

AGENDA

CANBY CITY COUNCIL MEETING

August 20, 2008, 7:30 P.M.

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Walt Daniels

Councilor Teresa Blackwell

Councilor Paul Carlson

Councilor Randy Carson

Councilor Tony Helbling

Councilor Wayne Oliver

CITY COUNCIL 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 August 6, 2008 City Council Work Session and Regular Meeting

7. RESOLUTIONS & ORDINANCES

A. Res. 1000, Amending Canby's Sanitary Sewer, Transportation, and Storm Drainage System Development Charges to Account for Inflation Pg. 1

B. Res. 1001, Formal Recognition of the SE Canby Neighborhood Association Pg. 6

C. Res. 1002, Formal Recognition of the SW Canby Neighborhood Association Pg. 12

D. Res. 1003, Authorizing Canby Urban Renewal Agency to Exercise Option Contract to Purchase Real Property Located at 301 NE Third Street Pg.17

E. Ord. 1287, Authorizing Contact with Northside Ford Truck Sales, Inc. of Portland for One 2009 Ford Escape Compact Sport Utility Vehicle for the Public Works Department (*2nd Reading*) Pg. 34

F. Ord. 1292, Amending Canby Municipal Code Chapter 13 by Repealing and Replacing Ord. 1153 Regulating the Discharge of Wastes of the City of Canby

- Sanitary and Storm Sewer Systems, Limiting Such Discharges Only to Those of Acceptable Types, Characteristics, or Concentrations; Establishing a System of Waste Discharge Permits and User Fees; Providing for Enforcement Pg. 36
- G. Ord. 1293, Authorizing Change Order #4 with Parker Northwest Paving for Construction of Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements (*2nd Reading*) Pg.104

8. NEW BUSINESS

- A. Recommendation for League of Oregon Cities 2009 Legislative Agenda Pg.106

9. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS

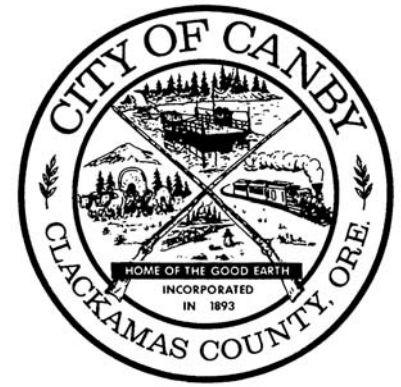
10. CITIZEN INPUT

11. ACTION REVIEW

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

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Kim Scheafer at 503.266.4021 ext. 233. A copy of this Agenda can be found on the City’s web page at www.ci.canby.or.us. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503.263.6287.



MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *Jill Thorn, Office Specialist*
THROUGH: *Mark C. Adcock, City Administrator*
DATE: *August 4, 2008*

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 4.2 percent.

Recommendation: Staff recommends that the City Council **approve Resolution 1000, 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 4.2 percent, similar to last year's 3.7%. 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	\$2,296	\$2,337
Transportation	\$2,362	\$2,440
Storm Drainage	\$90	\$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 1000.

RESOLUTION NO. 1000

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 4.2% since the SDCs were last adjusted in 2007; 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 4.2 % increase in construction costs:

Sanitary Sewer

Improvement Fee:	\$610.00 per EDU
Reimbursement Fee:	\$1,727.00 per EDU (equivalent dwelling unit)

Transportation

Improvement Fee:	\$234.00 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 20, 2008.

ADOPTED by the Canby City Council on the 20th day of August, 2008.

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder Pro-Tem



MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *Mark C. Adcock, City Administrator*
THROUGH: *Matilda Deas, AICP, Project Planner*
DATE: *August 13, 2008*
PREPARED BY: *Matilda Deas, AICP, Project Planner*

Issue: Resolutions 1001 and 1002, formal recognition of the Southeast Canby Neighborhood Association (SECNA) and the Southwest Canby Neighborhood Association (SWCNA), respectively.

Synopsis: Staff has prepared Resolutions whereby the City Council may formally recognize two newly organized Canby Neighborhood Associations: the Southeast Canby Neighborhood Association and the Southwest Canby Neighborhood Association.

Recommendation: Staff recommends that the Council adopt Resolutions 1001 and 1002.

Rationale: The Canby Municipal Code sets forth procedures whereby organized Neighborhood Associations located within Canby city limits may seek formal recognition from the City of Canby. The Southeast Canby Neighborhood Association and the Southwest Canby Neighborhood Association have both met the approval criteria set forth in CMC 2.70.010 through 2.70.050 and are seeking formal recognition from the City Council.

Background: The City Council and Planning Commission have been strong proponents of Neighborhood Associations and the benefits they may provide to the City and citizens of Canby. In 2002 the City Council formally recognized Canby's first two neighborhood associations located in North Canby: the Northeast Canby Neighborhood Association, and the Riverside Neighborhood Association.

Two recently organized Canby Neighborhood Associations have applied for formal recognition by the City Council. Both Associations have met the approval criteria for formal recognition and have submitted the required documentation (see Attachments 1 and 2). They are requesting that the Council adopt Resolutions 1001 and 1002 to formally recognize their Neighborhood Associations.

Options: The Council could elect not to recognize the Southeast Canby Neighborhood Association and the Southwest Canby Neighborhood Association by resolution, and lose the positive energy generated by the newly formed Neighborhood Associations. Both the City Council and the Planning Commission have expressed strong support for formally recognizing Neighborhood Associations, and for this reason Staff does not recommend this option.

- Attached:
1. Southeast Canby Neighborhood Association documents
 2. Southwest Canby Neighborhood Association documents

Note: If you have questions about this staff report or the proposed by-laws, please contact staff in advance.

RESOLUTION NO. 1001

A RESOLUTION PROVIDING FOR FORMAL RECOGNITION OF THE SOUTHEAST CANBY NEIGHBORHOOD ASSOCIATION, THEREBY FOSTERING A PARTNERSHIP OF OPEN COMMUNICATION BETWEEN THE CITY AND THE NEIGHBORHOOD ASSOCIATION.

WHEREAS, the City Council understands the importance of citizen participation and recognizes that it is desirable to maintain and improve the quality of life for all Canby residents; and

WHEREAS, the City Council desires to instill and enhance a sense of civic pride and responsibility for the community; and

WHEREAS, the City Council recognizes that participation of the greatest number of citizens with a wide diversity of viewpoints leads to better understanding of mutual concerns; and

WHEREAS, it is essential for citizens to provide information to aid the City Council and Planning Commission in decisions on matters affecting the City's quality of life, including, land use, housing, the annual City budget, community facilities and infrastructure, human resources, social and recreation programs, traffic and transportation, environmental quality, public safety and other matters; and

WHEREAS, the diversity of views and suggestions will also result in a better understanding and acceptance of those decisions by the citizens of Canby, and

WHEREAS, the City Council desires to enhance livability by giving citizens the opportunity to participate in government decisions in an advisory role; and

WHEREAS, the City Council in order to provide more effective citizen participation requires the development of certain minimum standards that outline the principles, functions and organization of neighborhood associations when providing formal recognition by the City.

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

The Southeast Canby Neighborhood Association is hereby recognized as an official Neighborhood Association of the City of Canby, Oregon, subject to compliance with Chapter 2.70.010 through 2.70.050 of Canby's Municipal Code.

This Resolution shall take effect August 20, 2008

ADOPTED this 20th day of August, 2008 by the Canby City Council.

Melody Thompson-Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder, Pro-Tem

Southeast Canby Neighborhood Association

BYLAWS

ARTICLE I Purpose

Section 1. The name of the organization shall be the Southeast Canby Neighborhood Association (SECNA).

Section 2. The purposes for which SECNA is organized are:

- (a) For educational, social, charitable and advocacy purposes with the goal to improve and maintain the health, safety and livability of the neighborhood.
- (b) To enhance the livability of the area by establishing and maintaining an open line of communication and liaison between the neighborhood, City of Canby and other neighborhoods. Provide representation of SECNA concerns to local government and to further SECNA interests by participating in the processes of government.
- (c) To provide an open process by which all members of the neighborhood may involve themselves in the affairs of the neighborhood.

Nothing in these bylaws shall preclude SECNA from forming as a non-profit organization.

ARTICLE II Membership

Section 1. Anyone who lives on or owns any real property, or any legal entity who operates a place of business or institution, within the recognized boundaries of the SECNA shall be considered a member.

Section 2. An active member is defined as one who has attended at least one general or special meeting within the last calendar year.

Section 3. All residents, property owners, or businesses located with SECNA boundaries shall have one vote per member household, property, or business entity, each to be cast during attendance at any general or special meeting. One representative from each government agency or nonprofit organization located within SECNA boundaries shall have the same privilege as the residents listed above.

ARTICLE III Dues:

Charging of dues or membership fees shall be prohibited; however, voluntary contributions and fund-raising activities are encouraged.

ARTICLE IV Membership Meetings

Section 1. There shall be at least one *general* membership meeting yearly. Notification for all general meetings shall require fourteen (14) days advance written, email, or public notice to all members of SECNA.

Section 2. The Chair may call *special* meetings of the membership as deemed necessary. Reasonable attempt to notify all SECNA members shall be made at least seven (7) days prior to meetings.

- Section 3. Any Member may make a motion to add an item to an agenda. Adoption of that motion requires a second and majority vote. Any non-member may request to add an item to the agenda by submitting the item in writing to the SECNA officers at least seven (7) days in advance of the membership meetings. The Chair shall place the item on the agenda only if the majority of the officers agree to do so.
- Section 4. A quorum for any general or special meeting of SECNA shall be a minimum of ten (10) members in attendance. Unless otherwise specified in these Bylaws, decision of SECNA shall be made by a majority vote of those members present at any meeting.
- Section 5. Any general, special, officer or committee meeting is open to any person to observe. However, only Members may participate in discussion and are entitled to vote. Non-members may participate in discussion if an item from a Non-member has been placed on the agenda per the requirements of Section 3, Article IV. The Chair may regulate the order and length of appearances and limit appearances to relevant points. All actions or recommendations of the general or special meetings shall be recorded in the minutes, including minority reports.
- Section 6. The SECNA shall follow Robert's Rules of Order (Revised) in all areas not covered by the Bylaws.

ARTICLE V Officers

- Section 1. There shall be at least three (3) officers and the SECNA may add additional officers as needed.
- Section 2. Each officer shall hold office for a term of two (2) years for which he/she is elected or appointed and until his/her successor has been elected or appointed to take office.
- Section 3. Only persons eligible for SECNA membership shall be qualified to hold an elected or appointed position.
- Section 4. Officers shall manage the affairs of SECNA in the interim between general meetings. The Officers shall seek the views of those affected by any proposed policies or actions before adopting any recommendation on behalf of SECNA; and shall strictly comply with these Bylaws.
- Section 5. Officers shall be elected by a vote of the membership at its even year annual meeting. The names of all candidates for the officer slate shall be placed in nomination. Secret written ballots shall be used for voting for Officers. Election requires a majority vote of the membership present.
- Section 6. Officers may fill any vacancy on the SECNA or committee by majority vote of the officers in cases involving absences by an Officer or committee member from three (3) consecutive meetings, or if a position is vacated for any reason. A member appointed to fill a vacancy shall serve the remainder of the unexpired term and until his/her successor is elected or appointed.
- Section 7. Duties of Officers:
- (a) Chair shall prepare the agenda and preside at all meetings of the officers and membership; shall appoint members of committees with a majority approval of the Officers. The Chair shall make all necessary reports to the City of Canby.
 - (b) Vice Chair shall assist the Chair; in the Chair's absence shall function as Chair.

- (c) Secretary/Treasurer shall keep minutes and written records of majority and minority opinions expressed at all meetings; shall be responsible for all correspondence of SECNA; shall make records of SECNA available for inspection at any reasonable time. The secretary/treasurer shall also be held accountable for all funds and shall give an accounting at each general meeting; shall receive, safe keep and disburse SECNA funds, but such disbursement shall require the signature of the Chair. This position may be divided into separate secretary and treasurer functions if the SECNA so desires.
- (d) The SECNA may establish additional Committee Chairs to serve with the officers as necessary.

Section 8. Any Officer may be removed from office by an affirmative vote of two thirds of the Members present, the notice of which shall have specified the proposed removal. In addition, Officer members failing to attend three (3) consecutive meetings shall be automatically deemed to have resigned.

ARTICLE VI Committees:

The Officers shall establish both standing and ad hoc committees, as they deem necessary. Committees shall make recommendations to the officers for officer actions. Committees shall not have the power to act on behalf of the organization without specific authorization from the Officers.

ARTICLE VII Conflict of Interest

Section 1. A conflict of interest exists for an Officer whenever the Officer holds a personal financial interest which will be impacted by the action or inaction by SECNA on a proposal before the membership or officers. A personal financial interest shall include a financial interest held by the officer and/or by members of their immediate family. A personal financial interest includes an ownership interest above 5% of a business, which will be impacted by the decision of SECNA. Examples of personal financial interest would include Employment by SECNA; ownership of property the use or control of which is being considered by SECNA; plans to purchase property the use or control of which is under discussion by SECNA, etc. Ownership of a primary residence within the SECNA boundaries does not constitute a conflict of interest.

Section 2. Whenever an Officer determines that they have a conflict of interest relating to an item under discussion, they must inform the body hearing the proposal that the conflict of interest exists.

Section 3. Officers shall not vote on matters in which they have a conflict of interest.

ARTICLE VIII Indemnification:

SECNA shall indemnify an Officer who may be party to a proceeding as a result of the individual being or having been an Officer to the fullest extent provided by the laws of the State of Oregon now in effect or later amended.

ARTICLE IX Boundaries

Section 1. Boundaries of SECNA shall be defined as follows: Property within the city limits of the City of Canby, South of Township, East of Ivy extending east to the Molalla Western Railroad tracks. See the attached map.

Section 2. Boundaries of the SECNA shall be reviewed if the SECNA membership exceeds 6,000, or upon request by the SECNA or adjacent neighborhoods. The revised boundaries shall be voted

on and adopted with a majority vote of the members in attendance at a SECNA meeting and subject to City Council Approval.

ARTICLE X Public Meetings/Public Records Requirement:

SECNA shall abide by all Oregon statutes relative to public meetings and public records. Official action(s) taken by SECNA must be on record or part of the minutes of each meeting. The minutes shall include a record of attendance and the results of any vote(s) taken. A summary of discussion, including all dissenting views, should be transmitted along with any recommendation made by SECNA to the City.

ARTICLE XI Non-Discrimination:

SECNA shall afford equal opportunities for participation in the Neighborhood Association to all persons who meet the membership qualifications regardless of race, color, religion, gender, age, handicap, familial status, or national origin.

ARTICLE XIV Adoption and Amendment of Bylaws:

All amendments to these Bylaws must be proposed in writing and submitted to the SECNA Chair, who will then distribute copies of the proposed amendment/s to active members at least thirty (30) days before voting on their adoption. Reasonable attempts to notify all SECNA members of the proposed amendments through public notice or any other methods deemed reasonable by the SECNA shall be made at least seven (7) days prior to voting. This notice shall specify the date, time, and place for consideration of the proposed amendment(s). Adoption of, and amendments to, these Bylaws shall require a two-thirds (2/3) vote by the members present at a general meeting. Adoption of these Bylaws must be ratified by the City Council prior to becoming adopted. The City must be notified of any updates or amendments to these Bylaws.

RESOLUTION NO.1002

A RESOLUTION PROVIDING FOR FORMAL RECOGNITION OF THE SOUTHWEST CANBY NEIGHBORHOOD ASSOCIATION, THEREBY FOSTERING A PARTNERSHIP OF OPEN COMMUNICATION BETWEEN THE CITY AND THE NEIGHBORHOOD ASSOCIATION.

WHEREAS, the City Council understands the importance of citizen participation and recognizes that it is desirable to maintain and improve the quality of life for all Canby residents; and

WHEREAS, the City Council desires to instill and enhance a sense of civic pride and responsibility for the community; and

WHEREAS, the City Council recognizes that participation of the greatest number of citizens with a wide diversity of viewpoints leads to better understanding of mutual concerns; and

WHEREAS, it is essential for citizens to provide information to aid the City Council and Planning Commission in decisions on matters affecting the City's quality of life, including, land use, housing, the annual City budget, community facilities and infrastructure, human resources, social and recreation programs, traffic and transportation, environmental quality, public safety and other matters; and

WHEREAS, the diversity of views and suggestions will also result in a better understanding and acceptance of those decisions by the citizens of Canby, and

WHEREAS, the City Council desires to enhance livability by giving citizens the opportunity to participate in government decisions in an advisory role; and

WHEREAS, the City Council in order to provide more effective citizen participation requires the development of certain minimum standards that outline the principles, functions and organization of neighborhood associations when providing formal recognition by the City.

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

The Southwest Canby Neighborhood Association is hereby recognized as an official Neighborhood Association of the City of Canby, Oregon, subject to compliance with Chapter 2.70.010 through 2.70.050 of Canby's Municipal Code.

This Resolution shall take effect August 20, 2008

ADOPTED this 20th day of August, 2008 by the Canby City Council.

Melody Thompson-Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder, Pro-Tem

SOUTHWEST CANBY NEIGHBORHOOD ASSOCIATION BYLAWS

Article I Purpose

Section 1. The name of the organization shall be the Southwest Canby Neighborhood Association.

Section 2. The purposes for which the NA is organized are:

- (a) To enhance the livability of the area by establishing & maintaining an open line of communication & liaison between the neighborhood, the city of Canby, & other participating neighborhoods. Provide representation of SWCNA concerns to local government & to further SWCNA interests by participating in the processes of government.
- (b) For educational, social, charitable and advocacy purposes with a goal to improve & maintain the health, safety, & livability of the neighborhood.
- (c) Nothing in these bylaws shall preclude an association from forming as a non-profit organization.
- (d) Provide an open process by which all members of the neighborhood may involve themselves in the affairs of the neighborhood.

Article II Membership

Section 1. Anyone who lives in or owns any real property, or any legal entity who operates a place of business or institution within the recognized boundaries of the NA shall be considered a member.

