

AGENDA

CANBY CITY COUNCIL MEETING

January 2, 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
- B. Appreciation Presentation to Retiring Planning Commission Members

2. COMMUNICATIONS

3. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

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

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

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

- A. Approval of Minutes of the December 5, 2007 City Council Regular Meeting
- B. New Wholesale Malt Beverage and Wine Liquor License Application for Pacific Rim Commodities Group Pg. 1
- C. Amended Attachment "A" to Interagency Agreement with Canby Swim Club Pg. 3

7. RESOLUTIONS & ORDINANCES

- A. Res. 969, Adopting an IGA with Canby School District No. 86 for the Purpose of Collecting a Construction Excise Tax on Behalf of the District on New Construction in the City of Canby Pursuant to Oregon Laws 2007 Chapter 829 Pg. 5
- B. Res. 970, Requesting Clackamas County to Surrender Jurisdiction of Approximately 0.27 Miles of NW Territorial Rd. and Approximately 0.48 Miles of S. Township Rd. to the City of Canby Pg. 12

- C. Ord. 1261, Creating and Imposing a Tax on Motor Vehicle Fuel Dealers; Providing for Enforcement, Administration, and Collection of the Tax; and Amending the Canby Municipal Code by Adding a New Chapter 3.40 “Motor Vehicle Fuel Tax” (2nd Reading) Pg. 14
- D. Ord. 1262, Amending the Canby Municipal Code by Adding a New Chapter 3.30, “Street Maintenance Program,” and Requiring Payment of a Street Maintenance Fee Pg. 26
- E. Ord. 1264, Authorizing Contract with Curran-McLeod, Inc. for Engineering Services on the Reconstruction of Approximately 2,500 Lineal Feet of Knights Bridge Rd. Pg. 38
- F. Ord. 1265, Authorizing Contract with Parker Northwest Paving Co. for Construction of Sequoia Parkway Stages 5 & 6 and Township Rd. Street Improvements Pg. 55
- G. Ord. 1266, Authorizing Contract with Canby Sand & Gravel/South County Asphalt for Supplying Rock Product Pg. 66
- H. Ord. 1268, Authorizing Contract with Canby Sand & Gravel/South County Asphalt for Supplying Hot Mix Asphaltic Concrete Materials Pg. 73
- I. Ord. 1269, Ratifying Contract with Peterson Equipment Services LLC for the Purchase of a Mixing Screw Conveyor for the Wastewater Treatment Facility Pg. 78

8. NEW BUSINESS

- A. Discussion Regarding Failure of Measure 3-271 Adopting a Revised Home Rule Charter Pg. 87
- B. Discussion Regarding Construction Excise Tax Pg. 5
- C. Creation of No Parking Area on Easterly Side of N. Redwood St. Beginning at the Northerly Side of NE 11th Avenue and Extending 100’ North Pg. 88

9. CITY ADMINISTRATOR’S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

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

13. ADJOURN

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

Memo

To: Mayor Thompson & Members of City Council
From: Chief Greg A. Kroeplin
CC: Kim Scheafer, General Administration
Date: December 10, 2007
Re: Liquor License Application / Pacific Rim Commodities Group

I have reviewed the attached liquor license application completed by the applicant(s), Keenan Booher and Xiaodong Qui. They will be conducting their business in Canby at 320 NE 19th Avenue, Canby, Oregon.

In addition, I met with the applicant, Keenan Booher, where we discussed laws involving the sale of alcoholic beverages. Mr. Booher told me that he would be working closely with OLCC as it relates to training on pertinent laws involving alcohol related violations and crimes.

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

RECEIVED RECEIVED

Pd \$400 11/30/07 VK

NOV 16 2007 NOV 30 2007

OREGON LIQUOR CONTROL COMMISSION

LIQUOR LICENSE APPLICATION

Take these attached forms to the governing body in which your business is located for Endorsement.

