commissioner Taylor that since we had a sign code, it should be enforced. He didn't think the code was intended for things of this nature. He felt it was a good effort to tie the building together.

Commissioner Milne moved to approve Nonconforming Structure or Use application NCS 09-01 as presented. It was seconded by Commissioner Slagle. The motion passed 4-1 with Commissioner Taylor voting no.

**b.     Site and Design Review** to construct a single story 2,033 sq ft commercial building and accessory parking lot – Warren Medical Building – 1507 SE 3<sup>rd</sup> Court – DR 09-01.

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 July 1, 2009 staff report for the record.

Commissioner Slagle asked if lights in the parking lot were being proposed. Ms Hardy said the code did not require lights, and the applicant was not proposing to install any parking lot lighting.

Commissioner Joyce asked if any of the lots on 3<sup>rd</sup> Court were had buildings. Ms Hardy stated there was one medical building already built on the lot that is on the other side of the driveway.

Commissioner Joyce voiced concerns about the parking during construction.

Commissioner Milne asked staff to elaborate on the requirements for pedestrian access and extending the walkway to the next lot. Ms Hardy said it was to encourage and accommodate alternate forms of transportation such as pedestrians and bicyclists.

Commissioner Milne stated she felt three bike parking spaces would not be used and one ADA parking space would not be adequate.



Ms Hardy responded that in each case that was the minimum required by the code, but that the applicant could install more bicycle parking or more handicapped parking if he felt he needed it.

**Applicant: Mike Wellman – Architect for the project** – stated all of the existing sidewalks were already 5 feet wide; the bike parking as shown in the drawings would be put in. He said the driveway on page C1 met ADA requirements. He felt the sidewalk extension to neighboring properties was a bad idea for safety reasons. He said the landscape plan was drawn to 8 scale and met the criteria.

Commissioner Slagle asked if the landscape, if the walkway was extended, was a problem. Mr. Wellman stated that it wasn't because of the grade.

Commissioner Ewert asked how much the grade was. Mr. Wellman said it was a 1 / 2 slope and discussed his intention to install a retaining wall system.

Commissioner Milne asked what the depth of the lot was. Ms Hardy said it was 117.29' x 93.6'.

Ms Hardy asked Mr. Wellman where the retaining wall was shown on his plans. Mr. Wellman responded it was on the civil plans, but felt it would go away and not be an issue.

**Proponents: Ken Hostetler** – Mr. Hostetler stated he was the contractor for the project. The light pole will have to be re-sighted. The business hours would be until 6 PM. He felt the current sidewalks were sufficient for connectivity.

Commissioner Taylor asked if it would be possible to make the sidewalk at the site's grade and the neighbor could then make their site to that grade. Mr. Hostetler said it could possibly be used for bike parking.

**Trent Warren – Owner** – He indicated he was there to answer any questions. He also stated that the color of the building is restricted by CC&Rs.

Commissioner Ewert asked how many employees would be at the site. Dr. Warren said that daily there would be 5 to 6 employees.

Commissioner Ewert asked what the average turnover of clients was. Dr. Warren indicated they had 30 to 40 patients daily.

Commissioner Ewert asked about the signage. Ms Hardy said that the applicant has stated that his sign proposal will be submitted later.

**Opponents: None**

**Neutral: None**

**Rebuttal: None**

Chair Ewert closed the public hearing.

Commissioner Taylor said he felt the pedestrian access and connectivity was necessary because the use of the building, or a neighboring building, could change at a later date. He felt

it was reasonable thing to ask to allow the neighbor to adjust to grade. He would like to add a condition for the retaining wall. He said the color of the building siding should be compatible, but not necessarily tan and should be handled by staff. He didn't think a lot of lighting was needed.

Commissioner Milne agreed with Commissioner Taylor on the color and felt that Condition 8 should be modified.

Commissioner Taylor said Condition 2 should be modified so that if the plans were correct, they would not need to be revised and could be submitted as is.

Commissioner Ewert felt Condition 8 should be dropped as the property had CC&R's that governed color. He would have rather have seen the drawings with the grade and retaining wall. He felt a new Condition 8 was needed to deal with the retaining wall. He felt Condition 5 should be modified to require signs to deal with the No Parking and not allow painting the curb for no parking.

Commissioner Joyce asked for a new Condition 11 to deal with the construction parking and sight distance.

Commissioner Milne moved to approve Site and Design Review application DR 09-01 as presented with the following modifications: Revise Condition 2 to remove the word "revised" modify Condition 5 to allow only signs; remove Condition 8 and replace with a condition about the retaining wall and add a Condition 11 to prohibit parking of vehicles and equipment on Redwood and SE 3<sup>rd</sup> Court 40 feet from the intersection during construction. It was seconded by Commissioner Taylor. The motion passed 5-0.

**c. Municipal Code Title 16 Land Development and Planning Ordinance Text Amendment** for the purpose of regulating temporary vendor activity on private property – TA 09-02.

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 July 1, 2009 staff report for the record.

**Applicant:** None

**Proponents:** None

**Opponents:** None

**Neutral:** None

**Rebuttal:** None

Chair Ewert closed the public hearing.

Commissioner Ewert stated he felt the application process could be more labor intensive than staff anticipates. Ms Hardy said that after processing several applications, staff will have a better idea.

Commissioner Slagle asked if the enforcement would be by the Code Enforcement Officer. Ms Hardy said it would.

Commissioner Milne felt the language dealing with “no public safety incidents have occurred” was too broad.

Commissioner Ewert wondered if Item F dealing with generators needed to be addressed in regard to noise. He felt a vendor could operate 24 hours a day.

Commissioner Taylor said the City deals with noise in the nuisance section of the code and this situation would be covered.