Section 2. An active member is defined as one who has attended at least 1 general or special meeting within the last calendar year.

Section 3. All residents, property owners, or businesses located within the NA boundaries shall have one vote per member household, property, or business entity, each to be cast during attendance at any general or special meeting. One representative from each government agency or nonprofit organization located within the NA boundaries shall have the same privilege as the residents listed above.

Article III Dues

Charging of dues or membership fees shall be prohibited.

Article IV Membership Meetings

Section 1. There shall be at least 1 general meeting per calendar year. Notification for all general meetings shall require 14 days in advance, written, E-mail, or telephone notice to all active members of the NA and public notice.

Section 2. The chairperson or vice chair, in the chair's absence, may call **special** meetings of the membership as deemed necessary. Reasonable attempt to notify all NA members shall be made prior to the meetings at least 7 days in advance.

Section 3. Any member of the NA may move to add an item to the agenda at a meeting. Adoption of that motion requires a second and a majority vote. Any non-member may request to add an item to the agenda by submitting the item in writing to a NA officer at least 7 days in advance of the meeting. The chairperson shall place the item on the agenda only if the majority of the officers agree to do so.

Section 4. A quorum for any meeting of the NA shall be a minimum of 10 members in attendance. Unless otherwise specified in these bylaws, decision of the NA shall be made by a majority vote of members present at the meeting.

Section 5. Any general, special, officer, or committee meeting is open to any person to observe. However, only members may participate in discussion and are entitled to vote. Non-members may participate in discussion if an item has been placed on the agenda per the requirements of Section 3, Article IV. The presiding officer may regulate the order & length of appearances & limit appearances to relevant points. All action or recommendations of the general or special meetings shall be recorded in the minutes, including minority reports. The NA shall notify the city of any recommendations contained therein.

Section 6. The NA shall follow Robert's Rules of Order (Revised) in all areas not covered by the bylaws.

Article V Neighborhood Officers

Section 1. There shall be at least 3 officers and the NA may add additional officers as needed.

Section 2. Each officer shall hold office for a term of two years for which he/she is elected or appointed & until his/her successor has been elected or appointed to take office.

Section 3. Only persons eligible for NA membership shall be qualified to hold an elected or appointed position.

Section 4. The officers shall manage the affairs of the NA in the interim between general meetings. The Officers shall seek the views of all affected by any proposed policies or actions before adopting any recommendations on behalf of NA and strictly comply with these bylaws.

Section 5. Officer members shall be elected by a vote of the membership at its **even** year annual meeting. The names of all candidates for the officer slate shall be placed in nomination. Secret written ballots shall be used for voting for officers. Election requires a majority vote of the members present.

Section 6. The officers may fill any vacancy on the NA or committee by majority vote of the officers in cases involving absences by an officer or committee member for 3 consecutive meetings, or if a position is vacated for any reason. A member appointed to fill a vacancy shall serve the remainder of the unexpired until his/her successor is elected or appointed.

Section 7

(a) The chairperson shall prepare the agenda & preside at all meetings of the officers and membership & shall appoint members of committees with a majority approval of the officers & membership. The chairperson shall make all necessary reports to the city.

(b) The Vice chairperson shall assist the chairperson & in his/her absence shall function as chairperson.

(c) The secretary/treasurer shall keep minutes & written record of majority & minority opinions expressed at all meetings. He/she shall be responsible for all correspondence of the NA, & shall make records of NA available for inspection at any reasonable time. He/she shall give an accounting of funds at each general meeting & receive, safe keep & disburse NA funds with an accompanying signature of the chairperson. This position may be divided into separate secretary & treasurer functions if the NA so desires.

Article VI Committees

The officers shall establish both standing & ad hoc committees as they deem necessary. Committees shall make recommendations to the officers for officer actions. Committees shall not have the power to act on behalf of the organization without specific authorization from the officers.

Article VII Conflict of Interest

Section 1. A conflict of interest exists for an officer whenever the officer holds a personal financial interest which will be impacted by the action or inaction by NA on a proposal before the membership or officers. A personal financial interest shall include a financial interest held by the officer and/or by members of his/her family. A personal financial interest includes an ownership interest above 5% of a business, which will be impacted by the decision of NA. Examples of person financial interest would include employment by NA; ownership of property the use of which is considered by NA; plans to purchase property the use or control of which is under discussion by NA, etc.

Section 2. Whenever an officer has a conflict of interest relating to an item under discussion, they must inform the body (membership or officers) hearing the proposal that the conflict of interest exists.

Section 3. Officers shall not vote on matters in which they have a conflict of interest.

Article VIII Indemnification

NA shall indemnify an officer who may be party to a proceeding as a result of the individual being or having been an officer to the fullest extent provided by the laws of the State of Oregon now in effect or later amended.

Article IX Boundaries

Section 1 Boundaries of NA shall be defined as follows: Beginning at the intersection of S Ivy Street and Canby's southern city limits; northerly on Ivy to S 6th Avenue; westerly on 6th to S Elm Street; northerly on Elm to SW 4th Avenue; westerly on 4th to Aspen Street; southerly on Aspen to its end; southerly along west boundary of Canby HS property line to Aspen Way; southerly along Aspen Way continuing southerly over the ridge and along the west boundary of "Village On The Lochs" to its intersection with the southwestern corner of the city limits; easterly along the southern city limits to its intersection with S Ivy St

Section 2. Boundaries of the NA shall be reviewed if the NA exceeds 6,000, or upon request by the NA or adjacent neighborhoods. The revised boundaries shall be voted on & adopted with a majority vote of the members in attendance at a NA meeting & subject to the City Council approval.

Article X Public Meeting/Public Records Requirement

NA shall abide by all Oregon statutes relative to public meetings & public records. Official action taken by the NA must be on record or part of the minutes of each meeting. The minutes shall include a record of attendance & the results of any votes taken. A summary of discussion, including all dissenting views, should be transmitted along with any recommendations made by NA to the city.

Article XI Non-Discrimination

NA shall afford equal opportunities for participation in the neighborhood association to all persons who meet the membership qualifications regardless of race, color, religion, sex, age, handicap, familial status, or national origin.

Article XII Adoption & Amendment of Bylaws

All amendments to these bylaws must be proposed in writing & submitted to the NA chairperson who will then distribute copies of the proposed amendment to active members at least 30 days before voting on their adoption. Reasonable attempts to notify all members of the proposed amendments through public notice or any other method deemed reasonable by the NA shall be made at least 7 days prior to voting. This notice shall specify the date, time, and place for consideration of the proposed amendments. Adoption of and amendments to these bylaws shall require a 2/3 vote by the members present at a general meeting & must be ratified by the Canby City Council prior to becoming amended.



City of Canby

**Canby Urban Renewal Agency
Economic Development Department**

RE: CITY COUNCIL RESOLUTION NO. 1003 STAFF REPORT

TO: Honorable Mayor Thompson and City Council

FROM: Catherine Comer, Economic Development Manager

THROUGH: Mark C. Adcock, City Administrator

DATE: August 13, 2008 for City Council Meeting August 20 2008

Summary

The attached resolution authorizes the Canby Urban Renewal Agency to exercise the option contract to purchase real property located at 301 NE Third Street, Canby, Oregon.

Recommendation

Staff recommends that the Council approve Resolution 1003

Rationale

The Council previously approved Resolution 976 authorizing the Canby Urban Renewal Agency to **enter into** an option contract. This resolution authorizes the Agency to take the next step in **exercising** the option. The City ownership of this property is critical in providing a connecting road between 2nd Ave. and 3rd Street and additional required parking to service the downtown in coordination with the Canby Cinema development.

Background

The City's Economic Development Department has worked for two years in planning development of an 8-plex theater to be located on 2nd Ave in downtown Canby. It has been determined that a theater will prove to be an important economic stimulus for downtown and other related Canby businesses. Parking requirements and traffic access are critical in planning for the 812 seat theater. The Urban Renewal Agency has approved this development along with a 130+ stall parking lot to serve the downtown business community.

Attached

Resolution 1003

Exhibit A: Purchase and Sale Agreement.

RESOLUTION NO. 1003

A RESOLUTION AUTHORIZING THE CANBY URBAN RENEWAL AGENCY BOARD TO EXERCISE AN OPTION CONTRACT TO PURCHASE REAL PROPERTY LOCATED AT 301 NE THIRD STREET, CANBY, OREGON

WHEREAS, the Canby City Council established an Urban Renewal Agency to function within the City pursuant to Ordinance 1032 passed October 6, 1999; and

WHEREAS, pursuant to the CMC 2.68.030 the City Council shall exercise all powers, duties rights granted to the Urban Renewal Agency, unless specifically granted by the City Council to the Agency to perform; and

WHEREAS, the City Council previously approved Resolution 976 authorizing the Urban Renewal Agency to enter into an Option Agreement for the above described property and which the Urban Renewal Agency did enter into on April 21, 2008; and

WHEREAS, City Council finds that it is in the City's best interest to complete the proposed redevelopment project by purchasing this property.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby, as follows:

1. The City of Canby Urban Renewal Agency Board is hereby authorized to exercise its option to purchase real property located at 301 NE Third Street in Canby, Oregon and to enter into the Purchase and Sale Agreement, attached hereto as Exhibit "A" and by this reference incorporated hereto, in order to effectuate said purchase; and
2. The City Administrator of the City of Canby is further authorized and directed to sign the attached Exhibit "A" on behalf of the Urban Renewal Agency Board and carry out all necessary actions to execute the Option and enter into the Purchase and Sale Agreement.

This Resolution shall take effect on August 20, 2008.

ADOPTED this 20th day of August, 2008, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder, Pro-Tem

**REAL ESTATE PURCHASE AND SALE AGREEMENT
(Battilega Property)**

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between the Urban Renewal Agency of the City of Canby, Oregon ("Purchaser") and Andreina T. Battilega ("Seller"), as of the _____ day of _____, 2008 (the "Effective Date").

SECTION 1. PURCHASE AND SALE

1.1 Purchase and Sale.

Seller hereby represents and warrants that Seller is the current sole and exclusive owner of that real property legally described in **Exhibit A**, attached hereto and incorporated by reference herein (the "Property") and has the full right and authority to convey the Property free and clear of any liens, claims or encumbrances. Seller further represents that the Property is occupied by Seller, and is not subject to any lease, other agreement or dispute. The Property is being conveyed together with all rights, easements and appurtenances pertaining to such real property including, but not limited to, water rights, mineral rights, development rights, contract rights and permits relating to the Property, and all improvements located thereon.

1.2 Survival.

The provisions included in this Agreement shall survive Closing (as defined in **Section 7**) and shall be fully effective thereafter.

SECTION 2. PURCHASE PRICE AND ALLOCATIONS

2.1 Purchase Price.

The purchase price for the Property (the "Purchase Price") shall be TWO HUNDRED TWENTY-NINE THOUSAND DOLLARS (\$229,000).

2.2 Payment of Purchase Price.

The Purchase Price shall be payable to Seller in cash or immediately available funds at Closing.

2.3 Escrow and Earnest Money.

The Earnest Money, which shall be credited to the Purchase Price, shall consist of the Option Fees paid pursuant to the Option Agreement entered into between the parties. Within five (5) days of Purchaser's receipt of Seller's signature on this Agreement, Purchaser shall open an escrow account with, and order a preliminary title commitment from, Chicago Title Insurance Company (the "Title Company") and deliver a copy of this Agreement to the Title Company. Purchaser will not be legally bound under this Agreement and will not sign this Agreement until

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it is approved by both the City Council and the Urban Renewal Agency Board (collectively “Governing Bodies”) on or about September 3, 2008. Purchaser has agreed, by the opening of escrow, to be responsible for escrow cancellation fees if this Agreement is not approved by the Governing Bodies.

SECTION 3. TITLE MATTERS

3.1 Title Review.

3.1.1. Preliminary Commitment. Upon opening of the escrow account, Purchaser and Seller will order, at Seller’s cost and expense, a preliminary commitment (the “Preliminary Commitment”) for the Title Policy, as described in **Section 3.2**, showing the status of title of the Property, showing all exceptions and conditions affecting the Property which would appear in the Title Policy, and committing the Title Company to issue such a Title Policy to Purchaser. Seller will also cause the Title Company to concurrently deliver to Purchaser complete and legible copies of all instruments referred to in the Preliminary Commitment as conditions or exceptions to the title (the “Exception Documents”). Seller hereby authorizes and directs the Title Company to furnish to Purchaser the foregoing items.

3.1.2. Purchaser’s Review. Purchaser shall have ten (10) days after receipt of the Preliminary Commitment and Exception Documents to notify Seller, in writing, of its approval and/or disapproval of each exception shown in the Preliminary Commitment. Purchaser’s failure to notify Seller within the above referenced time period shall be deemed Purchaser’s disapproval of the Preliminary Commitment and Exception Documents. Any exception that Purchaser has approved, in writing, shall become a Permitted Exception.

3.1.3. Seller’s Response. If Purchaser does notify Seller of an objection to any exception, then Seller shall have up to ten (10) days after receipt of Purchaser’s notice to notify Purchaser, in writing, of its agreement to remove any of the disapproved exceptions. Seller’s failure to notify Purchaser within this time period as to whether or not Seller will take the action required to remove a particular exception shall constitute Seller’s agreement to remove that exception prior to Closing. Seller shall thereafter remove, by Closing, the exceptions it has agreed to remove, either by express agreement or by the foregoing failure to respond.

3.1.4. Purchaser’s Rights. If Seller declines to remove all or some of the exceptions disapproved by Purchaser, Purchaser shall have up to ten (10) days to notify Seller, in writing, whether it will, in its sole discretion, waive such objections or terminate this Agreement. Purchaser’s failure to give such notice shall constitute Purchaser’s election to terminate this Agreement. In the event Purchaser gives written notice of its election to waive the exceptions that Seller has declined to cure, then those initially disapproved but subsequently accepted exceptions shall become Permitted Exceptions. If Purchaser elects to terminate this Agreement, Seller shall immediately return the Earnest Money to Purchaser. Purchaser shall pay any cancellation fee or other cost of the Title Company.

3.1.5. Updated Title Matters. The foregoing notice and response procedures shall be repeated for any title exceptions first appearing after Purchaser’s receipt of the Preliminary Commitment, except that if the time period for delivery of any notice extends

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beyond the Closing Date, such notice and all subsequent notices shall be delivered on or before the Closing Date.

3.2 Title Policy.

3.2.1. Delivery of Policy. At Closing, Seller will, at its sole cost and expense, cause the Title Company to issue to Purchaser an ALTA standard coverage owner's policy of title insurance, in the amount of the Purchase Price, insuring Purchaser against loss or damage arising from any defects in title to the Property other than the Permitted Exceptions (the "Title Policy"). The Title Policy shall contain such endorsements as shall be reasonably requested by Purchaser. If Purchaser elects to obtain an ALTA extended coverage owner's policy, Purchaser shall pay the difference in the premium between the standard coverage policy and the extended coverage policy, and Seller shall cooperate in order to allow the extended coverage policy to be issued.

3.2.2. Failure to Deliver Policy. If, at Closing, the Title Company will not issue the Title Policy as provided above, Purchaser may either proceed to close despite the lack of required insurance, or terminate this Agreement. If Purchaser terminates this Agreement because of the failure of the title Company to issue the Title Policy as provided above, Seller shall immediately return the Earnest Money to Purchaser. Seller shall pay any cancellation fee or other cost of the Title Company, and this Agreement shall terminate and all rights and obligations of the parties shall terminate unless such failure is due to a default by Seller and in that case the remedies of **Section 9.1** shall also apply.

SECTION 4. FEASIBILITY CONTINGENCY/DUE DILIGENCE

Purchaser's Governing Bodies must approve or disapprove the purchase of the Property. If the Governing Bodies do not approve the purchase of the Property, this Agreement will terminate without liability to either party and Purchaser shall pay any Title Company fees due as a result of the termination. The Governing Bodies will be asked to approve the purchase on or before September 3, 2008. If approved, Closing will occur on or before September 14, 2008 unless the Option Agreement entered into between the parties is otherwise extended, as provided therein.

SECTION 5. PRE-CLOSING OBLIGATIONS

5.1 Seller's Closing Obligations.

At all times from the date of this Agreement to the Closing, Seller will:

5.1.1. Make all payments due under, and comply with each and every covenant and obligation imposed upon the owner of the Property by, promissory notes, mortgages, deeds of trust, ground or other leases and any other agreements affecting the Property, or secured by an interest in the Property or any part thereof, and will take any and all action as may be necessary to avoid any default under such agreements;

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5.1.2. Not negotiate, discuss or enter into, or cause to be entered into, any written or oral option, sale agreement, lease, service contract or other contract or agreement regarding or pertaining to the Property or any portion thereof. Seller will also take all action required to terminate any existing leases, contracts or agreements pertaining to the Property prior to Closing so that the Property shall be transferred to Purchaser free and clear of any encumbrances, except Permitted Encumbrances;

5.1.3. Pay for any materials, supplies or work provided or ordered for the Property by Seller or Seller's agents prior to the Closing and for which a labor, materialman's or mechanic's lien may be claimed under applicable law and, if required by the Title Company, provide the Title Company with such indemnifications or security as it may require to insure title to the Property at the Closing without exception for any unrecorded labor, materialman's or mechanic's claim of lien.

5.1.4. Reasonably cooperate with Purchaser with respect to all applications relating to the Property and the development of the Property for Purchaser's intended use.