PLEASE PRINT OR TYPE

Application is being made for:

LICENSE TYPES

- ☐ Full On-Premises Sales (\$402.60/yr)
 - ☐ Commercial Establishment
 - ☐ Caterer
 - ☐ Passenger Carrier
 - ☐ Other Public Location
 - ☐ Private Club
- ☐ Limited On-Premises Sales (\$202.60/yr)
- ☐ Off-Premises Sales (\$100/yr)
 - ☐ with Fuel Pumps
- ☐ Brewery Public House (\$252.60)
- ☐ Winery (\$250/yr)
- ☒ Other: WMBW

ACTIONS

- ☐ Change Ownership
- ☒ New Outlet
- ☐ Greater Privilege
- ☐ Additional Privilege
- ☐ Other _____

The city council or county commission:

City of Canby
(name of city or county)

recommends that this license be:

Granted ☐ Denied ☐

By: _____
(signature) (date)

Name: Melody Thompson

Title: Mayor

OLCC USE ONLY

Application Rec'd by: Hudson

Date: 10/16/07

90-day authority: ☐ Yes ☒ No

Applying as:

- ☐ Individuals ☐ Limited Partnership ☐ Corporation ☒ Limited Liability Company

1. Applicant(s): [See SECTION 1 of the Guide]

- ① Keenan Wynn Boohar ③ Pacific Rim Commodities Grp LLC
- ② Xiaodong Liu ④ _____

2. Trade Name (dba): Pacific Rim Commodities Group, LLC

3. Business Location: 320 NE 19th Ave, Canby, Clackamas, Oregon 97013
(number, street, rural route) (city) (county) (state) (ZIP code)

4. Business Mailing Address: 19210 SW Martinazzi Ave #208 Tualatin, Oregon 97062
(PO box, number, street, rural route) (city) (state) (ZIP code)

5. Business Numbers: 503-342-3009 503-342-3009
(phone) (fax)

6. Is the business at this location currently licensed by OLCC? ☐ Yes ☒ No

7. If yes to whom: N/A Type of License: N/A

8. Former Business Name: N/A

9. Will you have a manager? ☐ Yes ☒ No Name: N/A
(manager must fill out an individual history form)

10. What is the local governing body where your business is located? Canby
(name of city or county)

11. Contact person for this application: Keenan Wynn Boohar 503-806-3732
(name) (phone number(s))
19210 SW Martinazzi Ave, #208, Tualatin OR 97062 503-342-3009
(address) (fax number) (e-mail address)

I understand that if my answers are not true and complete, the OLCC may deny my license application.

Applicant(s) Signature(s) and Date:

- ① Keenan Wynn Boohar Date 9/4/07 ③ N/A Date N/A
- ② Xiaodong Liu Date 9/4/07 ④ N/A Date N/A

1-800-452-OLCC (6522)
www.olcc.state.or.us

AMENDED ATTACHMENT "A"
CITY OF CANBY INTERAGENCY AGREEMENT
CANBY SWIM CLUB, INC.

For the budget year 2007-2008 the base cost for operating the Canby Swim Center is \$48.00 per hour. This is the cost to "open the doors." Further, a cost of service study has determined that the cost of servicing the Swim Club is \$15,285 for the year. In Section I, items A through C are options for in-kind service that can be performed to offset the cash portion of this agreement. The Swim Club must notify the City in writing by October 1, 2007 which option(s), if any, they will utilize. The balance will be due in three equal payments December 15, 2007; February 15, 2008; and May 15, 2008.

- I. A. Pool maintenance: Each year the pool closes for extensive maintenance. The Club could provide four people, each subject to the facility manager's approval, for one forty-hour period to assist with this maintenance. This would deduct \$1,440 from the above total.

Corporate sponsorships: Both the Swim Club and the Swim Center could benefit from cultivating sponsorship opportunities in the community, but the Swim Center staff resources have prevented us from providing the legwork necessary for the support of such a venture. The Club could work with Swim Center staff and the Library and Park Director to develop and implement a plan with resulting revenue divided in some manner agreeable to each party.

Distribution of schedules: The club could distribute swim schedules to area clinics for their waiting rooms. This would deduct \$9.00 per hour that will be calculated at each payment due date.

- II. The Canby Swim Club will pay \$300.00, as well as providing their own paper for use of the pool copy machine.
- III The Canby Swim Club may have a fifth swim meet that will affect the Canby Swim Center Schedule.
- IV. The current rate to purchase extra time using the facility is \$48.00 per hour.
- V. The current wages and benefits for lifeguards is \$11.00 per hour.
- VI. The Canby Swim Club may have 10 meets on Saturdays or Sundays that are completed and cleaned up by 12:45pm.

VII. STORAGE SPACE:

The CITY will provide free storage space for the SERVICE AGENCY, as has been done for several years. This storage will be approximately 200 square feet and will be located in a storage shed outside the Swim Center building.

The storage area will be kept neat and orderly by the SERVICE AGENCY. Nothing flammable or of an unsafe nature will be stored. No structural changes can be made to the storage facility without permission of the CITY.