Commissioner Ewert said the amendment was well crafted and as good as it gets, but personally he did not feel it met the criteria. He felt there was no public need for the change.

Commissioner Taylor stated he felt the amendment added more control and did meet the criteria and that there is a public need for the change because the current code does not control these activities at all, and this will create standards for these uses.

Commissioner Milne felt the amendment will have more teeth and would benefit the public.

Commissioner Taylor moved to recommend to the City Council approval of TA 09-02 as presented. It was seconded by Commissioner Joyce. The motion passed 4-1 with Commissioner Ewert voting no.

## **NEW BUSINESS                      None**

## **FINAL DECISIONS**

**a.        NCS 09-01 – Napa** - It was moved by Commissioner Joyce to approve the written findings for NCS 09-01 – Napa – as presented. It was seconded by Commissioner Taylor. The motion passed 5-0.

**b.        DR 09-01 – Warren Medical Building** – Bryan Brown, Planning Director, said that staff would make the changes to the findings and conditions the Commission approved at the close of the public hearing and route the document via email to the Commissioners for their approval. It was moved by Commissioner Milne to await the electronic version with the changes for DR 09-01, upon receipt of the Findings each Commissioner would respond via email their approval or disapproval. It was seconded by Commissioner Taylor and passed 5-0.

Commissioner Slagle asked if by sending the findings to each commissioner's personal email made the commissioner's entire email a public record. Commissioner Ewert asked that staff research the question and if it was possible to have the City could set up an email address for each commissioner on the City's system.

Mr. Brown said the staff would make the changes to the findings and conditions as directed and notify the Chair to stop by the office and sign the document.

It was moved by Commissioner Taylor to approve the written findings for DR 09-01 – Warren – as submitted and modified in the Public Hearing. It was seconded by Commissioner Milne. The motion passed 5-0.

## **MINUTES**

**June 8, 2009** - Commissioner Milne moved to approve minutes of June 8, 2009 as presented. Motion seconded by Commissioner Taylor and passed 5-0.

**ITEMS OF INTEREST FROM STAFF** – Bryan Brown reported that members of the Commission received copies of the City Council goals.

## **ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

### **9. ADJOURNMENT**



# MEMORANDUM

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Bryan Brown, Planning Director*  
*Melissa Hardy, Associate Planner*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**DATE:** *August 05, 2009*  
**RE:** *Ordinance No. 1315 - AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTERS 16.08 AND 16.49 FOR THE PURPOSE OF REGULATING TEMPORARY VENDOR ACTIVITY ON PRIVATE PROPERTY. (TA 09-02)*

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## Summary

Attached is Ordinance No. 1315, which amends Title 16 of the Canby Municipal Code (CMC); Specifically adding CMC Section 16.08.140, and amending CMC Section 16.49.030, for the purpose of codifying Text Amendment No. TA 09-02.

## Recommendation

Staff recommends that the City Council pass Ordinance No. 1315, attached hereto as Attachment 1.

Recommended Motion: *"I move to approve Ordinance 1315, an ordinance amending Canby Municipal Code Chapters 16.08 and 16.49 for the purpose of regulating temporary vendor activity on private property, to come up for second reading on August 19, 2009."*

## Background

Planning Commission held a public hearing concerning the proposed text amendment on July 13, 2009. Following close of public hearing, the Planning Commission voted 5-0 to forward a recommendation of approval to City Council based on the findings presented in the staff report.

City Council then received the application and a staff report on August 05, 2009. The City Council approved Text Amendment TA 09-02 as presented, based on the findings in the 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. 1315, in which case Text Amendment TA-09-02 will not be codified and CMC Chapters 16.08 and 16.49 will remain unchanged.

## Attachments

1. Ordinance No. 1315 including exhibit A

## **ORDINANCE NO. 1315**

### **AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTERS 16.08 AND 16.49 FOR THE PURPOSE OF REGULATING TEMPORARY VENDOR ACTIVITY ON PRIVATE PROPERTY.**

**WHEREAS**, the City of Canby initiated an application (application no. TA-09-02) for an amendment to the text of Title 16 for the purpose of regulating temporary vendor activity on private property; and

**WHEREAS**, the Planning Commission held a public hearing concerning the text amendment application on July 13, 2009, and based on their determination that the proposed amendment met all required approval criteria, voted 5-0 to forward a recommendation of approval to City Council; and

**WHEREAS**, the City Council received the text amendment application and Planning Commission recommendation on August 05, 2009, 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 09-02 as presented, based on the findings in the Council staff report, and directed staff to present Council with an ordinance for adoption; and

**WHEREAS**, this ordinance is for the purpose of codifying Text Amendment No. TA 09-02 into law; now therefore,

### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. Title 16 of the Canby Municipal Code, otherwise known as the “Land Development and Planning Ordinance of the City”, is amended as detailed in Exhibit A.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 05, 2009, 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, August 19, 2009, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19th of August, 2009, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

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Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

EXHIBIT “A” to ORDINANCE 1315

**AMENDMENT TO TEXT OF TITLE 16 (TA-09-02)**

Deleted text is illustrated below in ~~strikeout font~~, added text is illustrated in red underlined font.

*Add the following section to CMC Chapter 16.08...*

**16.08.140 Temporary vendor.**

Any person who exhibits goods or services for sale or for offer in a temporary manner on private property, from a vehicle, trailer, tent, canopy, shipping container, or other temporary structure, or from one's person or displayed on the ground or off the ground, shall first obtain permit approval in compliance with the following standards, and shall operate in compliance with this section and with all other applicable sections of the Canby Municipal Code.