SECTION 6. WARRANTIES OF SELLER

6.1 Warranties.

Seller hereby represents and warrants to Purchaser that Seller is the sole legal owner of the Property with good title thereto and full authority to convey the same to Buyer. For the purposes of inducing Purchaser to consummate the transactions contemplated hereby, in addition to the warranties contained in the Deed for the Property, Seller represents and warrants to Purchaser, as of the date hereof and, except as otherwise set forth herein, as of the Closing Date, all of the following:

6.1.1. Seller has full power, authority and legal right to execute, deliver and perform this Agreement, and all other documents and certificates contemplated hereby; Seller has duly authorized the execution, delivery and performance thereof; and has authorized the person executing this Agreement to do so;

6.1.2. There are no actions, suits, proceedings, orders or investigations pending or, to the best of Seller's knowledge, threatened against or affecting Seller which might adversely affect Seller's performance under this Agreement or the consummation of the transactions contemplated hereby;

6.1.3. Except as expressly provided herein, there is not pending or, to the best of Seller's knowledge, threatened (i) condemnation or similar proceedings with respect to the Property or any part thereof, or (ii) public improvements in, about or outside the Property which might result in the imposition of any assessment, lien or charge against Seller, the Property or any owner of the Property;

6.1.4. None of the following has occurred with respect to the Property or Seller: (i) appointment of a receiver, liquidator, or trustee; (ii) institution of any proceeding for

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dissolution or liquidation; (iii) filing or any petition for bankruptcy, or action toward reorganization; or (iv) notice of default or forfeiture;

6.1.5. All taxes and assessments and other governmental or quasi-governmental levies of any kind which are due for payment prior to the date hereof, the non-payment of which would in any way affect the Property or any part thereof, have been paid, or shall be paid by Seller, prior to or at the Closing Date, together with all interest and penalties thereon;

6.1.6. There are no unpaid bills, claims, or liens pending or contemplated by mechanics, materialmen, surveyors, or others, recorded or unrecorded, in connection with the Property;

6.1.7. The Property is not affected by any special assessment, whether or not a lien thereon, which has not or will not be paid in full by Seller prior to the Closing Date, nor does Seller know of any pending or contemplated assessments or similar charges which will affect the Property;

6.1.8. Neither the Property nor any portion thereof is located in a flood plain or special hazard area as designated by any federal, state or local governmental body or agency;

6.1.9. Nothing prohibits Seller from entering into this Agreement with Purchaser. No other person or entity has an interest in the Property, except as set forth in the Permitted Exceptions;

6.1.10. The Property Information provided by Seller to Purchaser is complete, accurate, true and correct and does not fail to state any fact without which the Property Information would be misleading; and

6.1.11. To the best of Seller's knowledge, except as disclosed in the Property Information provided to Purchaser, (i) there has been no generation, treatment, storage, transfer, disposal or release of Hazardous Substances on the Property (including grease traps which have not been properly cleaned and materials not properly disposed of); (ii) there are no aboveground or underground storage tanks on the Property nor have any aboveground or underground storage tanks been removed from the Property; and (iii) Seller is not aware of any facts which would lead it to believe that there are any Hazardous Substances on the Property. For purposes of this Agreement, the term Hazardous Substances shall mean: "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended; hazardous wastes, hazardous materials, hazardous substances, toxic waste, toxic materials, or toxic substances as defined in state or federal statutes or regulations; asbestos-containing materials; polychlorinated biphenyls; radioactive materials; chemicals known to cause cancer or reproductive toxicity; petroleum products, distillates or fractions; any substance the presence of which is prohibited by statute or regulation; and any substance for which any statute or regulation requires a permit or special handling in its use, collection, storage, treatment or disposal.

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6.2 Purchaser's Warranties.

Purchaser represents and warrants to Seller, as of the Closing Date, as follows: Purchaser is an urban renewal agency of the State of Oregon, duly organized and validly existing under the laws of the State of Oregon, and once this Agreement is approved by the Governing Bodies this Agreement will become a legally binding commitment to purchase the Property. Until that approval is obtained, however, this Agreement may be terminated by Purchaser without liability.

6.3 Survival of Warranties.

The warranties contained in this **Section 6** shall survive the Closing and shall be fully effective thereafter. If Seller breaches any warranty, Purchaser shall have the rights and may exercise, at its option, any of the remedies, provided under **Section 9.1** of this Agreement.

SECTION 7. CLOSING

7.1 Closing Date.

Closing of the sale of the Property from Seller to Purchaser shall occur on or before September 14, 2008 ("Closing" or "Closing Date"), unless the Option is extended as provided in the Option Agreement. Closing shall be held in the offices of the Title Company, or at such other place as may be agreed upon in writing by Seller and Purchaser. Each party hereto agrees to execute and deliver to the Title Company such escrow instructions as may be necessary to implement and coordinate the Closing as set forth in this Agreement.

7.2 Seller's Closing Obligations.

At Closing, Seller will:

7.2.1. execute, acknowledge and deliver a Statutory Warranty Deed to the Property, subject only to the Permitted Exceptions;

7.2.2. execute, acknowledge and deliver such other agreements, documents and instruments as may be necessary to transfer, convey and assign the Property to Purchaser;

7.2.3. deliver to Purchaser, pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, an affidavit stating that Seller is not a foreign person and providing Seller's United States taxpayer identification number; and

7.2.4. deliver to Purchaser such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by counsel for Seller and Purchaser to be necessary to fully consummate the transaction contemplated hereby.

7.3 Purchaser's Closing Obligations.

At the Closing, Purchaser will:

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7.3.1. deliver to Seller cash or funds readily available in the amount of the Purchase Price, less any Earnest Money already paid to Seller; and

7.3.2. deliver to Seller such other instruments or documents as may be required pursuant to the terms hereof or mutually agreed by counsel for Seller and Purchaser to be necessary to fully consummate the transaction contemplated hereby.

7.4 Allocation of Closing Expenses.

The costs of closing the transaction shall be allocated between Seller and Purchaser as follows:

7.4.1. Seller will pay:

- (a) the cost of the owner's standard Title Policy required by **Section 3.2**;
- (b) the cost of providing to Purchaser all information to be reviewed and approved by Purchaser pursuant **Section 4.2** of this Agreement;
- (c) one-half (1/2) of the escrow fees of the Title Company;
- (d) any applicable real estate excise taxes, transfer taxes and any other taxes and charges with respect to the transaction;
- (e) the costs of clearing title and obtaining any other item to be delivered to Purchaser at Closing;
- (f) any assessments against the Property existing as of Closing, whether due and payable before or after such date;
- (g) all property taxes, interest and penalties necessary to bring the Property out of any "open space", "forest land", "historic", "exempt" or other designation and to eliminate all liability for such charges and to eliminate any restrictions on the use of the Property due to its tax designation; and
- (h) all property taxes due in any tax year prior to the year of Closing.

7.4.2. Purchaser will pay:

- (a) one-half (1/2) of the escrow fees of the Title Company;
- (b) the cost of any extended coverage that exceeds the cost of the Owner's standard coverage and all endorsements, as requested by Purchaser; and

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- (c) the cost of recording the Statutory Warranty Deed and any other documents that Purchaser may choose to record.

7.4.3. All other expenses incurred by Seller or Purchaser with respect to Closing, including, but not limited to, attorneys' fees, shall be borne and paid exclusively by the party incurring the same unless the parties hereto expressly agree in writing to the allocation of part or all of such expenses to one of the parties.

7.5 Prorations.

The following items shall be adjusted or prorated between Seller and Purchaser at the Closing, as of the Closing Date:

7.5.1. Property taxes and assessments for the then current tax year relating to the Property.

7.6 Right to Possession.

At Closing, Purchaser shall have full and unrestricted right to possession of the Property, subject only to the Permitted Exceptions, unless Seller elects to enter into a lease back with Purchaser for a period not to exceed sixty (60) days following Closing, as more particularly described in **Section 10.14** below.

7.7 Risk of Loss.

Risk of loss or damage to the Property by condemnation, eminent domain, foreclosure or similar proceedings (or deed in lieu thereof), or by fire or any other casualty, from the date hereof through Closing will be on Seller and thereafter will be on Purchaser. Seller will immediately notify Purchaser in writing of any such loss or damage. Purchaser shall notify Seller, in writing, within fourteen (14) days of receiving such notice whether Purchaser shall proceed to Closing. Purchaser's failure to notify Seller that it will proceed to Closing shall constitute notice of disapproval of the loss or damage. If Purchaser proceeds to Closing, Seller shall assign to Purchaser any insurance proceeds or condemnation awards, if any, and all causes of action and rights against such condemning authority, insurer or lender. If Purchaser disapproves this loss or damage, the Seller shall immediately return the Earnest Money to Purchaser, Seller shall pay any cancellation fee or other cost of the Title Company, and this Agreement shall terminate and all rights and obligations of the parties shall terminate.

SECTION 8. INDEMNIFICATION

8.1 Brokerage Commissions.

Seller and Purchaser warrant that the only broker involved in this transaction is Tim Stuart of Stuart Realty Group, and his commission shall be paid by Purchaser.

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8.2 Warranties.

8.2.1. Seller agrees to indemnify, defend and hold Purchaser, its successors and assigns, harmless from any and all liabilities, claims, damages, demands, costs, fines, penalties and expenses of any kind or nature (except those items which by this Agreement specifically become the obligation of Purchaser), including, without limitation, attorneys' fees and expenditures for investigation and remediation (collectively "Claims"), by any other party or parties (including a governmental entity) which may be imposed upon or incurred by Purchaser, its successors or assigns arising out of or in connection with the breach of Seller's warranties under this Agreement.

SECTION 9. TERMINATION AND REMEDIES

9.1 Seller's Defaults.

9.1.1. Seller's Defaults. Seller shall be deemed to be in default hereunder in the event Seller fails, for a reason other than Purchaser's default hereunder, to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement, or there shall have occurred a breach of any representation or warranty made by Seller.

9.1.2. Purchaser's Remedies. In the event of default by Seller, Purchaser may pursue any remedy available at law or equity, including:

- (a) Enforcing specific performance of this Agreement;
- (b) Bringing suit for damages.

In addition, and without prejudice to the foregoing remedies, Purchaser may, if default occurs prior to Closing, terminate this Agreement.

9.1.3. Return of Earnest Money. Upon termination of this Agreement pursuant to **Section 9.1.2** following a Seller default, the Earnest Money shall be promptly returned to Purchaser by Seller upon receipt of written notice from Purchaser that Seller has defaulted under this Agreement.

9.2 Purchaser's Defaults.

9.2.1. Purchaser's Defaults. Purchaser shall be in default hereunder in the event Purchaser fails, for a reason other than Seller's default hereunder, without legal excuse to complete the purchase of the Property or to meet, comply with, or perform any covenant, agreement or obligation on its part required within the time limits and in the manner required in this Agreement, or there shall have occurred a breach of any representation or warranty made by Purchaser but only after this Agreement has been approved by the Governing Bodies and signed as a result thereof.

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9.2.2. Seller's Remedies. In the event of default by Purchaser, Seller's sole and exclusive remedy shall be to retain the Earnest Money, it being agreed between Purchaser and Seller that such sum shall be liquidated damages for a default of Purchaser hereunder because of the difficulty, inconvenience and uncertainty of ascertaining actual damages for such default. Receipt of the Earnest Money (as paid pursuant to the Option Agreement) shall constitute a full waiver of any other remedies Seller may have under this Agreement, or at law or equity.

SECTION 10. MISCELLANEOUS

10.1 Assignment of Contract.

Purchaser may assign its rights and obligations under this Agreement. Purchaser must notify Seller of any such assignment prior to the Closing and the assignee shall for all purposes be regarded as Purchaser under this Agreement.

10.2 Entire Agreement; Modification.

This Agreement sets forth the entire understanding between the parties with respect to the transactions contemplated herein and supersedes all prior or contemporaneous agreements, oral or written. Neither this Agreement nor any provision hereof may be waived or amended except by an instrument in writing signed by both parties.

10.3 Time of Essence.

Time is of the essence of this Agreement.

10.4 Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

10.5 Notices.

All notices to either party must be in writing and either (i) delivered in person; (ii) by United States certified mail, postage prepaid; (iii) by courier service, postage prepaid; or (iv) by facsimile transmission with confirmed receipt and sent to the address (or facsimile number) of such party as set forth below, or such other address (or facsimile number) as either party may from time to time designate by written notice to the other.

If to Purchaser:

The Urban Renewal Agency
for City of Canby
182 North Holly Street
PO Box 930
Canby, OR 97013
Attn: Catherine Comer

If to Seller:

Andreina T. Battilega
301 NE Third Avenue
Canby, OR 97013

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10.6 Interpretation.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

10.7 Captions.

The captions used in this Agreement are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Agreement.

10.8 Severability.

If one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.

10.9 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Venue shall be in Clackamas County.

10.10 Exhibits.

The following exhibits are incorporated into and made a part of this Agreement as if set forth fully herein:

- Exhibit A** Legal Description of Property
- Exhibit B** Books and Records Required by Section 4.1.1

10.11 Attorney Fees.

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review in addition to all other amounts provided by law. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Agreement requires a party to defend the other, it is agreed that such defense shall be by legal counsel reasonably acceptable to the party being defended.

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10.12 Waiver.

No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time of performance of any other obligation or act.

10.13 Sole Ownership.

Seller warrants that she is sole owner of the Property and has full authority to sell the Property and to enter into this Agreement.

10.14 Relocation Assistance.

Seller acknowledges that this is a voluntary sale of her Property and this sale is not being made under the threat of condemnation. In consideration of the sale, however, Purchaser will provide Seller with certain relocation benefits in accordance with Oregon law. Seller has agreed that a lump sum payment of One Thousand Five Hundred Dollars (\$1,500) to be paid at Closing shall constitute reasonable relocation expenses. In addition to the foregoing, at or before Closing, Seller shall advise Purchaser if she wishes to remain in the Property for a period not to exceed sixty (60) days while she finds a replacement property. If Seller elects to remain in the Property, she will enter into a Stevens-Ness standard residential lease form, and she shall be allowed to remain in the Property rent free for a period of two (2) months as an additional relocation benefit. Any holdover beyond the two (2) months will be covered by the terms of the lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

Andreina T. Battilega

Address:

Phone:

Facsimile:

Email:

PURCHASER:

**The Urban Renewal Agency of the City of
Canby, Oregon**

By: _____

Name: _____

As Its: _____

Address:

Phone:

Facsimile:

Email:

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EXHIBIT A
LEGAL DESCRIPTION

Section 33 Township 3S Range 1E
Quarter DB Tax Lot 02500

Parcel Number: 00795358
Reference Parcel: 31E33DB02500
Mail Address: 301 NE 3rd Avenue
Canby, Oregon 97013

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EXHIBIT B

BOOKS AND RECORDS REQUIRED BY SECTION 4.1.2.

Statements of all real and personal property taxes (including special assessments or other charges affecting the Property), along with notices of any proposed tax assessments with respect to the Property or any portion thereof for the two (2) most recent tax years;

Copies of any boundary or other surveys, wetland studies or delineations, architectural or structural reports, environmental site assessments, or soil studies with respect to the Property;

Copies of any notices of violation, administrative orders or any other enforcement action or lawsuit taken against the Seller and concerning the Property or improvements;

Copies of records concerning the past or present release, generation, disposal, transportation or existence of Hazardous Materials on the Property, and any environmental studies relating to the Property;

Copies of records of or information concerning any enforcement actions pursuant to federal, state and/or local environmental legislation against neighboring property owners of which Seller has knowledge; and

Any other documents or records with respect to the operation of the Property which may be reasonably requested by Purchaser.

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City Council Packet 33 of 114

ORDINANCE NO. 1287

AN ORDINANCE AUTHORIZING THE MAYOR AND/OR CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CANBY FORD TO PURCHASE A NEW 2008 FORD ESCAPE COMPACT SPORT UTILITY VEHICLE; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby wishes to purchase a new 2008 compact sport utility vehicle, and

WHEREAS, the cost of the vehicle will be paid by the Fleet Services Department with funds budgeted and approved for this purpose in the 2008-2009 fiscal year budget; and

WHEREAS, in accordance with ORS Chapter 279 and Canby Public Purchasing Rules as set forth in Ordinance No. 1170 and Resolution No. 897, three written quotes were obtained for the vehicle; and

1. Canby Ford	\$17,490.00
2. Landmark Ford	\$17,519.00
3. Miles Dodge/Jeep	\$18,957.00

WHEREAS, Canby Ford submitted the lowest quote of \$17,490.00 for a New 2008 Ford Escape Compact Sport Utility Vehicle; and

WHEREAS, the City Council meeting and acting as the Contract Review Board for the City of Canby has reviewed this bid, reviewed the staff report and believes it to be in the best interest of the City to contract with Canby Ford for said vehicle.

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 Canby Ford to purchase a new 2008 Ford Escape Compact Sport Utility Vehicle for the Canby Public Works Department for a total of \$17,490.00.

2ND READING

Section 2. In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide the Public Works Department with the afore mentioned vehicle without further delay, and to better serve the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on August 6, 2008, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on August 20, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2nd Avenue in Canby, Oregon.

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 20th day of August, 2008, by the following vote:

YEAS _____

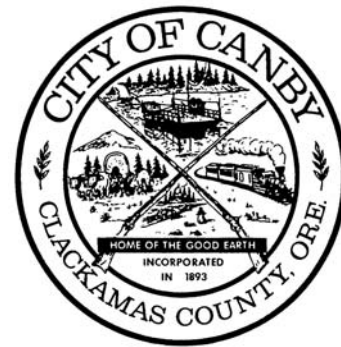
NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder - Pro Tem

2ND READING



MEMORANDUM

TO: *Honorable Mayor Thompson and City Council*
FROM: *Darvin Tramel, Wastewater Treatment Plant Supervisor*
DATE: *August 11, 2008*
THROUGH: *Mark C. Adcock, City Administrator*

Issue: Adoption of Sewer Use Ordinance 1292, and repealing Ordinance 1153. .

Synopsis: The City's Sewer Use Ordinance serves as the City's legal authority to regulate discharges to the sanitary sewer, develop capital improvements through system development charges, sets user fees and recover costs associated with the operations of the City wastewater treatment facility. Due to many changes in the Code of Federal Regulations (CFR), EPA and DEQ required that the City revise our current ordinance to reflect the new regulations and bring our ordinance in line with the EPA Streamlining rules. The proposed ordinance is reorganized, edited and updated to be in line with the newer CFRs and the EPA Streamlining regulations. Therefore staff has proposed repealing Sewer Use Ordinance 1153 and replacing it entirely with Ordinance 1292.