Any keys that are given to the SERVICE AGENCY for access to this building will be the responsibility of the President of the SERVICE AGENCY and will not be given out to anyone other than persons who are authorized to access the storage facility. The Swim Center staff will be provided with a list of authorized persons.

Should the CITY require the storage area for CITY purposes, the SERVICE AGENCY will be notified at least 90 days in advance of the change. The CITY will endeavor to work with the SERVICE AGENCY to find alternative storage space.

VIII. SHARED EQUIPMENT:

The CITY and SERVICE AGENCY share equipment whenever it makes sense to do so. Shared equipment is purchased and maintained on a 50-50 basis. The parties will meet annually during **September** to discuss the shared equipment and plan for maintenance and replacement so that both parties can budget the needed funds. A list of shared equipment will be maintained by both the CITY and the SERVICE AGENCY and updated annually.

SERVICE AGENCY:

Janis Haederman, name

12-10-07, title

DATE:

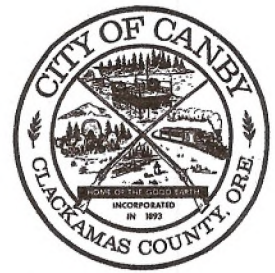
CITY OF

CANBY:

_____,
Mayor

_____,
City Administrator

DATE:



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*
FROM: *John R. Williams, Community Development & Planning Director*
John Kelley, City Attorney
DATE: *December 21, 2007*
THROUGH: *Mark C. Adcock, City Administrator*
RE: *School Construction Excise Tax*

Synopsis

On December 2, the Council directed staff to return with an Intergovernmental Agreement setting terms for the City to collect a Construction Excise Tax on behalf of the Canby School District. Resolution 969 adopts this agreement.

Recommendation

Based on the Council's decision on December 2, staff recommends the City Council adopt Resolution 969.

Background

The new excise tax allows the School District to collect up to \$1 per square foot for new residential construction and \$0.50 per square foot for non-residential construction. For non-residential construction only the excise tax is limited to \$25,000 per building permit or \$25,000 per structure, whichever is less. A variety of different construction types are exempted from the tax (see attached informational sheet).

This tax would thus add about 20%, or \$2,500, to the permit cost of a new 2,500 s.f. house, which currently requires payments of about \$12,750 at our counter. Commercial/industrial project fees would vary, but there are a number of large commercial/industrial projects over 50,000 s.f., such as American Steel, that would pay the \$25,000 maximum. We would try to make clear that revenues go to the School District, but we know customers will inevitably leave our office with the perception that they're paying more money to the City.

The attached intergovernmental agreement keeps the work fairly simple for the City. The School District will prepare forms and information sheets and review all exemption and appeal requests. The City will be responsible for calculating the fee for each project, collecting revenues, and issuing payments quarterly to the District. In exchange, the City will receive 1% of total collected funds (as provided by the state law). Since the City already collects an excise tax, calculating and collecting the new fee should not take too much time and our internal review suggests that 1% may just about cover our costs. This can be tracked and reviewed after implementation.

Attached

- School District's informational handout on the Construction Excise Tax
- Draft Intergovernmental Agreement with the City

Canby School District

Construction Excise Tax

What is the Construction Excise Tax for the Canby School District?

The Oregon Legislature passed a law (SB 1036) that provides a financial tool to help school districts pay for a portion of the cost for new or expanded facilities needed due to growth in the community. The law authorizes a school district, in cooperation with cities and counties, to tax new residential and non-residential development. Specifically, the tax applies to improvements to real property that result in a new structure or additional square footage in an existing structure.

What does the tax pay for?

The excise tax revenue could be used for capital improvements such as acquiring property, construction of facilities, related architect and engineering expenses, and for additional fixtures, furnishings and equipment. The excise revenue would allow the district to purchase and prepare sites for future school facilities, and/or to help defray the cost of new school facilities.

Who has to pay and when?

The tax is required to be paid by the developer or property owner who is developing property in the Canby School District at the time when they wish to have a permit issued by the City. A permit will not be issued unless the tax is paid or unless an approved exemption is submitted on the Exemption Form.

Who is exempt from paying the tax?

The following are exempt from the Construction Excise Tax: (1) Private school improvements; (2) Public improvements as defined in ORS 279A.010; (3) Residential housing that is guaranteed to be affordable (under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80% of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction for residential house); (4) Public or private hospital improvements; (5) Improvements to religious facilities primarily used for worship or education associated with worship; (6) Agricultural building as defined by 455.315; (7) Improvements to real property that result in a new structure or additional square feet totaling 1,000 square feet or less.