**A. Exemptions.** The following temporary activities do not require a Temporary Vendor permit, and are exempt from the standards in this section:

1. Any person engaged in the mere delivery of any goods or services to a site, which were purchased from a regular place of business inside or outside the city;
2. Any person engaged in delivery, exhibition, sale or offering of food on a site for a period of time not to exceed 2 hours during any 24 hour period;
3. Any contractor who is engaged in constructing, maintaining, or repairing a structure, utility, equipment, or landscaping on a site; or
4. Any person conducting a garage sale per Section 5.04.020.

**B. Permit process.**

1. A request for a Temporary Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Temporary Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
2. An application for a Temporary Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Temporary Vendor's structures, equipment, furnishings, signage, and inventory.
3. The Temporary Vendor activity (e.g., retail, restaurant, etc) shall be an outright permitted use in the zoning district in which it is located; Or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Temporary Vendor permit.



4. A "Site and Design Review" permit is not required for a permitted Temporary Vendor.

5. Any signage displayed by the Temporary Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.

6. A Temporary Vendor must obtain a City of Canby business license.

C. Duration. A Temporary Vendor permit may be granted for a site for up to 90 consecutive calendar days, and then may be renewed once upon request for an additional 90 days, provided that the temporary vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the temporary vendor activity. In no case shall a site be permitted to host Temporary Vendor activity for more than 180 days in any 12 month period.

D. A Temporary Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.

E. A Temporary Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site.

F. Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way.

G. A Temporary Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Temporary Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.

H. A Temporary Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:

1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or

2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.

I. The property owner and the temporary vendor permit holder shall be jointly and severably responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-renewal of a temporary vendor permit, and may result in the denial of any future temporary vendor permit for the site upon which the violation occurred.

*Amend the following section in CMC Chapter 16.49...*

**16.49.030 Site and design review plan approval required.**

1. The following projects require site and design review approval, except as exempted in (2) below:

- a. All new buildings.
- b. All new mobile home parks.
- c. Major building remodeling above 60% of value.
- d. Addition of more than 5,000 square feet of additional gross floor area in a one year period.
- e. Construction activity which causes a decrease in pervious area in excess of 2,500 square feet in a one year period.

None of the above shall occur, and no building permit for such activity shall be issued, and no sign permit shall be issued until the site and design review plan, as required by this ordinance, has been reviewed and approved by the Board and their designees for conformity with applicable criteria.

2. The following are exempt from site and design review:

- a. Signs that are not a part of a reviewable development project. Signs that are a part of a reviewable development project, and that are proposed more than two (2) years beyond the final occupancy of the reviewed development.
- b. Alterations or remodeling that do not change the exterior of the building.
- c. Temporary public structures which will be removed within two (2) years of placement.
- d. Accessory structures under 500 square feet.
- e. Temporary commercial tent/canopy structures, which meet the Uniform building or Fire Code, and which will be removed within thirty (30) days of placement.

**f. Temporary Vendor activity permitted pursuant to Section 16.08.140.**

**fg.** Parking lot or paving projects. If no buildings or structures are involved, paving or parking lot development in excess of 2,500 square feet of impervious surface is exempted from site and design review, except in the C-1 zone. In the C-1 zone, all new parking lots that do not involve buildings or structures are subject to site plan review as required in Section 16.49. All new paved areas and parking lots in excess of 2,500 square feet must meet the requirements of Section 16.49.150.

**gh.** Single family or two-family dwellings, and any alterations or remodeling thereof.

**hi.** Minor public facilities.

**3.** Construction, site development and landscaping shall be carried out in substantial accord with the approved site and design review plan. Review of the proposed site and design review plan and any changes thereto shall be conducted in accordance with site and design review procedures.

**4.** No fence/wall shall be constructed throughout a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the community unless reviewed and approved by the Planning Commission.



# **M E M O R A N D U M**

**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Catherine Comer, Economic Development Manager*  
**THROUGH:** *Mark C. Adcock, City Administrator*  
**DATE:** *July 27, 2009 for Council Meeting August 5, 2009*

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**Issue:**           **Ordinance No. 1316**  
                          **Sidewalk Cafés**

**Summary:**

Per Council direction, this ordinance amends the Canby Municipal Code by allowing alcohol to be served at sidewalk cafés and establishing a permit process. Staff is also recommending that there be a nominal fee established for use of the Right-of-Way. This ordinance establishes a new Chapter 12.13 of the Canby Municipal Code to address all uses of sidewalk cafés.

**Recommendation:** Staff recommends that the Council approve this ordinance

- **Recommended motion “I move to approve Ordinance 1316, AN ORDINANCE AUTHORIZING SIDEWALK CAFÉS, ESTABLISHING A POLICY FOR PERMITS AND USES OF SIDEWALK CAFÉS, REPEALING SECTION 12.12.035 OF THE CANBY MUNICIPAL CODE, AMENDING SECTION 9.24.060 OF THE CANBY MUNICIPAL CODE AND DECLARING AN EMERGENCY”**

Staff also recommends the City charge a nominal fee for a sidewalk café permit. Recommended fee: \$25 annual permit fee (non-refundable amount due upon submission of application) plus \$25 right-of-way rental fee. The total \$50 permit fee would be due annually upon anniversary date of permit issuance.

- **Recommended action: Direct staff to return with a resolution adopting an annual \$50 permit fee for sidewalk cafés.**

**Rationale:** As presented in the City Council Work Session on July 15, Sidewalk Café examples from other cities demonstrate that sidewalk cafés encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce. Staff reviewed the issue of how much a permit fee should be. Typical permit fees for other communities are \$10 - \$100 and may have rental fees based on square footage in addition to that. Our Public Works Director estimates that it will cost \$75-100 in staff time to inspect an applicant's property which would include reviewing seating plan, measuring the sidewalk etc. However, it is staff's understanding that Council's direction at the work session was to try to keep the fees low in starting out this program, therefore staff is recommending the \$50 per year fee.