Recommendation: Staff recommends the Council adopt Ordinance 1292.

Rationale: This Ordinance is based on the EPA Model Sewer Use Ordinance and contains standard language updated to reflect current federal and state laws. The City staff followed the states required process by submitting the ordinance to DEQ for review and approval. The ordinance was approved by DEQ for its content with only minor changes, and then reviewed by John Kelley for legal clarity. Therefore, staff recommends that Ordinance 1292 be approved as drafted.

Background: The sewer use ordinance covers two major topics. First: General and specific discharge prohibitions protecting the sewer system from pollutants such as hazardous materials, high strength loads, grease, materials that cause blockages and pollutants that are untreatable. Secondly: The ordinance sets up the ability to legally require industries to monitor, report, establish permits, set limits, and bring enforcement actions against users that do not comply with the ordinance or the industrial pretreatment program.

Options: Reject the ordinance or edit the contents. Staff does not recommend this option because of the specific language that has been reviewed and approved by DEQ and the majority being required by the Code of Federal Regulations.

Attached: Ordinance 1292

CITY OF CANBY SEWER USE ORDINANCE 1292



Industrial Pretreatment Program
Wastewater Treatment
Canby, Oregon
September 3, 2008

CONTENTS

CITY OF CANBY ORDINANCE 1292

<u>SECTION I GENERAL PROVISIONS</u>	<u>PAGE</u>
1.1 Purpose and Policy	4
1.2 Administration	5
1.3 Definitions	5
1.4 Abbreviations	15
 <u>SECTION 2 GENERAL SEWER USE REQUIREMENTS</u>	
2.1 Prohibited Discharge Standards	16
2.2 Federal Categorical Pretreatment Standards	18
2.3 State Requirements	19
2.4 "Local Limits" Specific Pollutant Limitations	19
2.5 City's Right to Revision	20
2.6 Special Agreement	20
2.7 Dilution	20
2.8 Deadline for Compliance with Categorical Standards	20
2.9 Inflow and Infiltration	21
 <u>SECTION 3 PRETREATMENT OF WASTEWATER</u>	
3.1 Pretreatment Facilities	22
3.2 Additional Pretreatment Measures	22
3.3 Spill Prevention	23
3.4 Tenant Responsibility	25
3.5 Separation of Domestic and Industrial Wastewater	25
3.6 Hauled Wastewater	25
3.7 Vandalism	25
3.8 Grease Interceptors	26
 <u>SECTION 4 WASTEWATER PERMIT ELIGIBILITY</u>	
4.1 Wastewater Survey	26
4.2 Wastewater Permit Requirement	26
4.3 Permitting Existing Connections	27
4.4 Permitting New Connections	27
4.5 Permitting Extra-Jurisdictional Industrial Users	27
4.6 Wastewater Permit Application Contents	27
4.7 Application Signatories and Certification	29
4.8 Wastewater Permit Decision	30

SECTION 5 WASTEWATER PERMIT ISSUANCE PROCESS

5.1	Wastewater Permit Duration	31
5.2	Wastewater Permit Contents	31
5.3	Wastewater Permit Appeals	33
5.4	Wastewater Permit Modifications	34
5.5	Wastewater Permit Transfer	35
5.6	Wastewater Permit Revocation	35
5.7	Wastewater Permit Reissuance	36
5.8	Regulation of Wastewater Received from other Jurisdictions	36

SECTION 6 REPORTING REQUIREMENTS

6.1	Baseline Monitoring Reports	37
6.2	Compliance Schedule for Meeting Pretreatment Standards	39
6.3	Reports on Compliance with Categorical Pretreatment Standard Deadline	40
6.4	Periodic Compliance Reports	40
6.5	Report of Changed Conditions	42
6.6	Reports of Potential Problems	43
6.7	Reports from Unpermitted Users	43
6.8	Sample Collection	43
6.9	Analytical Requirements	45
6.10	Monitoring Charges	45
6.11	Timing	45
6.12	Record Keeping	45
6.13	Reporting of Additional Monitoring	45
6.14	Notification of Significant Production Change	46
6.15	Notification of the Discharge of Hazardous Waste	46

SECTION 7 COMPLIANCE

7.1	Inspection and Sampling	47
7.2	Search Warrants	48

SECTION 8 CONFIDENTIAL INFORMATION

SECTION 9 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

SECTION 10 ADMINISTRATIVE ENFORCEMENT REMEDIES

10.1	Industrial User Violation Process	51
10.2	Violation	52
10.3	Violation of Permit Parameters	52
10.4	Additional Violation Parameters	52
10.5	IU Notice to City of Violation	53
10.6	Consent Orders	53
10.7	Show Cause Hearing	53
10.8	Compliance Orders	54
10.9	Cease and Desist Orders	54
10.10	Administrative Fines	54
10.11	Emergency Suspensions	55
10.12	Termination of Permit	56

SECTION 11 JUDICIAL ENFORCEMENT REMEDIES

11.1	Injunctive Relief	57
11.2	Civil Penalties	57
11.3	Criminal Prosecution	58
11.4	Remedies Nonexclusive	58

SECTION 12 SUPPLEMENTAL ENFORCEMENT ACTIONS

12.1	Performance Bonds	59
12.2	Liability Insurance	59
12.3	Water Supply Severance	59
12.4	Public Nuisance	59
12.5	Contractor Listing	59

SECTION 13 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATION

13.1	Affirmative Defenses	60
13.2	Upset	60
13.3	General/Specific Prohibitions	61
13.4	Bypass	61

SECTION 14 MISCELLANEOUS PROVISIONS

14.1	Pretreatment Charges and Fees	63
14.2	Sewer Connection Charges Levied and Imposed	63
14.3	Rates for Connection Charges	64
14.4	Fees for Sewer Service Levied and Imposed	64
14.5	Severability Conflicts with Other Ordinances	65
14.6	Emergency Clause	65

<u>SECTION 15 EFFECTIVE DATE</u>	66
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ORDINANCE NO. 1292

AN ORDINANCE AMENDING CHAPTER 13 OF THE CANBY MUNICIPAL CODE BY REPEALING AND REPLACING ORDINANCE NO. 1153, ENACTED DECEMBER 15, 2004, REGULATING THE DISCHARGE OF WASTES TO THE CITY OF CANBY SANITARY AND STORM SEWER SYSTEMS, LIMITING SUCH DISCHARGES ONLY TO THOSE OF ACCEPTABLE TYPES, CHARACTERISTICS, OR CONCENTRATIONS; ESTABLISHING A SYSTEM OF WASTE DISCHARGE PERMITS AND USER FEES; PROVIDING FOR ENFORCEMENT; AND DECLARING AN EMERGENCY.

SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This Ordinance sets forth uniform requirements for users of Publicly Owned Treatment Works (POTW) for the City of Canby and enables the City to Comply with all applicable State and Federal laws including the Clean Water Act (Act 33 U.S.C. 1251 et seq.), and the General Pretreatment Regulations (40 CFR Part 403) and Oregon Administrative Rules (OAR) Chapter 340. The objectives of this Ordinance are:

- (A) To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- (B) To prevent the introduction of pollutants into the POTW, which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- (C) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal to be in compliance with applicable statutes and regulations?
- (D) To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and
- (E) To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;

This Ordinance shall apply to all users of the POTW. The Ordinance authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires users reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

1.2 Administration

Except as otherwise provided herein, the Public Works Manager or designate shall administer, implement and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Public Works Manager may be delegated by the Public Works Manager to other City personnel.

1.3 Definitions

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance shall have the meanings hereinafter designated;

- (1) Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C.1251 et seq.
- (2) Approval Authority. The Oregon Department of Environmental Quality (DEQ)
- (3) Authorized Representative of the User.
 - A. If the industrial user is a corporation, authorized representative shall mean:
 - i) The president, secretary, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - ii) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- B. If the industrial user is a partnership or sole proprietorship: a general partner or proprietor, respectively;
 - C. If the user is a Federal, State or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.
 - D. The individuals described in subsections A-C above may designate another authorized representative if the authorization is in writing. The authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the City.
- (4) Best Management Practice (BMP). Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
 - (5) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, within five (5) days at 20° Celsius, usually expressed as a concentration [milligrams per liter (mg/l)].
 - (6) Building Sewer. A sewer conveying wastewater from the premises of a user to the POTW.
 - (7) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of users and which appears in 40 CFR Chapter I, Subchapter N, Parts 405-471.
 - (8) Categorical Industrial User. A user regulated by one of EPA's Categorical Pretreatment Standards.

- (9) City. City of Canby Oregon, a municipal corporation of the State of Oregon, acting through its City Council or any board, committee, body, official, or person to whom the Council shall have lawfully delegated the power to act for or on behalf of the City.
- (10) Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.
- (11) Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on either an increment of flow or time.
- (12) Control Authority. The City of Canby Public Works Manager
- (13) Continuing Violation. Each day a violation occurs may be considered as a separate violation.
- (14) Cooling Water/Non Contact Cooling Water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.
- (15) Department of Environmental Quality or (DEQ). The Oregon Department of Environmental Quality or where appropriate, the term may also be used as a designation for the Director of the Department or other duly authorized official of the Department.
- (16) Domestic User (Residential User). Any person who contributes, causes, or allows the contribution of wastewater into the City POTW that is of a similar volume and/or chemical make-up to that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day.
- (17) Environmental Protection Agency or U.S. EPA. The U.S. Environmental Protection Agency or, where appropriate, the Director of the Region 10 Office of Water, or other duly authorized official of said agency.
- (18) Existing Source. A categorical industrial user, the construction or operation of whose facility commenced prior to the publication by EPA of proposed categorical pretreatment standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

- (19) Existing User. Any non-categorical user which was discharging wastewater prior to the effective date of this Ordinance.
- (20) Grab Sample. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.
- (21) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump trucks.
- (22) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.
- (23) Industrial User. Any person, which is a source of indirect discharge.
- (24) Industrial Pretreatment Coordinator. The person designated by the City to carry out certain duties and responsibilities associated with the pretreatment program. This person is the duly authorized representative of the Public Works Manager in accordance with Section 1.3 (47) of this Ordinance.
- (25) Infiltration. Any water other than wastewater that enters the sewage treatment system (including service connections) from the ground, typically from broken pipes, or defective joints in pipes and manhole walls.
- (26) Inflow. Any water from storm water runoff that directly enters the sewage system during or immediately after rainfall. Typical points of entry include, but are not limited to, connections with roof and area drains, storm drain connections, holes in manhole covers in flooded streets, cooling water discharges, catch basins, and drainage from springs and swampy areas.
- (27) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.
- (28) Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources, both:
- A. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
 - B. Therefore is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory provisions and

regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II, commonly referred to as (RCRA); and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

- (29) Local Discharge Limitations. Specific discharge limits developed and enforced by [the City] upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).
- (30) Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.
- (31) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.
- (32) Municipal Wastewater System or System's. A "treatment works" as defined in Section 212 of the Act, (33 U.S.C. 1292) which is owned by the State or municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having the responsibility for the O&M of the system.
- (33) National Pretreatment Standard. National pretreatment standard is defined in 40 CFR 403.3 (j) as any regulation containing pollutant discharge limits promulgated by EPA under Section 307 (b) and (c) of the Clean Water Act applicable to industrial users, including the general and specific prohibitions found in 40 CFR 403.5.
- (34) New Source.
 - A. Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307 (c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- i) The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - ii) The building, structure, facility or installation completely replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (i), (ii), (iii) above but otherwise alters, replaces, or adds to existing process or production equipment.
- C. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - i) Begun, or caused to begin as part of a continuous on-site construction program;
 - (a) Any placement, assembly, or installation of facilities or equipment; or
 - (b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new sources facilities or equipment; or
 - ii) Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contacts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

- (35) New User: A “new user” is a user that is not regulated under federal categorical pretreatment standards but applies to the City for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the City’s collection system after the effective date of this Ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an “existing user” if no significant changes are made in the manufacturing operation.
- (36) Non-domestic Pollutants. Any substances other than human excrement and household gray water (shower, dish washing operations, etc.). Non-domestic pollutants include the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, odor).
- (37) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).
- (38) Permittee. A person or user issued a wastewater discharge permit.
- (39) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, state, or local governmental entities.
- (40) pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.
- (41) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and characteristics of the wastewater [i.e., pH, temperature, TSS, Turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].
- (42) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).

- (43) Pretreatment Requirement. Any substantive or procedural requirements related to pretreatment imposed on a user, other than a pretreatment standard.
- (44) Pretreatment Standards or Standards. Prohibited discharge standards, categorical pretreatment standards, and local limits established by the City/POTW.
- (45) Prohibited Discharge Standard or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances, which appear in Sections 2.1 (A) and (B) of this Ordinance.
- (46) Publicly Owned Treatment Works (POTW). “A treatment works,” as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the City.
- (47) Public Works Operations Manager or Public Works Manager. The Person or his duly authorized representative designated by the City to supervise and carry out the responsibilities of the City pretreatment program, and who is charged with certain duties and responsibilities by this article.
- (48) Receiving Stream or Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.
- (49) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- (50) Sewage. Human excrement and gray water (household showers, dish washing operations, etc.)
- (51) Sewer. Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.
- (52) Shall, May. “Shall” is mandatory, “may” is permissive.
- (53) Significant Industrial User.
- A. A user subject to categorical pretreatment standards; or
- B. A user that:

- i) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow down wastewater); contributes a process wastewater); or
 - ii) Contributes a process wastestream which makes up (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - iii) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
 - C. Upon a finding that a user meeting the criteria in Subsection B has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user [in accordance with procedures in 40 CFR 403.8(f)(6) determine that such user should not be considered a significant industrial user.
- (54) Slug Load. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2 of this Ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.
 - (55) Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
 - (56) State. State of Oregon
 - (57) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
 - (58) Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
 - (59) Toxic Pollutant. One of the pollutants or combination of those pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency under the provision of Section 307 (33 U.S.C. 1317) of the Act.
 - (60) Treatment Plant. That portion of the municipal wastewater system

designed to provide treatment of sewage and industrial waste.

- (61) Treatment Plant Effluent. The discharge from the POTW into the waters of the State.
- (62) User or Industrial User. A source of indirect discharge. The source shall not include “domestic user” as defined herein.
- (63) Violation. Shall have occurred when any requirement of this Ordinance has not been met; or when a written request of the Public Works Manager, made under the authority of this Ordinance, is not met within the specified time; or when a condition of a permit or contract issued under the authority of this Ordinance is not met within the specified time; or when permitted effluent limitations are exceeded, regardless of intent or accident; or if an industrial user (IU), causes the POTW to violate its NPDES permit, the IU is in violation; or when false information has been provided by the discharger.
- (64) Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- (65) Wastewater Discharge Permit (Industrial Wastewater Discharge Permit). An authorization or equivalent control document issued by the City to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this Ordinance.

This Ordinance is gender neutral and the masculine gender shall include the feminine and vice versa. Shall is mandatory; may is permissive or discretionary. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

-	BOD	Biochemical Oxygen Demand
-	CFR	Code of Federal Regulations
-	COD	Chemical Oxygen Demand
-	DEQ	Oregon Department of Environmental Quality
-	EPA	U.S. Environmental Protection Agency
-	GPD	Gallons Per Day
-	IU's	Industrial Users
-	IWA	Industrial Waste Acceptance
-	LC ₅₀	Lethal Concentration for Fifty Percent (50%) of the Test Organisms
-	l	Liter
-	LEL	Lower Explosive Limit
-	mg	Milligrams
-	mg/l	Milligrams per liter
-	NPDES	National Pollutant Discharge Elimination System
-	O&M	Operation and Maintenance
-	POTW	Publicly Owned Treatment Works
-	RCRA	Resource Conservation and Recovery Act
-	SP/SCP	Spill Prevention/Slug Control Plan
-	SIC	Standard Industrial Classification
-	SWDA	Solid Waste Disposal Act (42 U.S.C. 6901)
-	TSS	Total Suspended Solids
-	USC	United States Code

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 Prohibited Discharge Standards

A. General Prohibitions [CFR 403.5 (a)]

A user may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These general prohibitions and the specific prohibitions in this section apply to each User introducing pollutants into a POTW whether or not the User is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

B. Specific Prohibitions [CFR 403.5 (b)]

No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

- (1) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the municipal wastewater system. Included in this prohibition are wastestreams with a closed cup flash point of less than 140° F (60° C) using the test methods prescribed in 40 CFR 261.21.
- (2) Any substance which may solidify or become discernible viscous at temperatures above 0 degrees Celsius (32 degrees Fahrenheit). Solid or viscous substances in amounts which will cause interference with the flow in a sewer but in no case solids greater than one-quarter inch (1/4"), (0.65 centimeters) in any dimension.
- (3) Any fat, oils or greases, including but not limited to petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (4) Any wastewater from a grab sample having a pH less than 6.0 su., or more than 10.0 su., or which may otherwise cause corrosive structural damage to the POTW, but in no case discharges with a pH lower than 5.0, unless the sewerage treatment system is specifically designed to accommodate such discharges.
- (5) Any wastewater containing pollutants, including oxygen-demanding pollutants (BOD,etc), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to pass through or interfere with the municipal wastewater system, any wastewater treatment or sludge process, or constitute a hazard to humans or animals.

- (6) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (7) Any substance which may cause the treatment plant effluent or any other residues, sludge, or scum, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the system cause the City to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other State requirements applicable to the sludge use and disposal practices being used by the City.
- (8) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plants effluent thereby violating the City's NPDES permit.
- (9) Heat in amounts that will inhibit biological activity in the POTW resulting in Interference, but in no case wastewater that causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
- (10) Any wastewater containing any radioactive waste or isotopes except as specifically approved by the Public Works Manager in compliance with applicable State and Federal regulations.
- (11) Any pollutants, which result in the presence of toxic gases, vapor or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (12) Any hauled pollutants, except at discharge points designated by the City in accordance with Section 3.6 of this Ordinance.
- (13) Storm water, surface water, groundwater, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, cooling water and unpolluted industrial wastewater, unless specifically authorized by the Public Works Manager.
- (14) Any sludge, screening, or other residues from the pretreatment of industrial wastes.
- (15) Any medical wastes, except as specifically authorized by the Public Works Manager in a wastewater permit.