How much is the tax?

The tax is \$1 per square foot on residential construction and 50 cents per square foot on non-residential construction. For non-residential construction only, the excise tax is limited to \$25,000 per building permit or \$25,000 per structure, whichever is less.

Is this a permanent tax?

No. The 2007 Act is automatically repealed on January 2, 2018.

Who can I contact for more information?

If you have additional questions, you may contact the Canby School District's Business Manager, David Moore, via e-mail at moored@canby.k12.or.us or by phone: (503) 266-0020.

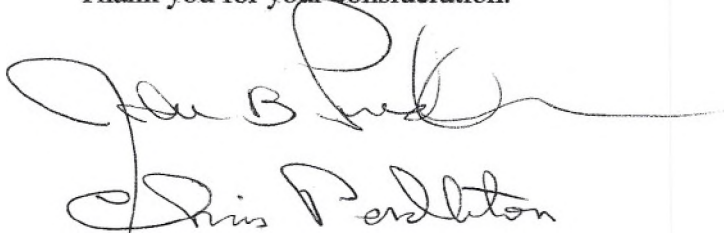
Jack & Chris Pendleton
686 NW 13th Ave.
Canby, OR 97013
November 26, 2007

To: Canby City Council

Re: Collection of the Construction Excise Tax for Schools by the City of Canby

It is our understanding that at the December 5, 2007 meeting the City Council will discuss and perhaps vote on collection of the Construction Excise Tax for Schools by the City of Canby on behalf of the Canby School District. We are writing to express our strong support of the Construction Excise Tax as a means to help to spread the cost of new schools to new development. Our understanding is that the City Council must approve the City of Canby collect to tax on behalf of the school district. We urge the council to adopt a resolution to collect this tax at the earliest date possible so that funds can be collected to provide for construction of the new school facilities that will be needed in the future.

Thank you for your consideration.

The block contains two handwritten signatures in cursive. The top signature is for Jack Pendleton, and the bottom signature is for Chris Pendleton. Both are written in dark ink.

Jack Pendleton
Chris Pendleton

RECEIVED
NOV 26 2007
CITY OF CANBY

RESOLUTION NO. 969

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CANBY SCHOOL DISTRICT NO. 86 (DISTRICT) FOR THE PURPOSE OF COLLECTING A CONSTRUCTION EXCISE TAX (CET) ON BEHALF OF THE DISTRICT ON NEW CONSTRUCTION IN THE CITY OF CANBY PURSUANT TO OREGON LAWS 2007 CHAPTER 829.

WHEREAS, the 2007 Oregon legislature drafted and approved Oregon Laws 2007, Chapter 829 (the "Act") which creates a construction excise tax on new construction throughout the State of Oregon to be paid to school districts to be used to help offset the cost of new education facilities necessitated by new growth in its district; and

WHEREAS, the Act authorizes school districts to enter into an intergovernmental agreements (IGA) with each local government to collect the tax for the district; and

WHEREAS, the Canby School District No. 86 wishes to enter into such an IGA with the City for such purpose and the City is willing to collect the CET on behalf of the District; and

WHEREAS, the District has proposed a form of IGA that is acceptable to the City; now therefore

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

1. That the attached IGA, marked as Exhibit "A" and by this reference incorporated here, by and between the District and the City is hereby adopted. The Mayor is authorized to sign the IGA on behalf of the City.
2. This resolution shall take effect on January 2, 2008.

ADOPTED this 2nd day of January, 2008, by the Canby City Council.

Melody Thompson - Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder - Pro-Tem

CONSTRUCTION EXCISE TAX INTERGOVERNMENTAL AGREEMENT

Date: December 20, 2007

Parties:

Canby School District No. 86, a school district as defined under ORS 330.005. ("School District").

City of Canby, a political subdivision of the State of Oregon. ("City").

Recitals:

A. ORS 190.003-.030 allows units of local government to enter into agreements for performance of any or all functions and activities which such units have authority to perform.

B. In accordance with Oregon Laws 2007, chapter 829 (the "Act"), on December 13, 2007, School District adopted a resolution establishing the Construction Excise Tax (the "CET") throughout its regional jurisdiction (the "Resolution"). The Resolution provides that City shall collect CET and remit payment of the collected CET, minus City's administrative fee, to School District in accordance with this Intergovernmental Agreement ("Agreement").

C. This Agreement establishes, among other things, (i) collection duties and responsibilities, (ii) the specific School District account into which tax revenues are to be deposited and the frequency of such deposits, and (iii) the amount of the administrative fee that City may retain to recoup its expenses in collecting the tax.