**Background:** In a July 15, 2009 Work Session, The City Council directed staff to come forward with an ordinance amending the Canby Municipal Code for serving alcohol at sidewalk cafés and hold a public hearing at the August 5, Council Meeting. Together the City Attorney, Planning Director, and Economic Development Manager have reviewed examples of ordinances from other communities and developed an ordinance that meets Canby's needs.

**Attached:**       Ordinance 1316  
                          Sidewalk Café Application Packet

## **ORDINANCE NO. 1316**

**AN ORDINANCE AUTHORIZING SIDEWALK CAFÉS, ESTABLISHING A POLICY FOR PERMITS AND USES OF SIDEWALK CAFÉS, REPEALING SECTION 12.12.035 OF THE CANBY MUNICIPAL CODE, AMENDING SECTION 9.24.060 OF THE CANBY MUNICIPAL CODE AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby currently does not allow alcohol to be possessed or served, among other places, on the public right-of-way, including public sidewalks; and

**WHEREAS**, the City of Canby has been approached by local restaurants with liquor licenses asking the City to allow the service of alcohol at tables on public sidewalks in front of their food service businesses; and

**WHEREAS**, the Canby City Council wants to establish a procedure to license and regulate sidewalk cafés that desire to serve alcohol at sidewalk tables, now, therefore

### **THE CITY OF CANBY ORDAINS AS FOLLOWS:**

**SECTION 1:** Canby Municipal Code Section 12.13 is added to read as follows:

#### **Chapter 12.13**

#### **Sidewalk Cafés**

##### **Sections:**

- 12.13.010 Purpose.**
- 12.13.020 Permit required.**
- 12.13.030 Definitions.**
- 12.13.040 Permit fee.**
- 12.13.050 Permit application.**
- 12.13.060 Notice required**
- 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.**

##### **Section 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.

**Section 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.

**Section 12.13.030 Definitions.**

- 1) Abutting property owners and occupants – Any owner or occupant of property which abuts the subject sidewalk café site excluding public right-of-way.
- 2) Accessible Route – A continuous unobstructed path of travel connecting all publicly accessible elements and spaces of a building or facility.
- 3) Adjacent sidewalk area – 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.
- 4) Clearances – 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 four (4) feet in width and no less than seven (7) feet in height for the entire length of the accessible route. Radiuses along an accessible route shall be no less than four (4) feet in width.
- 5) Operate a sidewalk café – 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.
- 6) Substantiated – Witnessed and recorded by City staff.
- 7) Tree Well – 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.
- 8) Vision clearance triangle – A 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.

**Section 12.13.040 Permit fee.**

- 1) Applicants for a sidewalk café shall pay a permit fee and a rental fee for

the use of the public right-of-way.

2) The fee for the permit and the rental fee as described in Section 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.

**Section 12.13.050 Permit application.**

1) 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:

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

2) Information shall be provided as required by the City Administrator or Designee to carry out the purpose hereof.

**Section 12.13.070 Location rules and review criteria.**

1) The City Administrator or Designee shall review the application for compliance with the following criteria:

a) The operation of a sidewalk café shall be located such that there is at least a minimum of four (4) feet of clear and unobstructed accessible route to a height of seven (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 four (4) feet in width.

b) 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.

c) The location of the sidewalk café operation shall be approved by the City Administrator or Designee.

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

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

2) 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.

a) 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,

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

#### **Section 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.

#### **Section 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.

1) Requirements for all sidewalk cafés:

a) Each permit issued shall terminate one year after the anniversary date.

b) 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.

c) 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.



d) 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 Section 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.

e) The operation of a sidewalk café shall be located such that there is at least a minimum of four (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 seven (7) feet measured vertically from grade. Radiuses along an accessible route shall be no less than four (4) feet in width.

f) 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.

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

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

i) The permittee shall notify the City Administrator or Designee in writing when operation of the sidewalk café commences.

j) No use of City fixtures will be allowed.

k) Sidewalk cafés shall not occupy or obstruct the Visual Clearance Triangle.

l) 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.

m) Sidewalk café hours of operation will discontinue by 11:00 PM nightly.

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

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

b) Storage of containers commonly used for dispensing alcoholic beverages to customers including but not limited to bottles, pitchers, and carafes must be kept inside the business unless an employee is stationed in the outside area at all times. No taps, kegs, coolers, or other alcoholic beverage storage devices are allowed outside on the sidewalk.

c) 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.

d) 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.

e) All service and consumption of alcoholic beverages at sidewalk

cafés will discontinue by 11:00 PM nightly.

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

g) Sidewalk cafés shall designate one 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.

**Section 12.13.100 Denial, revocation or suspension of permit.**

1) 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.

2) 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.

**Section 12.13-110 Consumption of alcoholic beverages.**

The provisions of Section 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.

**Section 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 ORS Chapter 153 and Canby Municipal Code Section 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:

1) 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 ten 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.

2) 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 two 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:

- a) first levy (third substantiated violation) \$500;
- b) second levy (fourth substantiated violation) \$1,000;

c) third levy (fifth substantiated violation) \$1,500.  
d) Penalties shall continue to accrue in \$500 increments for each additional substantiated violation.

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

4) Levies of civil penalties and revocations of permits may be appealed to the municipal court judge within ten days of date written notice of the levy of penalty or revocation is deposited in the United State 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 ten 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.

5) 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 ten 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.

6) 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.

7) Failure to pay levy penalty. Unless the full amount of the levy of penalty is paid within ten 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.