- (16) Any material containing ammonia, ammonia salts, or other chelating agents, which will produce metallic complexes that interfere with the municipal wastewater system.
- (17) Any material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Public Works Manager.
- (18) Any wastewater causing the treatment plant effluent to demonstrate toxicity to test species during a bio-monitoring evaluation.
- (19) Recognizable portions of the human body or animal anatomy.
- (20) Any wastes containing detergents, surface-active agents, or other substances, which may cause excessive foaming in the municipal wastewater system.

Waste prohibited by this section shall not be processed or stored in such a manner that these waste could be discharged to the POTW.

2.2 Federal Categorical Pretreatment Standards

Users subject to categorical pretreatment standards are required to comply with applicable standards set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

- (A) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Public Works Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c)
- (B) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Public Works Manager shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (C) A user may obtain a variance from categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (D) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

2.3 State Requirements

State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this Ordinance or in other applicable Ordinances.

2.4 "Local Limits"

- (A) No person (user) shall discharge wastewater containing pollutants into the municipal wastewater system in excess of limitations specified in its Wastewater Discharge Permit or published by the Public Works Manager.

The Public Works Manager shall publish and revise standards for specific prohibitions or limits on pollutants "Local Limits". These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Ordinance.

- (B) The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing pollutant levels in excess of the following City of Canby Local Discharge Limits January 2, 2001, or any revisions thereof adopted by Council, through Resolution.

2001 LOCAL LIMITS		
POLLUTANT	Basis in Derivation of 2001 Local Limit	2001 Uniform Concentration Limit (mg/l)
Arsenic	Inhibition (Activated Sludge)	2.04
Cadmium	Pass Through (NPDES)	0.56
Chromium	Inhibition (Nitrification)	11.64
Copper	Inhibition (Nitrification)	3.04
Cyanide	Inhibition (Activated Sludge)	2.08
Lead	Inhibition (Activated Sludge)	2.35
Mercury	Pass Through (NPDES)	0.0053
Nickel	Inhibition (Nitrification)	9.44
Silver	Pass Through (NPDES)	0.07
Zinc	Inhibition (Activated Sludge)	3.92
pH	Protection of Workers & Treatment System	6.0-10.0 su

The above limits apply at the point where the wastewater is discharged to the POTW (end of pipe). All concentrations of metallic substances are for "total" metals unless indicated otherwise. The Public Works Manager may impose mass limitations in addition to (or in place of) the concentration-based limitations above. Where a user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent or applicable pretreatment standard shall apply.

- (C) The Public Works Manager may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits, to implement Local Limits and the requirements of Section 2.1

2.5 City's Right to Revision

The City reserves the right to establish, by Ordinance or in wastewater permits, more stringent limitations or requirements for discharge to the municipal wastewater system if deemed necessary to comply with the objectives presented in Section 1.1 of this Ordinance or the general and specific prohibitions in Section 2.1 of this Ordinance.

2.6 Special Agreement

The City reserves the right to enter into special agreements with users setting out special terms under which the industrial user may discharge to the system. In no case will a special agreement waive compliance with a pretreatment standard or requirement. However, the industrial user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. Industrial users may also request a variance from the categorical pretreatment standard from US EPA. Such a request shall be approved only if the user can prove that factors relating to its discharge are fundamentally different from the factors considered by US EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 CFR 403.13.

2.7 Dilution

No user shall ever increase the use of process water, or in any way attempt to dilute, a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard, or any other pollutant-specific limitation developed by the City.

2.8 Deadline for Compliance with Categorical Standards

Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I Subchapter N.

New sources shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

2.9 Inflow and Infiltration

All property owners and responsible users identified by the City as contributors to excessive or improper infiltration or inflow into the treatment works shall be advised of their infiltration or inflow problems. All such properties shall be provided a 180-day grace period in which to correct the identified infiltration and inflow problems, said 180-day grace period to extend from the date of notification. By the end of the 180-day grace period, each property owner shall notify the City that corrective actions have been taken or are in progress, and describe the actions being taken.

A property owner failing to notify the City of corrective actions prior to the end of the 180-day grace period shall be subject to termination of service without further notice, and water service shall be immediately discontinued and shut off until the violations shall have been corrected in accordance to federal, state, and City regulations.

In the event any instance of excessive infiltration or inflow into the treatment works of the City shall continue beyond the 180-day grace period, it is hereby declared that such continuing infiltration or inflow is a public nuisance. The Public Works Manager shall have the right to abate such a public nuisance, to enter upon any private property within the City for such a purpose, and to assess the cost of such abatement as a lien against the property upon which such infiltration and inflow occurs. The Public Works Manager shall assess the cost of such abatement to the property from which infiltration and inflow occurs. An administration fee of \$350.00 dollars or 5% of the cost, whichever is greater, shall be assessed by the Public Works Manager in addition to all cost of abatement. The assessment of all cost shall be levied by the filing of a statement of such costs together with the description of the property or properties to be assessed and the name of the owner(s) thereof with the City Recorder. The City Recorder shall enter the assessment as a lien against such property in the Lien Docket of the City.

No new connections from inflow sources into the water pollution control facilities shall be permitted without the approval of the Public Works Manager.

SECTION 3 - PRETREATMENT OF WASTEWATER

3.1 Pretreatment Facilities

Industrial users shall provide necessary wastewater treatment as required to comply with this Ordinance and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 2 above, within the time limitations specified by the Public Works Manager. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Ordinance.

3.2 Additional Pretreatment Measures

Whenever deemed necessary, the Public Works Manager may require industrial users to restrict the industrial user's discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the municipal wastewater system and determine the industrial user's compliance with the requirements of this Ordinance.

- (A) Each person discharging, into the municipal wastewater system greater than 100,000 gallons per day or greater than five percent (5%) of the average daily flow in the system, whichever is lesser, may be required by the Public Works Manager to install and maintain, on his property and at his expense, a suitable storable and flow control facility to ensure equalization of flow over a twenty-four (24) hour period. The facility shall have a capacity for at least fifty percent (50%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Public Works Manager. A wastewater permit may be issued solely for flow equalization.
- (B) Grease, oil and sand interceptors shall be provided, when, in the judgment of the Public Works Manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, suspended solids or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner, at his expense.

- (C) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

3.3 Spill Prevention and Slug Control Plans

The Public Works Manager may require any user to develop and implement a spill prevention/slug control plan (SP/SCP). Where deemed necessary by the City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. A spill prevention/slug control plan (SP/SCP) showing facilities operating procedures to provide this protection shall be submitted to the City for review and approval before implementation. The City shall determine which user is required to develop a plan and require said plan to be submitted within 90 days after notification by the City. Each user shall implement its SP/SCP as submitted or as modified after such plan has been reviewed and approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this Ordinance. The plan shall be posted and available for inspection at the facility during normal business hours.

- (A) Any user required to develop and implement an accidental spill prevention plan shall submit a plan which addresses, at a minimum, the following:
1. Description of discharge practices, including non-routine batch discharges;
 2. Description of stored chemicals;
 3. Procedures for immediately notifying the POTW of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any standards in Section 2.1 through 2.4 of this Ordinance, including any discharge that would violate a prohibition under 40 CFR 403.5(b), or as required by Section 6.6 of this Ordinance; and
 4. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and or measures and equipment for emergency response.

- (B) Users shall notify the City Wastewater Treatment Facility immediately after the occurrence of a slug or accidental discharge of substances regulated by this Ordinance. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected user shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City on account thereof under State or Federal law.
- (C) Within five (5) days following an accidental discharge, the user shall submit to the City a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Ordinance or other applicable law.
- (D) Signs shall be permanently posted in conspicuous places on the user's premises advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such discharge with respect to emergency notification procedures
- (E) Preventive Measures

If any user has a spill or uncontrolled discharge of prohibited or restricted substances into the City sewer, the Public Works Manager may require the user's spill prevention and control plan to be resubmitted, with revisions, in order to fully comply with the requirements of this Ordinance. The POTW may also require the industrial user to install, modify equipment and/or make other changes necessary to prevent such discharges as a condition of issuance of and Industrial Waste Discharge Permit or as a condition of continued discharge into the City sewer system. The Public Works Manager may establish a schedule of compliance for construction completion.

The Public Works Manager may require connections or entry points which could allow spills or uncontrolled discharges of prohibited or restricted substances to enter the City sewer systems to be eliminated, labeled, or controlled, so as to prevent the entry of wastes in violation of this Ordinance.

3.4 Tenant Responsibility

Any person who shall occupy an industrial user's premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of this Ordinance in the same manner as the Owner.

3.5 Separation of Domestic and Industrial Wastestreams

All domestic wastewaters from rest rooms, showers, drinking fountains, etc. unless specifically included as part of a categorical pretreatment standard, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through a required pretreatment system and the industrial user's monitoring facility. When directed to do so by the Public Works Manager, industrial users must separate existing domestic wastestreams.

3.6 Hauled Wastewater

Septic tank waste (septage) will be accepted into the municipal wastewater system at a designated receiving structure within the POTW area, (when such structures become available), and at such times as are established by the Public Works Manager, provided such wastes do not contain toxic or hazardous pollutants, and provided such discharge does not violate any other requirements established by the City. The Public Works Manager shall issue permits for individual vehicles to use such facilities.

- (A) All waste haulers, regardless of the origin of the hauled wastes, shall be considered "industrial users" for the purposes of this Ordinance and required to apply for a waste hauler permit.
- (B) The discharge of domestic septage wastes from commercial or industrial sites requires prior approval of the Public Works Manager. The Public Works Manager shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation.
- (C) Fees for the discharge of septage will be established as part of the user fee system as authorized in Section 14.

3.7 Vandalism

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in Section 10, below.

3.8 Grease Interceptors

The City may inspect grease interceptors (i.e., traps, oil/water separators) to insure proper installation and maintenance. Users may be required to reimburse the City for cleaning and additional maintenance of public sewer mains due to discharge of grease caused by noncompliance with these rules and regulations.

In the event the City, during routine line maintenance, discovers an accumulation of grease in a public line sufficient to restrict the normal flow of waste, upstream IUs shall be inspected. When the City determines which user was responsible for the grease or oil discharge, the user may be required to cease discharge of the prohibited waste, install an interceptor, maintain the interceptors, and may be charged for the cost of cleaning the line.

SECTION 4 - WASTEWATER PERMIT ELIGIBILITY

4.1 Wastewater Survey

When requested by the City of Canby, all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The Public Works Manager is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be considered a violation of this Ordinance and subjects the industrial user to the sanctions set out in Section 10.

4.2 Wastewater Permit Requirement

It shall be unlawful for significant industrial users to discharge wastewater into the City's sanitary sewer system without first obtaining a wastewater permit from the Public Works Manager. Any violation of the terms and conditions of wastewater permit shall be deemed a violation of this Ordinance and subjects the industrial user to the sanctions set out in Section 10. Obtaining a wastewater permit does not relieve a permittee of its obligation to obtain other permits required by Federal, State or local law.

The Public Works Manager may require other non-domestic users, non discharging categorical industrial users and liquid waste haulers, to obtain waste water permits as necessary to carry out the purpose of this chapter.

4.3 Permitting Existing Connections

Any significant industrial user, without a current industrial discharge permit, which discharges industrial waste into the municipal wastewater system prior to the effective date of this Ordinance and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the City for a wastewater permit in accordance with Section 4.6 below, and shall not cause or allow discharges to the system to continue after one hundred eighty (180) days of the effective date of this Ordinance except in accordance with a permit issued by the Public Works Manager.

4.4 Permitting New Connections

Any significant industrial user proposing to begin or recommence discharging industrial wastes into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge. An application for this permit must be filed at least ninety (90) days prior to the anticipated startup date.

4.5 Permitting Extra-Jurisdictional Industrial Users

Any existing significant industrial user located beyond the City limits shall submit a permit application, in accordance with Section 4.6 below, within ninety (90) days of the effective date of this Ordinance. New significant industrial users located beyond the City limits shall submit such applications to the Public Works Manager ninety (90) days prior to any proposed discharge into the municipal system. Upon review of such application, the Public Works Manager may enter into a contract with the industrial user which requires the industrial user to subject itself to and abide by this Chapter, including all permitting, compliance monitoring, reporting, and enforcement provisions herein. Alternately, the Public Works Manager may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements against said user.

4.6 Wastewater Permit Application Contents

In order to be considered for a wastewater permit, all industrial users required to have a permit must submit the following information on an application form approved by the Public Works Manager.

- (A) Name, mailing address, and location if different from the mailing address);
- (B) Environmental control permits held by or for the facility;
- (C) Standard Industrial Classification (SIC) codes for pretreatment the industry as a whole and any processes for which categorical pretreatment standards have been promulgated.

- (D) Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally be discharged to the municipal system;
- (E) Number and type of employees, and hours of operation, and proposed or actual hours of operation of pretreatment system.
- (F) Each product by type, amount, process or processes and rate of production;
- (G) Type and amount of raw materials process (average and maximum per day);
- (H) The site plans, floor plans and mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation, and all points of discharge.
- (I) Time and duration of the discharge.
- (J) Measured average daily and maximum daily flow, in gallons per day, to the municipal system from regulated process streams and other streams as necessary to use the combined wastestream formula in 40 CFR 403.6(e);
- (K) Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly, and seasonable variations, if any;
- (L) Wastewater constituents and characteristics, including any pollutants in the discharge which are limited by Federal, State, and local standards, pretreatment standards applicable to each regulated process; and nature and concentration (or mass if pretreatment standard requires) of regulated pollutant in each regulated process (daily maximum and average concentration or mass when required by a pretreatment standard) Sampling and analysis shall be undertaken in accordance with 40 CFR Part 136; and certified that sampling is representative of normal work cycles and expected pollutant discharges.
- (M) A statement reviewed by an authorized representative of the user and certified to by a qualified professional indicating whether or not the pretreatment standards are being met on a consistent basis, and if not, what additional pretreatment is necessary.

- (N) If additional pretreatment and/or O&M will be required to meet the standards, then the industrial user shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule;
1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation). No increment referred to above shall exceed nine (9) months nor shall the total compliance period exceed thirty-six (36) months.
 2. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Public Works Manager including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the Public Works Manager.
- (O) Any other information as may be deemed by the Public Works Manager to be necessary to evaluate the permit application.
- (P) A new source discharger may provide estimates as to the character and volume of pollutants described in Section 4.6 (J)(K)(L).

Incomplete or inaccurate applications shall not be processed and shall be returned to the industrial user for revision.

4.7 Authorized Signatory and Accuracy Certification

All permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user:

"I certify under penalty of law that this document and all attachments were

prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to Public Works Manager prior to or together with any reports to be signed by an Authorized Representative.

4.8 Wastewater Permit Decisions

The Public Works Manager will evaluate the data furnished by the industrial user and may require additional information. Within sixty (60) days of receipt of a complete permit application, the Public Works Manager will determine whether or not to issue a wastewater permit. If no determination is made within this time period, the application will be deemed denied.

If any waters or wastes are discharged, or area proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 2, and which in the judgment of the Public Works Manager, may have a deleterious effect upon the municipal treatment system, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Public Works Manager may take any of the following actions:

- (A) Reject the wastes,
- (B) Require pretreatment to an acceptable condition for discharge to the public sewers,
- (C) Require control over the quantities and rates of discharge, and/or
- (D) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

SECTION 5 - WASTEWATER PERMIT ISSUANCE PROCESS

5.1 Wastewater Permit Duration

Permits shall be issued for a specific time period, not to exceed five (5) years. A permit may be issued for a period less than five (5) years, at the discretion of the Public Works Manager. Each permit shall indicate a specific date upon which it will expire.

5.2 Wastewater Discharge Permit Contents

Wastewater permits shall include such conditions as are reasonably deemed necessary by the Public Works Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plants effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(A) Wastewater Permits shall contain the following conditions:

1. A statement that indicates permit duration, which in no event shall exceed 5 years.
2. A statement that the permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new owner or operator with a copy of the existing permit.
3. Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards in Federal, State and local law.
4. Self monitoring, sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law.
5. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedules may not extend the compliance date beyond applicable federal deadlines.
6. Requirements to control Slug Discharge, if determined by the Public Works Manager to be necessary.
7. Requirements for immediate reporting of any instance of

noncompliance and for automatic re-sampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).

8. Requirements for prior notification and approval by the Public Works Manager of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction in the system.
9. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system.

(B) Permits may contain, but need not be limited to, the following:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulations and equalization;
2. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
3. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
4. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
5. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
6. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
7. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
8. Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
9. Compliance schedules for meeting pretreatment standards and requirements.

10. Requirements for submission of periodic self- monitoring or special notification reports.
11. Requirements for maintaining and retaining plant records relating to wastewater discharge as specified in Section 6.12 and affording the Public Works Manager, or his representatives, access thereto.
12. Requirements for the prior notification and approval by the Public Works Manager of any change in the manufacturing and/or pretreatment process used by the permittee.
13. A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit.
14. Other conditions as deemed appropriate by the Public Works Manager to ensure compliance with this Ordinance, and state and federal laws, rules, and regulations.

5.3 Wastewater Discharge Permit Appeals

Any person, including the user, may petition the Public Works Manager to reconsider the terms of the permit within ten (10) days of its issuance.

- (A) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- (B) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative conditions, if any, it seeks to place in the wastewater permit.
- (C) The effectiveness of the permit shall not be stayed pending the appeal.
- (D) If the Public Works Manager fails to act within fifteen (15) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purpose of judicial review.
- (E) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with

the Clackamas County Circuit Court, pursuant to ORS Chapter 34, within sixty (60) days of the final administrative decision.

5.4 Wastewater Permit Modifications

The Public Works Manager may modify the permit for good cause including, but not limited to, the following:

- (A) To incorporate any new or revised federal, state, or local pretreatment standards or requirements.
- (B) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance.
- (C) A change in the municipal wastewater system that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- (D) Information indicating that the permitted discharge poses a threat to the City's municipal wastewater system, City personnel, or the receiving waters.
- (E) Violation of any terms or conditions of the wastewater permit.
- (F) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- (G) Revisions of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.
- (H) To correct typographical or other errors in the permit.
- (I) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

The filing of a request by the permittee for a permit modification does not stay any permit condition.

5.5 Wastewater Permit Transfer

Permits may be reassigned or transferred to a new owner and/or operator only with prior approval of the Public Works Manager. The permittee must give at least thirty (30) days advance notice to the Public Works Manager. The notice must include provision for furnishing the new owner or operator with a copy of the existing permit and a written certification by the new owner which:

- (A) States that the new owner has no immediate intent to change the facility's operations and processes.
- (B) Identifies the specific date on which the transfer is to occur.
- (C) Acknowledges full responsibility for complying with the existing permit.

Failure to provide advance notice of a transfer renders the wastewater permit terminated.

5.6 Wastewater Permit Revocation

The Public Works Manager may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (A) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- (B) Falsifying self-monitoring reports;
- (C) Tampering with monitoring equipment;
- (D) Refusing to allow the City timely access to the facility premises and records;
- (E) Failure to meet effluent limitations;
- (F) Failure to pay administrative penalties;
- (G) Failure to pay sewer charges;
- (H) Failure to meet compliance schedules;
- (I) Failure to complete a wastewater survey;
- (J) Failure to provide advance notice of the transfer of a permitted facility;
- (K) Violations of any pretreatment standard or requirement or any terms of the permit or the Ordinance.
- (L) Failure to provide prior notification to the Public Works Manager of changed conditions pursuant to Section 6.5 of this Ordinance.

(M) Misrepresentation of, or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(N) Failure to complete a wastewater discharge permit application.

Wastewater discharge permits shall be voided upon cessation of operations, or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater permit to that user.

5.7 Wastewater Discharge Permit Reissuance

A user who is required to have a wastewater discharge permit shall apply for a wastewater discharge permit application, in accordance with Section 4.6 of this Ordinance, a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until the City issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

5.8 Regulation of Wastewater Received from other Jurisdictions

If another municipality, or user located within another jurisdiction, contributes wastewater to the municipal wastewater system, the Public Works Manager shall enter into an intermunicipal or interjurisdictional agreement with the contributing municipality or jurisdiction, or enter into a contract with the user(s), in accordance with requirements specified in the City's pretreatment procedures. All interjurisdictional agreements made with users outside the City's jurisdiction will be considered a major modification to the City NPDES permit and will require approval from the Department of Environmental Quality.

SECTION 6 - REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

- (A) Within one hundred and eighty (180) days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the municipal system shall be required to submit to the City a report which contains the information listed in paragraph 6.1(B), below. At least ninety (90) days prior to commencement of their discharge, new sources, including existing users which have changed their operation or processes so as to become new sources, shall be required to submit to the City a report which contains the information listed in paragraph 6.1(B). A new source shall also be required to report the method it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.
- (B) The information required by this section includes:
1. Identifying Information. The user shall submit the name and address of the facility including the name of the operator and owners;
 2. Permits. The user shall submit a list of any environmental controls permits held by or for the facility;
 3. Description of Operation. The user shall submit a brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the system from the regulated processes.
 4. Flow Measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the system from regulated process streams and other streams as necessary to allow use of the combined wastewater formula set out in 40 CFR 403.6 (e).

5. Measurement of Pollutant.

- (a) The industrial user shall identify the categorical pretreatment standards applicable to each regulated process;
- (b) In addition, the industrial user shall submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by federal, state or City standards or the Public Works Manager) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long term average concentrations (or mass, where required by federal, state or City standards or the Public Works Manager) shall be reported. The sample shall be representative of daily operations.
- (c) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula, in order to evaluate compliance with Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e). This adjusted limit along with supported data shall be submitted to the Control Authority.
- (d) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR part 136 and amendments thereto.
- (e) The Control Authority may allow the submission of a baseline monitoring report, which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
- (f) The baseline report shall indicate the time, date and place, of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharge to the POTW.

6. Special Certification. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operations and maintenance (O&M) and/or additional pretreatment is required in order to meet the pretreatment standards and requirements; and
7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M shall be established. The completion date in this schedule will not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 4.6 (N) of this Ordinance.
8. Signature and Certification. All baseline-monitoring reports must be signed and certified in accordance with Section 4.7.

6.2 Compliance Schedule for meeting pretreatment standards

The following conditions shall apply to the compliance schedule required by Section 6.1(B)(7) of this Ordinance:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, commencing and completing construction, and beginning and conducting routine operation).
- B. No increment referred to above shall exceed nine (9) months.
- C. The user shall submit a progress report to the Public Works Manager no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule.
- D. In no event shall more than nine (9) months lapse between such progress reports to the Public Works Manager.

6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into the municipal (POTW) wastewater system, any user subject to such pretreatment standards and requirements shall submit to the Public Works Manager a report containing the information described in section 6.1 (B) 4-6 of this Ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.7 and 6.1(B)(6)(8).

6.4 Periodic Compliance Reports

- (A) Any user that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to the City semi-annually on the fifteenth day of June and December, unless required on other dates or more frequently by the City, a report indicating the nature and concentration of pollutants in the discharge which are limited by Pretreatment Standards. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Public Works Manager or the Pretreatment Standard necessary to determine the compliance of the User. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. At a minimum, users shall sample their discharge at least twice per year. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge according to 40 CFR 403.12 (b)(4).
- (B) The report shall include a record of the concentration (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations and shall also include any additional information required by this Ordinance or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the City or by this Ordinance, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.

- (C) Any user subject to equivalent mass or concentration limits established by the City or by unit production limits specified in the applicable categorical standards shall report production data as outlined in Section 6.3.
 - (D) If the City calculated limits to factor out dilution flows or non-regulated flows, the user will be responsible for providing flows from the regulated process flows, dilution flows and non-regulated flows.
 - (E) Flows shall be reported on the basis of actual measurements, provided, however, that the City may accept reports of average and minimum flows estimated by verifiable techniques if the City determines that an actual measurement is not feasible.
 - (F) Discharges sampled shall be representative of the user's daily operations and samples shall be taken in accordance with the requirements specified in Section 6.
 - (G) The City may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the sewer system.
 - (H) The City may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the City agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The City is under no obligation to perform periodic compliance monitoring for a user.
 - (I) All wastewater samples must be representative of industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.
1. In the event an industrial user's monitoring results indicate a violation has occurred, the industrial user shall immediately (within 24 hours of becoming aware of the violation) notify the Public Works Manager and shall re-sample its discharge. The industrial user shall report the results of the repeated sampling within thirty (30) days of discovering the first violation.

2. The reports shall indicate the time, date, persons, location of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of the normal work cycles and expected pollutant discharges to the city sewer system. All sampling and analysis protocol shall be in accordance with 40 CFR Part 136.
 3. The Public Works Manager may require reporting by dischargers that are not required to have an industrial discharge permit if information or data is needed to establish a sewer charge, determine the treat ability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.
 4. Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards will be according to the requirements established in 40 CFR 403.12 (h) and Section 6.4 of this Ordinance.
- (J) All periodic compliance reports must be signed and certified in accordance with Section 4.7 of this Ordinance.

6.5 Report of Changed Conditions

Each industrial user shall notify the Public Works Manager of any planned significant changes to the industrial user's operations or system, which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. Notification of any changes in the listed or characteristic hazardous wastes for which the user has submitted initial notification under 40 CFR 403.12 (p) must also be reported.

- (A) The Public Works Manager may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a waste water permit application under Section 4.6, if necessary.
- (B) The Public Works Manager may issue a wastewater permit under Section 4.8 or modify an existing wastewater permit under Section 5.4.
- (C) No industrial user shall implement the planned changed condition(s) until and unless the Public Works Manager has responded to the industrial user's notice.
- (D) For purposes of this requirement, flow or loading increases of twenty (20%) or greater and the discharge of any previously unreported pollutant shall be deemed significant.

6.6 Reports of Potential Problems

- (A) In the case of an accidental or other discharge, which may cause potential problems for the municipal wastewater system, it is the responsibility of the user to immediately telephone and notify the City POTW Supervisor or Public Works Manager of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (B) Within five (5) days following an accidental discharge, the user shall, unless waived by the Public Works Manager, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the system, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Ordinance.
- (C) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (A), above. Employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of the emergency notification procedure.
- (D) Significant Industrial Users are required to notify the Public Works Manager immediately of any changes at its facility affecting the potential for a Slug Discharge. Failure to notify the City of potential problem discharges shall be deemed a separate violation of this Ordinance.

6.7 Reports from Unpermitted Users

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater permit shall provide appropriate reports to the City as the Public Works Manager may require.

6.8 Sample Collection

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

- (A) Except as indicated in Section B and C below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by Public Works Manager. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.
- (B) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- (C) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 6.1 and 6.3 [40 CFR 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Public Works Manager may authorize a lower minimum. For the reports required by paragraphs Section 6.4 (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.
- (D) Samples that are taken by City personnel for the purposes of determining compliance with the requirements of this Ordinance may be split with the discharger if requested (or a duplicate sample provided in the instance of fats, oils and greases) if requested before or at the time of sampling.
- (E) The Public Works Manager may require a discharger to install and maintain at the discharger's expense a suitable manhole in the discharger's branch sewer or other suitable monitoring access to allow observation, sampling and measurement of all industrial wastes being discharged into the City sewer system. It shall be constructed in accordance with plans approved by the Public Works Manager and shall be designed so that flow measuring and sampling equipment may be conveniently installed. Access to the manhole or monitoring access shall be available to City representatives at all times.

6.9 Analytical Requirements

All sample analyses shall be performed in accordance with the procedures set forth in 40 CFR, Part 136 and any amendments thereto or with any other test procedures approved by the Administrator of The Environmental Protection Agency. If there are no approved test procedures for a particular pollutant, then analyses shall be performed using other validated procedures approved by the Public Works Manager and, if the discharge is subject to a Categorical Pretreatment Standard, by the EPA Administrator.

6.10 Monitoring Charges

The Public Works Manager may recover the City's expenses incurred in collecting and analyzing samples of the industrial user's discharge by adding the City's expenses to the industrial user's sewer charges.

6.11 Timing

Written reports shall be deemed to have been transmitted at the time of deposit, postage prepaid, into a mail facility services by the United States Postal Service.

6.12 Record Keeping

Industrial users shall retain, and make available for inspection, and copying, all records and information required to be retained under 40 CFR 403.12(o), (including documentation associated with Best Management Practices). These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this Ordinance, or where the industrial user has been specifically notified of a longer retention period by the Public Works Manager, DEQ or EPA.

6.13 Reporting of Additional Monitoring

If an industrial user subject to the reporting requirements of 40 CFR 403.12(e) or (h), which requires submission of periodic compliance reports, monitors any pollutant more frequently than required by the City, using the procedures prescribed in 40 CFR Part 136, the results of this monitoring shall be included in the report, as required by 40 CFR 403.12(g)(5).

6.14 Notification of Significant Production Change

An industrial user operating under a waste discharge permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the Public Works Manager within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the Public Works Manager of such anticipated change shall be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

6.15 Hazardous Waste Notification

- (A) Any user who commences the discharge of hazardous waste shall notify the City, the EPA Regional Waste Management Division Director, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the municipal wastewater system, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12 (j) and Section 6.5 of this Ordinance. The notification requirement in this Section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), (e), and Sections 6.1, 6.3, and 6.4 of this Ordinance.

- (B) Dischargers are exempt from the requirements of this paragraph (1),

above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous waste, unless the wastes are acute hazardous waste as specified in 40 CFR 261.30 (d) and 261.33 (e). Discharge of more than fifteen (15) kilograms of non-acute hazardous waste in a calendar month, or of any quantity of acute hazardous waste as specified in 40 CFR 261.30 (d) and 261.33 (e), requires a one - time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

- (C) In the case of any new regulations under Section 3001 of the RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Director, the EPA Regional Waste Management Division Director, and DEQ Solid and Hazardous Waste Division Director, of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (D) In the case of any notification made under this Section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (E) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued hereunder, or any applicable Federal or State law.

SECTION 7 - COMPLIANCE

7.1 Inspection and Sampling

Authorized City representatives may inspect and monitor any non-residential user of City water and/or sewer services to determine compliance with the requirements of this Ordinance. The discharger shall allow the City or its authorized representatives to enter upon the premises of the discharger at all reasonable hours, for the purpose of inspection, sampling, records examination, record copying, and photographic documentation. The City shall also have the right to set up on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The right of entry includes, but is not limited to, access to those portions of the premises that contain facilities for sampling, measuring, treating, transporting or otherwise handling waste, and storing records, reports or documents relating to the treatment, sampling or discharge of waste.

- (A) Where a user has security measures in force, which require proper identification and clearance before entry into their premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City, State, and US EPA will be permitted to enter, without delay, for the purposes of performing their official duties.
- (B) The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the Public Works Manager;
- (C) The City may require the industrial user to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at the industrial user's expense. All devices used to measure wastewater flow and quality shall be calibrated periodically to ensure their accuracy.
- (D) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or oral request of the Public Works Manager and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.
- (E) Unreasonable delays in allowing City personnel access to the industrial user's premises shall be a violation of this Ordinance.

7.2 Search Warrants

If the Public Works Manager or designate has been refused access to a building, structure or property or any part thereof, and if the Public Works Manager has probable cause to believe that there may be a violation to this Ordinance, or that there is a need to inspect as part of a routine inspection program of the City designed to protect the overall public health, safety and welfare of the community, the Public Works Manager shall contact the City Attorney who may then apply for an administrative search warrant from a court of competent jurisdiction.

SECTION 8 - CONFIDENTIAL INFORMATION

Information and data on an industrial user obtained from reports, questionnaires, permit applications, permits, and monitoring programs, and from City inspections and sampling activities shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State laws.

- (A) Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.
- (B) When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available immediately upon request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) program, and in enforcement proceedings involving the person furnishing the report.

SECTION 9 - PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2;
- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (C) Any other violation of a Pretreatment Standard or Requirement as defined by Section 2 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Public Works Manager determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;
- (D) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Public Works Manager's exercise of its emergency authority to halt or prevent such a discharge;
- (E) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation(s), which may include a violation of Best Management Practices, which the Public Works Manager determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES

This Section authorizes the development and implementation of an Enforcement Response Plan, Industrial Sampling/Inspection Procedures Manual, and any modifications or revisions thereof. Administration of fines for noncompliance shall be contained in the City's Enforcement Response Procedure. These procedures shall also establish a general guideline for establishment of a fine schedule. The Public Works Manager is hereby authorized to adopt rules, procedures and forms to implement the provisions of this chapter.

Any discharger that fails to comply with the requirements of this Ordinance and any rules adopted hereunder or provisions of its industrial waste discharge permit may be subject to enforcement actions as prescribed below in addition to those developed by the Public Works Manager.

10.1 Industrial User Violation Process

Whenever the Public Works Manager determines that a violation of this Ordinance, any permit issued hereunder, or any order issued by the City pursuant to this Ordinance, has occurred or is taking place, it may initiate enforcement action as provided in this Section. In addition, any enforcement action or remedy provided in state or federal law may be employed. If the Public Works Manager believes a violation has occurred or is occurring, a representative of the City shall make a reasonable effort to notify the user of the violation. All violations including the first violation shall receive a written Notice of Violation, and may also incur a monetary penalty.

- (A) All written Notices of Violations shall describe the violation and any potential penalty (monetary or additional pretreatment). The written notice may further require that a response to the violation be submitted to the City within a ten (10) day time period.
- (B) If a written Notice of Violation requires submittal of a response, the response shall include an explanation of the cause of the violation, a plan for its satisfactory correction and prevention of future such violations, and specific corrective or preventive actions. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Public Works Manager to initiate emergency action or other enforcement action without first issuing a Notice of Violation.

10.2 Violation

- (A) A violation of limitations established under this Ordinance, any applicable federal, state or pretreatment standards, or specific requirements of a discharge permit shall constitute a violation of this Ordinance and shall be cause for enforcement action by the City, including but not limited to levying of administrative penalties as described in Section 10 regardless of the intent of the user. Each day of a continuing violation shall constitute a separate offense for purposes of computing the applicable penalty.
- (B) Whenever the Public Works Manager finds that any IU has violated or is violating this Ordinance, a wastewater permit or order issued hereunder, or any other pretreatment requirement, the Public Works Manager shall cause to be served upon said IU a written Notice of Violation. The Notice of Violation shall be delivered to the user's premises or be sent by certified mail to the address of the permit holder on record with the City.

10.3 Violation of Permit Parameters

- (A) For the maximum daily allowable concentration, if the concentration of any single sample (whether grab or a sample within a series) exceed the limitations, a violation will have occurred.
- (B) For the monthly average allowable concentration, if the average of all sample(s) (grab or composite) taken exceeds the limitation, a violation will have occurred. One sample collected may constitute a monthly average violation.

10.4 Additional Violation Parameters

A violation of this Ordinance shall also be deemed to occur:

- (A) For noncompliance with any special reporting requirements established by permit, written request of the City, or as specified by federal pretreatment standards (40 CFR 403.12).
- (B) Pollutants prohibited by this Ordinance are discharged into the system.
- (C) Failure to apply for and obtain a permit prior to discharge of industrial wastewater into the system.

10.5 IU Notice to City of Violation

If sampling performed by an industrial user indicates a violation, the industrial user shall notify the Public Works Manager or designate within 24 hours of becoming aware of the violation. The user shall also resample and report the results within 30 days of becoming aware of violation pursuant to 40 CFR 403.12(g)(2). Resampling must continue until it is evident that the discharge is within compliance.

10.6 Consent Orders

The Public Works Manager may enter into Consent Orders, assurance of voluntary compliance, or other similar documents establishing an agreement with an IU not in compliance with any permit parameter or provision of this Ordinance. Such orders will include specific action to be taken by the IU to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as administrative orders and upon issuance, such orders shall be judicially enforceable. Use of a consent order shall not be a bar against, or prerequisite for, taking any other action against the user.