**SECTION 2:** CMC section 12.12.035 is hereby repealed.

**SECTION 3:** CMC section 9.24.060 is hereby amended to read as follows:

**“Section 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.”

**SECTION 4:** Emergency Declared.

In order to best serve the citizens of the City of Canby by authorizing sidewalk cafés to serve alcoholic beverages, an emergency is hereby declared to exist and this ordinance shall 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, August 5, 2009, 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, August 19, 2009, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 N.W. 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19<sup>th</sup> of August, 2009, by the following vote:

YEAS\_\_\_\_\_

NAYS\_\_\_\_\_

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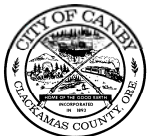
Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder Pro-Tem

PO Box 930  
182 N Holly St  
Canby, OR 97013  
503.266.4021  
Fax 503.266.7961



## CITY OF CANBY SIDEWALK CAFÉ APPLICATION

**Please Print or Type**

**Business License #** \_\_\_\_\_

**Business Name** \_\_\_\_\_ **Date** \_\_\_\_\_

**Business Address** \_\_\_\_\_

**Mailing Address (if different than above)** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_ **Business Phone** \_\_\_\_\_

**Number of Tables** \_\_\_\_\_ **Number of Chairs** \_\_\_\_\_ **Will alcohol be served** \_\_\_\_\_

**Business Owner Name** \_\_\_\_\_ **Residence Phone** \_\_\_\_\_

**Cell Phone** \_\_\_\_\_ **Email Address** \_\_\_\_\_

**Business Owner's Address (no PO Boxes)** \_\_\_\_\_

*I shall hold the City of Canby, its officers, agents, and employees free and harmless from any claims for damages to persons or property including legal fees and costs of defending any actions or suits thereon, including appeals therefrom, which may result from granting this permit.*

\_\_\_\_\_  
**Business Owner's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Property Owner Name** \_\_\_\_\_ **Phone** \_\_\_\_\_

**Property Owner's Address** \_\_\_\_\_

\_\_\_\_\_  
**Property Owner's Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

### DEPARTMENTAL APPROVALS

**Planning Director**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_ **Approved** \_\_\_\_\_

**Public Works Director**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_ **Approved** \_\_\_\_\_

**Police Chief**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_ **Approved** \_\_\_\_\_

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### Insurance Requirement

The City of Canby requires user to carry Liability insurance. This coverage shall be Comprehensive Personal or General Liability in with a coverage amount of not less than \$1,000,000.00 Combined Single Limit covering Bodily Injury and Property Damage. A Certificate of Insurance shall be provided to the City of Canby naming the City as a Certificate Holder. If alcohol is served Liquor Liability shall be provided in the amount of \$500,000 per occurrence for Bodily Injury and Property damage.

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### APPLICATION REQUIREMENTS

(\*If diagrams are larger than 11" x 17", please submit 4 copies)

\_\_\_ Renewal application with no changes to approved plan – must complete above and #2 below; provide #3 below as applicable.

\_\_\_ New Sidewalk Café application – must provide #1 and #2 below and #3 below as applicable.

1. Scaled Site Plan – Plans shall include the following information:
  - Café entrance location and size
  - ADA clearances into and throughout the café;
  - Clearances from proposed café to fixtures, lights, tree wells, signs, news racks, bike racks, planters, etc.
  - Size and location of tables and chairs;
  - Location of outdoor café waste receptacle (required within café area).
2. Certificate of Insurance and Endorsement Form
3. Current Oregon Liquor Control Commission License (If alcohol is being served)  
(Please include copy of current license)

**Non-refundable Permit Fee of \$25.00 to accompany this application**

**Right-of-Way Rental Fee of \$25.00 due upon approval of this application**

### FOR OFFICE USE ONLY

The above applicant has met the requirements listed below and supplied appropriate documents:

Certificate of Insurance Received	___ Yes ___ No	Initials ___
City of Canby Business License is Current	___ Yes ___ No	Initials ___
Scaled Site Plan	___ Yes ___ No	Initials ___
Current OLCC License	___ Yes ___ No	Initials ___

\_\_\_\_\_  
City Administrator's Signature

\_\_\_\_\_  
Date

## INSURANCE REQUIREMENTS FOR STREET AND SIDEWALK USE PERMITS

This information will assist you and your insurance agent in complying with City insurance requirements for a Sidewalk Café permit.

### The City of Canby Requires

- A standard Certificate of Liability Insurance, with the City of Canby named as the Certificate Holder.
  - **Certificate Holder Address:**

City of Canby

P O Box 930

Canby, OR 97013

### AND

- An endorsement, on file with the certificate, naming the City of Canby as an additional insured. List the endorsement used in the “DESCRIPTION OF OPERATIONS...” section of the certificate. The following endorsements are acceptable:
  - City of Canby Sidewalk Café Permit Endorsement
  - OR
  - CG 20 12 07 98; “Additional Insured – State or Political Subdivisions – Permits
  - OR
  - An endorsement equivalent to the CG 20 12 07 98 endorsement

### Minimum Requirements for Liability Insurance

The insurance shall provide coverage not less than \$1,000,000 (one million dollars) per occurrence. If alcohol is served Liquor Liability shall be provided in the amount of \$500,000 per occurrence for Bodily Injury and Property damage.

### Regulations

The insurance certificate is intended to protect the public from any liability it may incur as a result of granting the requested permit.

### Notification of Cancellation

The City of Canby requires 30 (thirty) days notice mailed from the insurance company prior to cancellation of the policy.

### In the “DESCRIPTION OF OPERATIONS...” section of the certificate

- Indicate the type of permit being applied for – Sidewalk Café
- If the insured seeks a permit for a set location/address or group of set locations/addresses that are different than the Insured’s address on the certificate then the location(s) must be listed.
- If the insured continuously seeks permits for changing location then do not list the permitted location/address, if you do we will require a new certificate for every location. In this situation you may choose to indicate “All Operations”.