10.7 Show Cause Hearing

The Public Works Manager may order any user, which causes or contributes to violation(s) of this Ordinance, wastewater permits, order issued hereunder, or any other pretreatment requirement, to appear before the Public Works Manager and show cause why a proposed enforcement action should not be taken. Notice shall be served on the IU specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and an order that the IU show cause why this proposed enforcement action should not be taken.

The notice of the hearing shall be served personally or by registered mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the IU. Whether or not the IU appears at the hearing, the Public Works Manager may pursue enforcement action following the hearing date. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

10.8 Compliance Orders

When the Public Works Manager finds that an IU has violated or continues to violate the Ordinance, permits or orders issued hereunder, or any other pretreatment requirement, an order may be issued to the IU directing that, following a specific time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer.

In addition to such Compliance Orders, the Public Works Manager may require additional self-monitoring for at least ninety (90) days after consistent compliance has been achieved, after which time the self-monitoring conditions in the discharge permit shall control. Issuance of a compliance order shall not be a bar against, or prerequisite for, taking any other action against the user.

10.9 Cease and Desist Orders

When the Public Works Manager finds that an industrial user has violated or continued to violate this Ordinance, any permit or order issued hereunder, or any other pretreatment requirement, the Public Works Manager may issue an order to the industrial user directing them to cease and desist all such violations and directing the user to:

- (A) Immediately comply with all requirements; and
- (B) Take such appropriate remedial or preventative action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

10.10 Administrative Fines

- (A) When the Public Works Manager finds that a user has violated, or continues to violate, any provision of this Ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Public Works Manager may fine such user in an amount not to exceed two thousand five hundred (\$2,500.00). Such fines shall be assessed on a per violation, per day basis. In the case of monthly or long-term average discharge limits, fines shall be assessed for each day during the period of violation.

- (B) Unpaid charges, fines and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of twenty percent (20%) of the unpaid balance, and interest shall accrue thereafter at a rate of seven percent (7%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.
- (C) Users desiring to dispute such fines must file a written request for the Public Works Manager to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Where a request has merit, the Public Works Manager may convene a hearing on the matter. In the event the users appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Public Works Manager may add the cost of preparing administrative enforcement actions, such as notices and orders, to the fine.
- (D) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

10.11 Emergency Suspensions

The Public Works Manager may immediately suspend an industrial user's discharge and the industrial user's wastewater discharge permit, after informal notice to the industrial user, whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Public Works Manager may also immediately suspend an industrial user's discharge and the industrial user's wastewater discharge permit, after notice and opportunity to respond, that threatens to interfere with the operation of the municipal waste water system, or which presents or may present an endangerment to the environment.

- (A) Any industrial user notified of a suspension of its wastewater permit shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the Public Works Manager shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the system, its receiving stream, or endangerment to any individuals. The Public Works Manager shall allow the industrial user to recommence its discharge when the user has demonstrated to the satisfaction of the Public Works Manager that the period of endangerment has passed, unless the termination proceedings set forth in Section 10.12 are initiated against the user.
- (B) An industrial user which is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed

written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Public Works Manager prior to the date of any show cause or termination hearing under Section 10.7 and 10.12

10.12 Termination of Permit

In addition to those provisions in Section 5.6 of this Ordinance, any industrial user which violates the following conditions of this Ordinance, wastewater permits, or orders issued hereunder is subject to permit termination:

- (A) Violation of permit conditions.
- (B) Failure to accurately report the wastewater constituents and characteristics of its discharge.
- (C) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.
- (D) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.
- (E) Slug loads causing interference, pass through, or damage to human health, the environment, or the treatment plant
- (F) When the facility serviced by the sanitary sewer service is occupied prior to a Certificate of Occupancy being issued.
- (G) When the facility served by the sanitary sewer service does not comply with the provisions of the City's "Construction Standards for Public Works Facilities".
- (H) When the facility served by the sanitary sewer service does not comply with a condition of approval issued by the City Council, Planning Commission, or Site and Design Review Committee.
- (I) When the facility served by the sanitary sewer service is improperly connected to a City utility system or is connected without obtaining the required approvals or without paying the required fees and charges.
- (J) When a user fails to immediately comply with an Administrative Order requiring the immediate halting or elimination of discharge.

Non-complying industrial users shall be notified of the proposed termination of their wastewater permit and be offered an opportunity to show cause under Section 10.7 of this Ordinance, why the proposed action should not be taken.

SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES

11.1 Injunctive Relief.

Whenever an industrial user has violated, threatens to violate, or continues to violate the provisions of this Ordinance, permits or orders issued hereunder, or any other pretreatment requirements, the Public Works Manager may petition the courts for the issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the wastewater permit, order, or other requirement imposed by this Ordinance on activities of the industrial user. Such other action as may be appropriate for legal and/or equitable relief may also be sought by the City. The Court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

11.2 Civil Penalties

Any industrial user which has violated or continues to violate this Ordinance, any order or permit hereunder, or any other pretreatment requirement shall be liable to the City for a maximum civil penalty of two thousand five hundred dollars (\$2,500) per violation per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each calendar day during the period of this violation.

- A. The court may award reasonable attorney fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- B. In determining the amount of civil penalty, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, corrective actions by the industrial user, economic benefit to the user of noncompliance, the compliance history of the user, and any other factors as justice requires.
- C. Where appropriate, the city may accept mitigation projects in lieu of the payment of civil penalties where the project provides a valuable service to the City and the industrial user's expense in undertaking the project is at least one hundred and fifty percent (150%) of the civil penalty.

11.3 Criminal Prosecution

Any industrial user who willfully or negligently violates any provisions of the Ordinance, any orders or permits issued hereunder, or any other pretreatment requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500) per violation per day or imprisonment for not more than (1) one year, or both.

- (A) Any industrial user who knowingly makes any false statement, representations or certification in any application, record, report, plan or other documentation filed or required to be maintained pursuant to the Ordinance or wastewater permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of not more than two thousand five hundred dollars (\$2,500) per violation per day or imprisonment for not more than (1) one year, or both.
- (B) In the event of a second conviction, the user shall be punishable by a fine not to exceed five thousand dollars (\$5,000) per violation per day or imprisonment for not more than (3) three years, or both.

11.4 Remedies Nonexclusive

- (A) A City Enforcement Response Plan will be developed by the Public Works Manager in accordance with 40 CFR Section 403.8 and submitted to the City Attorney for approval and certification. The Public Works Manager will implement the plan after receiving approval from the City Attorney.
- (B) The remedies provided for in this Ordinance are not exclusive. The Public Works Manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will be in accordance with the City of Canby's Enforcement Response Plan. However the Public Works Manager may take other action against any user when the circumstances warrant. Further, the Public Works Manager is empowered to take more than one enforcement action against any noncompliant user.

SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTIONS

12.1 Performance Bonds

The Public Works Manager may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Ordinance, any orders, or a previous permit issued hereunder unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Public Works Manager to be necessary to achieve consistent compliance.

12.2 Liability Insurance

The Public Works Manager may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Ordinance, any orders, or a previous permit issued hereunder, unless the industrial user first submits proof that it has obtained financial assurance sufficient to restore or repair damage to the municipal wastewater system caused by its discharge.

12.3 Water Supply Severance

When an industrial user has violated the provisions of this Ordinance, orders, or permits issued hereunder, the Public Works Manager may sever water service to the industrial user and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

12.4 Public Nuisance

Any violation of the prohibitions or effluent limitations of this Ordinance, permits, or orders issued hereunder is hereby declared a public nuisance and shall be corrected or abated as directed by the Public Works Manager or his designee. Any person(s) creating a public nuisance shall be subject to the provisions of the City Ordinance governing such nuisance, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

12.5 Contractor Listing

Subject to other applicable law, industrial users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive contract awards for the sale of goods or services to the City.

SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

13.1 Affirmative Defenses

A user shall have an affirmative defenses in any action brought against it alleging a violation of the general prohibitions, specific prohibitions and this Ordinance, where the user can demonstrate the requirements established in 40 CFR 403.5 (a)(2).

13.2 Upset

- (A) For the purpose of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (B) An upset shall be an affirmative defense to an enforcement action brought for noncompliance with categorical pretreatment standards and requirement if the following conditions are met:
- (C) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. The user can identify the cause of the upset.
 - 2. The facility was operating in a prudent and workman-like manner at the time of the upset and was in compliance with applicable O&M procedures; and
 - 3. The user submits the following information to the Public Works Manager within 24 hours of becoming aware of the upset, If this report is given orally, the user must also submit a written report containing such information within five (5) days unless waived by the Public Works Manager:
 - a) A description of the discharge and its causes of noncompliance;
 - b) The period of noncompliance including exact dates and time or, if not corrected, the anticipated time the noncompliance is expected to continue;

- c) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have burden of proof.
- (5) Users will have the opportunity for judicial determination on any claim of upset only in an enforcement action for noncompliance with categorical pretreatment standards.
- (6) User shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

13.3 Prohibited Discharge Standards

An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in Section 2.1 first paragraph of this Ordinance or the specific prohibitions in Sections 2.1 (B)(2-3), (5-11), (13-20) of this Ordinance if it can prove that it did not know or have reasons to know that its discharge, alone or in conjunction with discharges from other sources would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to and during the pass through or interference, or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, in compliance with applicable sludge use or disposal requirements.

13.4 Bypass

- (A) For the purposes of this section,
 - 1. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
 - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- (B) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (A), (B) and (C) of this section.
1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Public Works Manager, at least ten (10) days before the date of the bypass, if possible.
 2. A user shall submit oral notice to the Public Works Manager of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Public Works Manager may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
 3. Bypass is prohibited, and the Public Works Manager may take an enforcement action against a user for bypass, unless
 - a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c) The user submitted notices required under paragraph (3) of this section.
- (C) The Public Works Manager may approve an anticipated bypass, after considering its adverse effects; if the Public Works Manager determines that it will meet the three conditions listed in paragraph (B) of this section.

SECTION 14 - MISCELLANEOUS PROVISIONS

14.1 Pretreatment Charges and Fees

The City may adopt reasonable charges and fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

- (A) Fees for permit applications including the cost of processing such applications;
- (B) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by industrial users;
- (C) Fees for reviewing and responding to accidental discharge procedures and construction;
- (D) Fees for filing appeals;
- (E) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines and penalties chargeable by the City.

14.2 Sewer Connection Charges Levied and Imposed

- (A) What is a Connection Charge?

All sewer connection charges and any other development-related charges shall be imposed in accordance with the City's most current Systems Development Ordinance and implementing resolutions.

- (B) What the Connection Charge is based on

The service connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a service connection charge shall be levied for the modified portion of the property based upon connection charges in effect at the time of modification.

(C) Abutting a Right-of-Way with Sanitary Service

Any dwelling that is on property abutting any street, alley or right-of-way in which there is located a sanitary sewer of the City of Canby and, that by reason of Ordinance, resolution or motion duly adopted by the City Council, is not required to connect to the sewage system, shall not be subject to the sewer connection charges provided by this Ordinance.

14.3 Rates for Connection Charges

The City Council shall by resolution, establish appropriate rates and methodologies to be charged for connecting to the City sewer system. Such rates shall differentiate between various types of users or activities with discharge into the sewage system.

14.4 Fees for Sewer Service Levied and Imposed

(A) Rates

All users of the City's sewage system shall pay to the City the rates for sewer service as provided by this Ordinance.

(B) Abutting a Row with Service

Any dwelling that is on property abutting any street, alley or right-of-way in which there is located a sanitary sewer of the City of Canby and that, by reason of Ordinance, resolution or motion duly adopted by the City Council, is not required to connect to the sewage system, shall not be subject to the sewer service charges provided by this Ordinance.

(C) When Levied (existing)

When sewer service is initially provided to existing dwellings, said sewer service charge shall first be levied for the month following the first month in which dwellings are permitted to be connected to the sewer.

(D) When Levied (new)

When new dwellings are served by the sewage system, said sewer service charge shall first be levied for the month following the first month in which the dwelling is occupied or utilized by personnel not associated with the construction of the dwelling.

(E) Based on Availability

Sewer service charges are to be levied and imposed based upon the availability of sewer service, and are not dependent upon the owner's schedule for connecting to the sewer system after said system is available.

(F) Minimum Service

The minimum service for an individually billed service shall be equal to the charge for a residential service.

(G) Who is Billed

Sewer service charges shall be billed to any dwelling showing connection to the City sewer and either water use or electric power use.

(H) Property Owner Responsibility

Sewer service charges may be billed to an occupant; however, the property owner shall be ultimately responsible for all sewer service charges to his property.

14.5 Severability and Conflicts with other Ordinances

If any provision of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

To the extent that an inconsistency exists between the terms of this Ordinance and another existing Ordinance, this Ordinance shall be deemed to preempt the other Ordinance and the terms of this Ordinance shall control.

14.6 Emergency Clause

This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall take effect immediately after final reading and enactment by the Canby City Council.

SECTION 15 - EFFECTIVE DATE

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on August 20, 2008, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on September 3, 2008, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at 155 NW 2nd Avenue in Canby, Oregon.

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 3rd day of September, 2008, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder - Pro Tem

Approved as to form: _____
City Attorney

Date

ORDINANCE NO. 1293

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE CHANGE ORDER # 4 WITH PARKER NORTHWEST PAVING COMPANY FOR CONSTRUCTION OF SEQUOIA PARKWAY STAGES 5 & 6 AND TOWNSHIP ROAD STREET IMPROVEMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby has heretofore advertised and received bids for the Sequoia Parkway Stages 5 & 6 and Township Road Street Improvements; and

WHEREAS, the notice of call for bids was duly and regularly published in the Oregon Daily Journal of Commerce on November 27th, 2007; and

WHEREAS, bids were received and opened on December 18th, 2007 at 2:00 pm in the Council Chamber of the Canby City Hall and the low, responsive bidder was Parker NW Paving Company of Oregon City, Oregon; and

WHEREAS, in accordance with the General Provisions for Public Contracting, the Canby City Council, acting as the City's Contract Review Board, met on January 16th, 2008 and awarded a construction contract for the project to Parker NW Paving Company of Oregon City, Oregon in the sum of \$1,159,784.35; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor and City Administrator are hereby authorized and directed to make, execute, and declare in the name of the City of Canby and on its behalf, the attached Change Order No. 4 with Parker Northwest Paving Company of Oregon City, Oregon in the amount of \$41,520.17. A copy of the Change Order No. 4 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.

2ND READING

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, August 6th, 2008; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, August 20th, 2008, after the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2nd Avenue, Canby, Oregon.

Kimberly Scheafer, CMC
City Recorder Pro Tem

PASSED on second and final reading by the Canby City Council at a regular meeting thereof on the 20th day of August, 2008, by the following vote:

YEAS _____

NAYS _____

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder Pro Tem

2ND READING

DATE: August 11, 2008

MEMO TO: Mark Adcock, City Administrator

FROM: Beth Saul, Special Projects Manager

RE: Summary of staff review of LOC Legislative priorities

Mark, at your request I have prepared a summary of today's Management Team discussion of the League of Oregon Cities' legislative priorities. The Mayor requested that we pick our top four, and you led the team in a forced choice process to narrow down the issues that we all agree are the most important for Canby.

The top four choices, in no particular order, are as follows:

- Community Development: A. Recapitalize the Special Public Works and Water/Wastewater fund with a minimum level of funding of \$80 million for local infrastructure projects. *Staff believes this issue is critical to the continued success of Urban Renewal projects and economic development.*
- Finance and Taxation: H. Support new, statutory authority to allow cities to create service districts within city boundaries, establish a permanent property tax levy, and fund specific urban services within the district. *This authority would enable the City to provide dedicated funding for certain services that may now be utilizing five year levies or other unstable funding mechanisms, or to create districts for services that are new or that no longer can be accommodated by the General Fund.*
- Human Resources: O. Initiate legislation to require labor arbitrators to consider the total cost to the employer of salary and benefit awards instead of benefit provided to employees. *This requirement would make arbitration awards more realistic in terms of the employer's ability to afford the cost, rather than only looking at comparables and the amount paid to the employee to determine cost.*
- Transportation: S. Support a city transportation package for preservation funding shortfall (as outlined in the full Transportation Committee recommendation). *The ability to fund transportation infrastructure maintenance is a critical need for Canby and other government agencies, and this issue is one that requires a comprehensive, statewide approach in order to solve the funding and maintenance backlog that is growing larger every year.*

Staff also believes that Issue F: "Support changes to the property tax system that maintains stability and predictability, while providing greater sufficiency for needed city revenue, and minimizing inequities for property owners" is very important, but in terms of practicality the other four choices seem more likely to be achievable in the near term. This issue should be kept in mind as an underlying concept for successful local governance.



P.O. Box 928 • Salem, Oregon 97308
(503) 588-6550 • (800) 452-0338 • Fax: (503) 399-4863
www.orcities.org

July 1, 2008

Dear Chief Administrative Official,

As part of the League's revamped policy process, the Board asked the policy committees to propose specific legislative actions to assist in developing a pro-active legislative agenda. The committees have worked very diligently to develop specific proposed legislative actions, both for the League's legislative policies and for consideration in developing the League's action agenda for the 2009 Legislature. (The committees have also undertaken a review of the Oregon Municipal Policy that will be presented for membership consideration at the 2008 LOC conference in Salem.) The policy committees have identified 24 legislative outcomes that are fully set forth in the sheets following the enclosed input form. Those 24 outcomes span a wide array of issues and differ in the potential resources required to seek their achievement. As the Board adopts a legislative agenda, a prioritization is required in order to focus resources. The final legislative agenda may well encompass all of the committee recommendations, but identify some as priorities for 2009 (and in some cases as multi-year strategies), some for future years, and others as outcomes to be sought as opportunities and circumstances permit.