### Submission

Fax 502-266-NNNN  
Mail Please mail to the Certificate Holder Address above  
E-Mail [namex@ci.canby.or.us](mailto:namex@ci.canby.or.us)

**THE CERTIFICATE AND ENCORSEMENT MUST BE APPROVED BY THE CITY ATTORNEY BEFORE A PERMIT CAN BE ISSUED. PLEASE ALLOW 6 (SIX) BUSINESS DAYS FOR PROCESSING.**

### Questions

If you or your agent have any further questions, please call \_\_\_\_\_ at 503-266-NNNN or send email to [namex@ci.canby.or.us](mailto:namex@ci.canby.or.us)

**City of Canby Sidewalk Café Use Permit Endorsement**  
**This For to be Attached to Permittee's Certificate of Insurance**

INSURED \_\_\_\_\_

AFFORDING CO: \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

The policy shall bear also the following endorsement:

“Without prejudice to coverage otherwise existing herein, the City of Canby, its officers, agents, and employees are included as additional insureds under this policy as to any claim or claims for injury to person including death, or damage to property, resulting from or growing out of the operations of the permittee within the City of Canby, Oregon.”

“It is understood and agreed that this policy shall not terminate or be canceled without first giving thirty (30) days written notice of intention to terminate or to cancel said policy to the \_\_\_\_\_, P O Box 930, Canby, OR 97013.”

“Notwithstanding the naming of additional insured, the said policy shall protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein shall operate to increase the insured's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insured would have been liable if only one person or interest had been named as insured. The coverage applies as to claims between insureds on the policy. This endorsement assures that the policy complies with the terms and conditions of the named insured's permit with the City of Canby.”

\_\_\_\_\_  
Authorized Insurance Representative Signature

\_\_\_\_\_  
Date

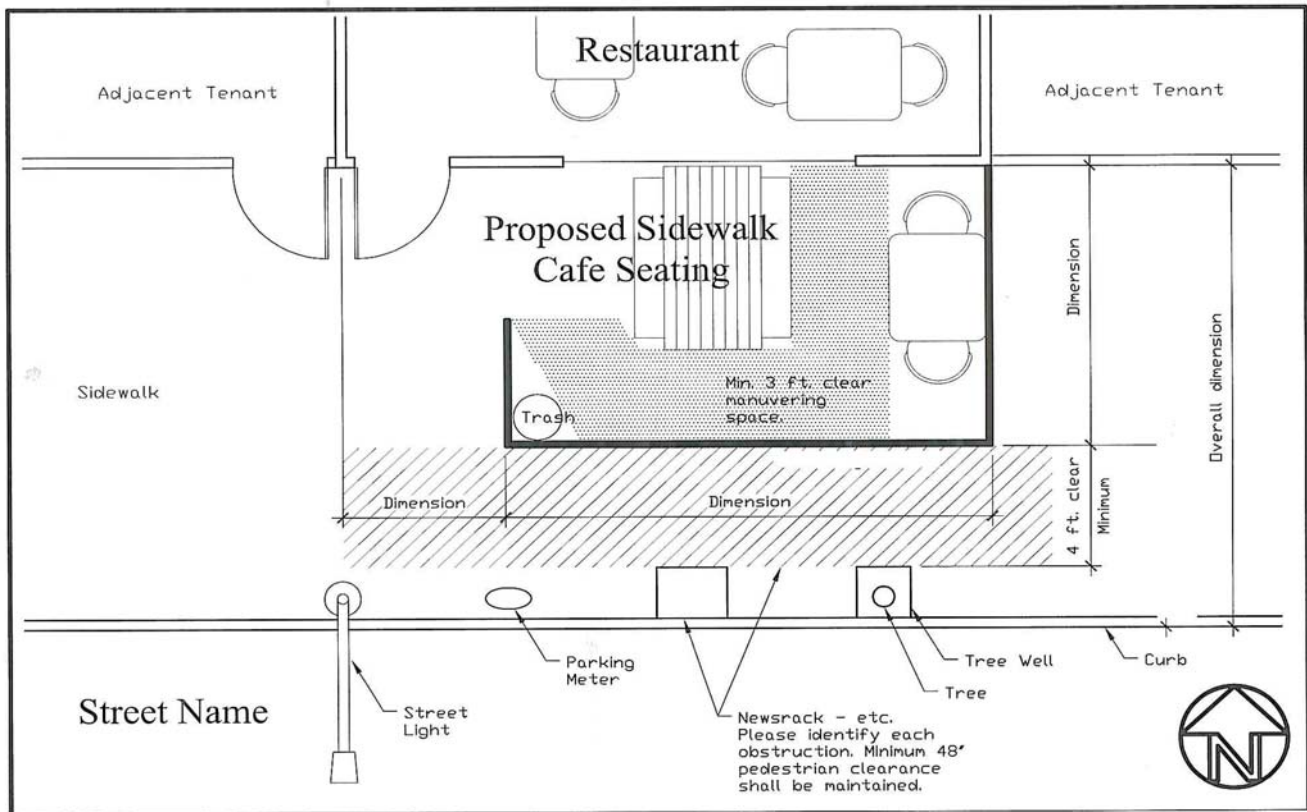
Name and Address of Certificate Holder:

City of Canby

\_\_\_\_\_  
P O Box 930  
Canby, OR 97013



# Sample Sidewalk Café Permit Site Plan



**Café Name** \_\_\_\_\_

**Café Address** \_\_\_\_\_

\_\_\_\_\_

# Sidewalk Café Permit Site Plan

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SITE PLAN AND A VALID PERMIT MUST BE DISPLAYED AND VISIBLE FROM THE SIDEWALK  
TABLES AND CHAIRS MUST CONFORM TO THIS SITE PLAN  
FOR SIDEWALK CAFÉ QUESTIONS OR CONCERNS, PLEASE CALL 503-266-4021

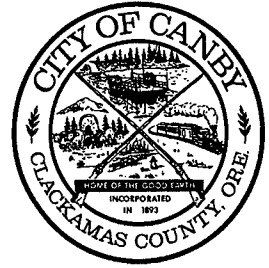
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**Café Name** \_\_\_\_\_

**Café Address** \_\_\_\_\_

\_\_\_\_\_

# MEMORANDUM



**TO:** *Honorable Mayor Thompson and City Council*  
**FROM:** *Dwayne Barnes, Director of Public Works*  
**DATE:** *July 29, 2009*  
**THROUGH:** *Mark C. Adcock, City Administrator*

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Issue: Ordinance 1317, Street Maintenance Fee/Gas Tax Paving Projects and Logging Road Trail Paving/Sidewalks Construction Contract.

Synopsis: Staff selected the first installment of street maintenance fee/gas tax projects based on a Pavement Management Analysis Study completed by Pavement Services, Inc in March 2007. Staff took the list of projects detailed in the report to be completed in the first year and inspected them to verify the condition of the segments as well as the maintenance treatment required. From there a scope of work was created and the project was advertized for bid. The second component of the project is to install a 10-foot wide sidewalk along the logging road trail beginning at Territorial Road and ending at a point north of the existing parking lot followed by paving the trail 10-feet wide beginning where the current asphalt terminates and extending to the north end of the trail.

Recommendation: Staff recommends the Council adopt Ordinance 1317.

Rationale: Please see the attached staff report from Curran Mcleod Engineering.

THIS HAS BEEN REVIEWED  
BY THE FINANCE DIRECTOR  
*[Signature]*

**To:** Honorable Mayor and City Council  
CITY OF CANBY  
ATTN: Mr. Mark Adcock, City Administrator

**FROM:** Hassan Ibrahim, P.E.  
CURRAN-McLEOD, INC.

**DATE:** July 29, 2009

**ISSUE:** 2009 STREET MAINTENANCE PROGRAM  
APPROVAL OF CONSTRUCTION CONTRACT ORDINANCE 1317

**SYNOPSIS:** On July 28<sup>th</sup>, 2009, the City of Canby solicited and received seven (7) bids for the 2009 Street Maintenance 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 1317 authorizing the Mayor and City Administrator to execute a unit price contract with Eagle-Elsner, Inc. in an amount not to exceed \$578,587.50 for the 2009 Street Maintenance Project; and declaring an emergency.

**RATIONALE:**

Competitive sealed 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, Eagle-Elsner, Inc. submitted the low responsible and responsive bid.

The low responsive bid is approximately \$175,000 under the amount of available funds budgeted for the 2009-2010 fiscal year, which will allow the City to expand the work scope to other streets that are in immediate need of maintenance. City staff can provide a list of the additional streets to be included in the scope of work at the next scheduled Council meeting.

OAR 137-049-0910 gives the City the authority to extend the scope of similar work at the bid unit prices and without new procurement and without executing a change order for the additional work.

Honorable Mayor & City Council  
July 29, 2009  
Page 2

**BACKGROUND:**

This project is part of the Street Maintenance Program funded through the street maintenance fee.

**FISCAL IMPACT:**

Attached are Ordinance 1317 and the proposed contract for execution. Our recommendation is to accept the low responsive bid from Eagle-Elsner, Inc. and execute a contract for construction in the bid amount of \$424,341, with authorization to expand the work scope to an amount not to exceed \$578,587.50.

This work is funded with \$78,587.50 from the parks department SDC reserves for paving on the Logging Road Tail, and the gas tax revenues for the balance not to exceed \$500,000.

**ENCLOSURES:**

- Bid Summary
- Ordinance Number 1317
- Exhibit 'A' Construction Contract

## **ORDINANCE NO. 1317**

### **AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH EAGLE-ELSNER, INC. FOR THE 2009 STREET MAINTENANCE PROGRAM; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has heretofore advertised and received seven (7) bids for the 2009 Street Maintenance Program; and

**WHEREAS**, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on July 9<sup>th</sup>, 2009; and

**WHEREAS**, bids were received and opened on July 28<sup>th</sup>, 2009 at 2:00 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:

Eagle-Elsner, Inc.	P.O. Box 23294 Tigard, OR 97281	\$424,341.00
Guernsey Stone Company	P.O. Box 12009 Salem, OR 97309	\$452,795.00
Brix Paving Company	P.O. Box 2388 Tualatin, OR 97062	\$478,297.84
Parker NW Paving Company	24370 SE Hwy 99E Canby, OR 97013	\$479,847.50
Roy L. Houck Construction Company	4444 22 <sup>nd</sup> Ave NE Salem, Or 97301	\$484,650.00
Knife River	3330 NW Yeon Ave, Ste 100 Portland, OR 97210	\$512,138.00
Portland Road and Driveway Company	10500 SE Jennifer St Clackamas, OR 97015	\$517,357.00

**WHEREAS**, the Canby City Council, acting as the City's Contract Review Board, met on Wednesday, August 5<sup>th</sup>, 2009, 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 City of Canby has budgeted \$500,000 for the Street Department share of the construction cost, and \$78,587.50 of funding from the Parks Department; and

**WHEREAS**, the Canby City Council determined that the low responsive bid was that of Eagle-Elsner, 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 Eagle-Elsner, Inc. for 2009 Street Maintenance Program, a unit price contract not to exceed \$578,587.50. A copy of the contract with Eagle-Elsner, Inc. prepared in the original bid amount of \$424,341 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, August 5<sup>th</sup>, 2009; ordered posted as required 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, August 19<sup>th</sup>, 2009, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