Each city is being asked to review the recommendations of the policy committees and provide input to the Board as it considers the adoption of a legislative agenda for 2009. Your city's input is sought on the enclosed form. After your city council has had an opportunity to review the 24 proposals and discuss the proposals with staff, please return the form with the top four issues that your city council would like to see the League focus on for the 2009 session. The League Board of Directors will review the results of this survey of member cities, along with the recommendations of the policy committees, as part of its adoption of the legislative policies for 2009 and the focused legislative agenda of outcomes to be actively pursued. Your city's participation in providing its input will assist the Board in creating a focused set of specific legislative targets that reflect the issues of greatest importance for cities. Thank you for your participation and thank you also to the many city officials who gave many hours of their time and expertise to develop the proposals. Rosters of the policy committees can be found on the LOC web site under the tab "About Us" followed by "Policy Committees".

If you have any questions, please contact me or any of the intergovernmental relations staff members.

Sincerely,

Michael J. McCauley
Executive Director

INSTRUCTIONS

1. Each city should submit one form that reflects the consensus opinion of its city council on the top 4 legislative priorities for 2009.
2. Simply place an X in the space to the left of the city's top 4 legislative proposals.
3. The top 4 do not need to be prioritized.
4. Return by August 15th mail, fax, or e-mail to the League
 - a. P.O. Box 928
Salem, Oregon 97308
 - b. Fax (503) 399-4863
 - c. info@orcities.org

Thank you for your participation.

City of:

Please mark 4 boxes with an X that reflect the top 4 issues that your city recommends be the priorities for the League's 2009 legislative agenda.

Community Development

- ☐ A. Recapitalize the Special Public Works and Water/Wastewater fund with a minimum level of funding of \$80 million for local infrastructure projects.
- ☐ B. Fund the Regional Investment Board program with a minimum level of funding of \$15 million- providing an allocation of \$2 million per each of 7 regions, plus a maximum of \$1 million for administrative expenses.

Energy

- ☐ C. Initiate legislation to ensure that cities may collect franchise fees from all electricity providers that utilize city owned rights-of-way.
- ☐ D. Ensure that any carbon reporting legislation introduced be neither burdensome to cities administratively or financially and provides reliable data.
- ☐ E. Support climate change legislation that promotes the use of financially viable clean renewable resources and provides financial and technical assistance to cities for energy efficiency projects.

Finance & Taxation

- ☐ F. Support changes to the property tax system that maintains stability and predictability, while providing greater sufficiency for needed city revenue, and minimizing inequities for property owners.
- ☐ G. Support statutory changes to allow increased flexibility of the use of transient lodging taxes to offset expenditures for tourism related services.
- ☐ H. Support new, statutory authority to allow cities to create service districts within city boundaries, establish a permanent property tax levy, and fund specific urban services within the district.

General Government

- ☐ I. Work towards an ethics policy that protects the interest of the public but is clearly understood by all and does not intrude into the private lives of Oregon's city leaders.
- ☐ J. Initiate legislation to allow local government to restrict the possession of a firearm in publically owned buildings.
- ☐ K. Work with other stakeholders to pass legislation to make it more difficult for thieves to profit from metal theft.
- ☐ L. Pursue legislation that ensures city leaders are represented on the governance structure of the Oregon Wireless Interoperability Network and advocate for a funding level that will allow all public safety first responders to communicate seamlessly.

Human Resources

- ☐ M. Advocate for a funding level for the Employment Relations Board that will allow the Board to resolve cases in a timely manner.
- ☐ N. Amend ORS 243.746(4)(a) to read "Interest and welfare of the public as determined by the governing officials of the jurisdiction"
- ☐ O. Initiate legislation to require labor arbitrators to consider the total cost to the employer of salary and benefit awards instead of benefit provided to employees.
- ☐ P. Work to ensure that labor arbitrators must use the same type and size of jurisdiction as comparables when comparing compensation and benefit packages.

Telecommunications

- ☐ Q. Move to an alternative revenue system for telecommunications providers and oppose preemption of city franchising, rights-of-way and taxing authority.
- ☐ R. Support a statewide broadband policy for Oregon.

Transportation

- ☐ S. Support a city transportation package for preservation funding shortfall (as outlined in the full Transportation Committee recommendation).

Water/Wastewater

- ☐ T. Recapitalize the Agriculture and Community Water Act (SB 1069, 2008 session) - Support the Water Resources Department's Policy Option Package #118. \$5,279,000 General Fund, 2 FTE.
- ☐ U. Establishment of a Water Supply, Conservation, and Reuse Construction Fund - Support the Water Resources Department's Policy Option Package #119. \$50,000,000 Lottery Backed Bonds.
- ☐ V. Climate Change and Basin Yield Analysis - Support the Water Resources Department's Policy Option Package #108. \$470,000 General Fund, 1 FTE.
- ☐ W. Establish a Statewide Drug Takeback Program - Support the Drug Takeback Task Force Recommendations
- ☐ X. Oppose legislative attempts to require end of pipe standards by preempting mixing zones.

LOC Policy Committees' Legislative Recommendations

Priority	Description
Community Development	
A. Recapitalize the Special Public Works and Water/Wastewater fund with a minimum level of funding of \$80 million for local infrastructure projects.	The state's Special Public Works Fund and the Water/Wastewater Fund are used to finance water and sewer systems, public buildings, road construction, downtown revitalization, energy and communications facilities, land acquisition, environmental clean-up, and port facilities. There has not been a significant re-investment by the state in the fund for several biennia, despite growing infrastructure demand.
B. Fund the Regional Investment Board program with a minimum level of funding of \$15 million-providing an allocation of \$2 million per each of 7 regions, plus a maximum of \$1 million for administrative expenses.	The Regional Investment Program, a state-funded regional economic development and diversification program received minimal funding in the past session. The regional boards seek to develop strategies for economic development in each region of the state, focusing on investments that contribute to the creation/retention of jobs and the leverage of short and long term investments. Historical funding amounts have ranged from \$7-22 million per biennium.
Energy	
C. Initiate legislation to ensure that cities may collect franchise fees from all electricity providers that utilize city owned rights-of-way.	In 1999 the Oregon Legislature passed a law to deregulate the electricity market, meaning that large utility customers were allowed to purchase their electricity from an energy provider other than Portland General Electric or Pacific Power and Light. The Legislature had intended to protect city franchise fees by allowing cities to utilize an alternative calculation method for computing franchise fees based on power volume as opposed to gross revenue. An unforeseen flaw in the proscribed calculation method has resulted in significant franchise fee reductions in some Oregon cities.
D. Ensure that any carbon reporting legislation introduced be neither burdensome to cities administratively or financially and provides reliable data.	Legislation requiring carbon emitting entities to report their emissions failed during the 2008 February Special Session but is widely expected to return in 2009. Existing carbon reporting systems in other states have proven to be confusing for filers and may not provide accurate data for policy makers and the public.
E. Support climate change legislation that promotes the use of financially viable clean renewable resources and provides financial and technical assistance to cities for energy efficiency projects.	It is anticipated that that Governor Kulongoski will introduce legislation to promote additional energy efficiency and renewable energy production as well as a carbon "cap-and-trade" system. A cap-and-trade system would establish a maximum limit on carbon emissions but would give credits to entities that produce less than the limit that could be sold to businesses that are unable to or unwilling to reduce their emissions. A portion of the "carbon credit" sales would be placed in a fund to assist with energy efficiency and conservation projects. Making these funds available to cities would allow cities to continue to pursue energy and cost saving projects that benefit all rate and tax payers.

LOC Policy Committees' Legislative Recommendations

Finance & Taxation	
F. Support changes to the property tax system that maintains stability and predictability, while providing greater sufficiency for needed city revenue, and minimizing inequities for property owners.	Local government's ability to raise revenue is severely restricted by Measures 5 and 50, which have also imposed strict limitations on the ability of local governments to respond to changing fiscal conditions and to adequately fund essential services. Modifications to the property tax system may require a long term, multi-session effort, with revisions to the Oregon Revised Statutes and/or the Oregon Constitution.
G. Support statutory changes to allow increased flexibility of the use of transient lodging taxes to offset expenditures for tourism related services.	Many cities incur substantial service expenditures necessitated by out-of-area residents or tourists. This proposal would allow additional use of transient lodging tax revenues to offset expenditures for tourism related services, in addition to the current use of tourism related facilities.
H. Support new, statutory authority to allow cities to create service districts within city boundaries, establish a permanent property tax levy, and fund specific urban services within the district.	Federal funding for major infrastructure improvements has steadily declined for the past several decades. Existing state and local resources barely keep up with the need for replacement infrastructure for existing development, with no consideration to areas that are rapidly urbanizing with new development and needed infrastructure. The formation of city service districts, located solely within city limits, to provide urban services would increase the "tools" cities have to provide needed services.
General Government	
I. Work towards an ethics policy that protects the interest of the public but is clearly understood by all and does not intrude into the private lives of Oregon's city leaders.	Oregon's current ethics laws require public officials to disclose the names of family members to the Oregon Government Ethics Commission and extend gift limits and prohibitions to the family members of public officials. Additionally, gift limits, exemptions and reporting requirements are not clearly understood by public officials or the public at large.
J. Initiate legislation to allow local government to restrict the possession of a firearm in publically owned buildings.	Current law prohibits municipal governments from prohibiting the holders of concealed weapons permits from carrying a weapon into a public building but allows private building owners to prohibit such conduct. The General Government Committee believes that it should be left to the discretion of the city government as to whether or not it should be permissible to carry weapons in public buildings.
K. Work with other stakeholders to pass legislation to make it more difficult for thieves to profit from metal theft.	Metal theft has become a common method for drug addicts to support their addiction and has resulted in significant losses to the utility and construction industries as well as to public works departments. A coalition of industry and public safety stakeholders have proposed legislation that will require scrap metal dealers to mail checks to sellers instead of paying in cash, make it unlawful for scrap buyers to purchase obviously stolen material and require dealers to keep records of transactions and make those records available to police.
L. Pursue legislation that ensures city leaders are represented on the governance structure of the Oregon Wireless Interoperability Network and advocate for a funding level that will allow all public safety first responders to communicate seamlessly.	The Oregon Wireless Interoperability Network (OWIN) is a proposed communication system that will allow all emergency workers to communicate across agency lines. The league endorsed the project in 2006 with the condition that cities be included in the governance structure of OWIN, that subscription to OWIN be voluntary and that OWIN provide service to the entire state.

LOC Policy Committees' Legislative Recommendations

Human Resources	
M. Advocate for a funding level for the Employment Relations Board that will allow the Board to resolve cases in a timely manner.	The ERB is currently understaffed and the pay scale for board members is below the market for labor attorneys. A fully staffed ERB would be able to resolve labor disputes more quickly and improving the salary range would make board positions more attractive to qualified candidates.
N. Amend ORS 243.746(4)(a) to read "Interest and welfare of the public as determined by the governing officials of the jurisdiction"	Labor arbitrators are required to consider the interest and welfare of the public when resolving contract and labor disputes but current state law allows an unelected arbitrator to define what that interest and welfare are.
O. Initiate legislation to require labor arbitrators to consider the total cost to the employer of salary and benefit awards instead of benefit provided to employees.	Current collective bargaining statutes require arbitrators to consider the ability of an employer to pay before awarding a decision on salary and benefit packages but arbitrators typically use the amount paid to an employee to determine cost as opposed the to the total cost to the employer when making such a determination.
P. Work to ensure that labor arbitrators must use the same type and size of jurisdiction as comparables when comparing compensation and benefit packages.	Currently, it is common practice for an arbitrator compare rural cities to large metropolitan special service districts that also reach into rural areas thus inflating personnel costs beyond the ability of a city to pay. Additionally, arbitrators often compare larger Oregon cities to other West Coast cities that have larger populations and higher costs of living. Requiring arbitrators to compare Oregon's smaller and mid-sized cities to other Oregon small and mid-sized cities and allow larger Oregon cities to be compared to cities of similar size and cost of living regardless of what region of the United States they are in would provide a more accurate comparison.
Telecommunications	
Q. Move to an alternative revenue system for telecommunications providers and oppose preemption of city franchising, rights-of-way and taxing authority.	Technology has advanced rapidly in the last decade and will continue to evolve in ways that cities cannot predict. This has led to significant implications for city rights-of-way authority and telecommunications revenues. Cities have experienced an onslaught of challenges to franchising, rights-of-way, and taxing authority through local referrals, state and federal legislation and litigation. Meanwhile, the predominate system of franchising telecommunications providers has not kept pace with technology. In particular, the shift from landline telephones to wireless technologies has resulted in an erosion of telecommunications revenues. To protect city rights-of-way authority and preserve critical telecommunications revenues, cities need to consider moving to an alternative revenue system. The alternative revenue system proposal developed by a task force of city officials is a gross revenues tax specific to telecommunications providers. The League anticipates beginning discussions during the 2009 legislative session, but that this issue would be a multi-session effort. For additional information, please access the "Telecommunications Tool-Kit" located on the Premium section of the League's Web site.
R. Support a statewide broadband policy for Oregon.	Access to broadband services has become essential to Oregon's ability to compete in a global economy. While individual communities have been proactive in pursuing broadband technologies, to ensure Oregon remains competitive, Oregon must undertake a statewide comprehensive approach to meet the infrastructure and service demands of citizens and businesses. The benefits of a statewide broadband policy reach far beyond the economic gains of attracting businesses and workforce productivity to applications that are integral to peoples' quality of life. From applications such as telemedicine to distance learning, implementation of a statewide broadband policy has the unparalleled potential to reach rural and underserved areas—to change how people communicate and provide every Oregonian with the opportunity to participate in the information age.

LOC Policy Committees' Legislative Recommendations

Transportation	
<p>S. Support a city transportation package for preservation funding shortfall that contains:</p> <ul style="list-style-type: none"> ➤ New resources need to be provided to cover a substantial portion of the \$160 million annual shortfall (2007 cost pricing) for city transportation system funding. ➤ The state funding formula for new resources should be distributed on the basis of “50-30-20” – 50 percent to the state, 30 percent to counties, 20 percent to cities. ➤ “Off-the-top” funding proposals – appropriating state highway funds prior to formula distribution – should be avoided as they reduce the ability of cities and counties to meet their existing needs. ➤ Maintaining city authority for creative transportation system funding with continued flexibility on how the funds are used – without referral to voters – is a vital component of the funding scheme. ➤ Index the state fuel tax for inflation or allow for other comparative cost adjustment factor. ➤ Identify new resources for urban and rural transit. ➤ Support the existing constitutional provisions regarding the use of the state highway funds and cost responsibility. ➤ Support the development of new, environmentally-friendly funding sources for maintenance/modernization/operations/multimodal, such as carbon emissions fees, VMT charges, and tolling new or existing 	<p>Well maintained city streets provide vital vehicle, freight, pedestrian, bicycle, and transit connections in our communities. Local roads are falling into disrepair because:</p> <ul style="list-style-type: none"> • The state gas tax has not increased since 1993; • Road and bridge repair costs have increased by 70 percent since 1993; • City revenue from the gas tax is shrinking as city populations grow; • The state has shifted costs to cities to pay for state-highway improvements; and • The property tax limits enacted in the 1990s have forced cities to focus tax dollars on public safety- removing a historic source of local road funding. <p>Cities need legislative action that will provide new revenues and policies that will aid in maintaining and protecting this vital asset. In 2007, it was estimated that the funding gap for municipal maintenance needs is \$160 million per year – and will rise considerably as the cost of oil continues to rise. Cities, counties and the state cannot address the challenges of Oregon’s transportation system alone – we must work together, as partners, to meet those challenges by finding efficiencies, raising revenues and preserving local revenue tools.</p>

LOC Policy Committees' Legislative Recommendations

transportation facilities.	
Water	
T. Recapitalize the Agriculture and Community Water Act (SB 1069, 2008 session) - Support the Water Resources Department's Policy Option Package #118. \$5,279,000 General Fund, 2 FTE.	The legislature passed SB 1069 in the 2008 February session which established a grant fund for the up-front study costs of water supply, conservation, and reuse projects. While the original bill called for \$10 million to be placed in the fund, the Legislature only allocated \$1.25 million. Assuming those funds will be committed in 2008; this priority seeks to recapitalize the fund at \$5 million.
U. Establishment of a Water Supply, Conservation, and Reuse Construction Fund - Support the Water Resources Department's Policy Option Package #119. \$50,000,000 Lottery Backed Bonds.	The Water Resources Department is introducing a Policy Option Package to establish a fund for the construction of water supply, conservation, and reuse projects. The fund would issue both loans and grants for project construction and would be funded through the issuance of \$50 million in lottery backed bonds.
V. Climate Change and Basin Yield Analysis - Support the Water Resources Department's Policy Option Package #108. \$470,000 General Fund, 1 FTE.	The Committee believes it is imperative to gain an understanding of our changing hydrograph. This package seeks to dedicate \$300,000 in research funds to model how surface water hydrographs will change in Oregon's rivers and streams as a result of decreased winter snowpack, early seasonal run-off, and other effects of climate change. This package would also provide funding for one surface water hydrologist to estimate the volume of water per month that runs off of each basin in Oregon. This information will help water providers project their water demands in the future and better understand the effects of climate change.
W. Establish a Statewide Drug Takeback Program - Support the Drug Takeback Task Force Recommendations	The Committee supports a toxics reduction and source prevention approach to reducing bio-accumulative toxins in the environment in lieu of implementing expensive wastewater treatment technologies. One of the areas of concern is pharmaceuticals entering the waste stream. A task force has been working on the potential of developing legislation to institute a drug take-back program based on the model of the electronic waste take-back program instituted by the 2007 legislature. The Task Force is targeting this fall for a timeframe to release the specifics of such a proposal.
X. Oppose legislative attempts to require end of pipe standards by preempting mixing zones.	Mixing zones are zones of dilution for wastewater discharges which allow wastewater treatment plants to meet Clean Water Act permit requirements. Over the last two legislative sessions certain interest groups have introduced legislation to eliminate the use of mixing zones in Oregon. These proposals would require municipal wastewater treatment plant to remove discharges into rivers and streams or implement very expensive, energy intensive technologies. Municipalities have instead focused on toxic reduction and source prevention as the most effective way to remove toxics in the environment.