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Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19th day of August, 2009, by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

---

Melody Thompson, Mayor

ATTEST:

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Kimberly Scheafer, CMC  
City Recorder

**CONTRACT FOR CONSTRUCTION**

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_ in the year 2009 by and between

\_\_\_\_\_  
City of Canby  
(hereinafter called OWNER) and

\_\_\_\_\_  
Eagle-Elsner, 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  
2009 Street Maintenance Program**

The scope of work consists of the following:

- Approximately 4,100 tons of asphaltic concrete pavement at 1.5", 2" and 3" thickness.
- Approximately 275 square yard pavement reconstruction of failed areas.
- Approximately 4,500 square yard of asphaltic concrete milling and disposal.
- Approximately 8,900 square yard of Petromat geotextile fabric.
- Approximately 4,100 lineal feet of asphalt joint crack sealing.

**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 30 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 15 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 Four Hundred Dollars (\$400.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete AND/OR for each day of delay beyond the deadline for Final Completion.

### **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 Four Hundred Twenty Four Thousand Three Hundred Forty One and 00/100 Dollars (\$424,341.00) 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 ORS 279C.570

## **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 Specifications bearing the following general title:
  - City of Canby
  - 2009 Street Maintenance Program
- 8.9 Addenda number(s) 1.
- 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 Article 1 of 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 three counterparts of this Agreement.

This Agreement will be effective on \_\_\_\_\_, 2009.

OWNER:

**City of Canby  
170 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013**

CONTRACTOR:

**Eagle-Elsner, Inc.  
P.O. Box 23294  
Tigard, OR 97281**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

\_\_\_\_\_  
Eagle-Elsner, Inc.

\_\_\_\_\_  
P.O. Box 23294

\_\_\_\_\_  
Tigard, OR 97281

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## MEMORANDUM

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**Date:** July 13, 2009

**To:** Honorable Mayor and City Council

**From:** Cynthia Thompson, Transit Director

**Subject:** Transit Advisory Committee Recommendation  
RE: Canby Area Transit (CAT) Saturday Service Suspension

---

Staff advises the City Council to approve the Transit Advisory Committee's recommendation to suspend Canby Area Transit's Saturday service as described in the attached memo. Staff also recommends that the City Council include the CAT Saturday service suspension on the August 5, 2009 agenda in order to provide citizens an opportunity to comment.

After careful review and much discussion we've determined that suspension of Saturday service is the best possible solution available to CAT at this time. A Saturday service suspension can be implemented quickly and it will save nearly \$50,000 to address the rate increase (7.5%) by OHAS, for the provision of the transit service.

Transit staff along with the TAC members will focus their efforts on finding solutions that will allow some form of Saturday service to be reinstated as soon as possible. Several ideas are being explored including instituting a fare on out of town service, pursuing other grant funds and redesigning the weekday services. Staff agrees with the consensus of the committee as described in the memo and will bring a recommendation regarding CAT's Saturday service suspension to the City Council for review in one year.

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## MEMORANDUM

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**Date:** July 10, 2009

**To:** Honorable Mayor and City Council

**From:** Clair Kuppenbender, Transit Advisory Committee (TAC) Chairperson

**Subject:** Canby Area Transit (CAT) – Saturday service

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On July, 8 2009 the Transit Advisory Committee (TAC) was informed of a 7.5 percent rate increase for the services provided by Oregon Housing and Associated Service (OHAS) dba Wheels Community Transportation (the transit service provider). After reviewing the budget realities and evaluating what might be done quickly to address the budget shortfall the committee recommends a temporary suspension of CAT 's Saturday service for up to one year at which time it will be reviewed by staff and the TAC and a recommendation will be made to City Council. The motion recommending the suspension passed with a 4-1 vote for suspending Saturday service.

Saturday ridership averages 271 trips per day and the demographic of rider is 30% youth, 58.3% adults and 11.7% seniors/disabled. We anticipate some negative reaction to this service suspension and City Council may hear comments from citizens. Transit staff along with committee members will focus our efforts on finding solutions that will allow some form of Saturday service to be reinstated as soon as possible. Several suggestions were discussed including instituting a fare on out of town service, pursuing other grant funds and redesigning the weekday services. The committee consensus was that these suggestions have merit but would take time to implement.

Suspension of CAT's Saturday service on September 5, 2009 complies with the Intergovernmental Agreement (IGA) between the City of Canby and TriMet which requires CAT to make major service and/or schedule changes on the same dates as TriMet.

DATE: July 27, 2009

MEMO TO: Mark Adcock, City Administrator

FROM: Beth Saul, Interim Library Director

RE: City of Canby representation on the new District Advisory Board

Since the voters have now approved the new Clackamas County Library District, the structures we had in place for mutual cooperation have been modified and strengthened to reflect the formality of the new district.

Previously we were represented on the Library Network Intergovernmental Board, which consisted of one representative from each participating city (usually the City manager).

Now the Board of County Commissioners is also the Board of Directors for the new Clackamas County Library Service District, and the new advisory board for the members is to be called the District Advisory Board. In addition to completing the IGA's governing membership in the District, it is necessary to formally select and propose a District Advisory Board representative from Canby.

I would recommend that the City Administrator continue to be Canby's representative. This is what most other cities are also doing.

In order to formalize the proposal, it would be desirable for the Canby City Council to confirm this appointment and forward it on to the Board of County Commissioners.

The new Library Director will already be expected to serve on the Director's Group Committee as Canby's representative on that technical committee, while the District Advisory Board is more of a policy board that advises the Commissioners on Library District matters, so I think the Library Director should stay focused on the technical committee. In the past, that was how we divided the responsibilities and it worked well.