Agreement:

1. *Information and Forms.* School District shall create and provide: (i) information, forms, and assistance explaining the CET; (ii) information and forms for CET exemptions and appeals from CET exemption denials; and, (iii) any other forms or information necessary for implementation of the CET.

2. *Staffing.* City shall provide sufficient staff to calculate and collect the CET along with the collection of other permit fees. School District shall provide sufficient staff to review exemption applications and conduct exemption decision appeals.

3. *Collection; Start date.* City shall collect the CET on behalf of the School District for those properties that are within the City limits of the City. City shall begin

assessing and collecting the CET upon (a) receipt of a certified copy of the School District's resolution establishing the CET which is in compliance with the CET law, and (b) receipt of a fully-executed original copy of this IGA. City will continue collection until the CET expires, the underlying statutory authority is repealed, the program is terminated by the School District, or this IGA is terminated by either party hereto. If City determines that the Resolution adopted by School District does not meet the requirements of the Act, City may not collect the CET until such time as the Resolution meets the requirements of the Act.

4. *Exemptions.* School District shall determine the validity of any proposed exemption. If a building permit applicant asserts that the applicant is exempt from the CET and presents a CET exemption form signed by the School District, the City will recognize the exemption.

5. *Remittance.* Following the effective date of this Agreement, City shall pay School District 99% of the CET collected by the City. City shall make CET payments quarterly and no later than thirty (30) days after the end of each quarter.

6. *Failure to Pay CET.* Construction taxes shall be paid by the person undertaking construction at the time that the permit authorizing the construction is issued. If a person refuses or fails to pay the CET when due, City shall not issue a permit authorizing construction. In no event shall City be liable for failure to collect CET when due.

7. *Records.* City shall make all records related to building permit activity, CET collections, and CET exemptions available to School District or its designated auditors, as necessary for School District to audit CET collections.

8. *Administrative Fee.* As full consideration for the above described services, City shall be entitled to 1% of the CET collected by the City.

9. *Successors and Assigns.* This Agreement is binding on and inures to the benefit of the parties and their successors, and assigns. Except with the other party's prior written consent, a party may not assign any rights or delegate any duties under this Agreement.

10. *Amendment.* This Agreement may be amended only by an instrument in writing executed by all the parties.

11. *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

12. *Waiver.* A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor

shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

13. *Time is of the Essence.* From time to time, each of the parties shall execute, acknowledge, and deliver any instruments or documents necessary to carry out the purposes of this Agreement. Time is of the essence for each and every provision of this Agreement.

14. *No Third-Party Beneficiaries.* Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

15. *Effective Date.* This Agreement shall become effective upon the approval of School District's Board of Directors and the City Council.

16. *Other Agreements.* This Agreement does not affect or alter any other agreements between School District and City.

17. *School District's Defense and Indemnification.* School District agrees to indemnify, hold harmless, reimburse and defend City, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of School District's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of School District, its employees, subconsultants, or anyone for whose acts School District is responsible.

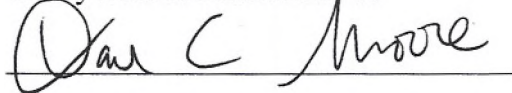
18. *City's Defense and Indemnification.* City agrees to indemnify, hold harmless, reimburse and defend School District, and its officers, agents and employees, from, for and against all claims, suits, actions, damages, and expenses, including but not limited to attorneys' fees, related to or arising out of City's performance of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of City, its employees, subconsultants, or anyone for whose acts City is responsible.

19. *Termination.* Either party may terminate this Agreement with or without cause five business days after delivering notice of termination to the other party.

Dated this 20TH day of DECEMBER 2008 Dated this ____ day of ____ 2008

Canby School District No. 86

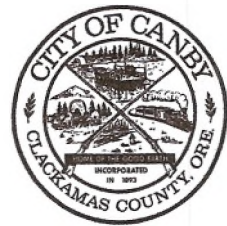
Canby City Council



By: DAVID MOORE

By Chair _____

Its: BUSINESS MANAGER



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*
FROM: *John R. Williams, Community Development & Planning Director*
DATE: *December 21, 2007*
THROUGH: *Mark C. Adcock, City Administrator*

Issue

Resolution 970, to transfer parts of NW Territorial Road and S. Township Road from county to city jurisdiction.

Synopsis

S. Township Road lies within the Canby Pioneer Industrial Park, and is scheduled for improvement by American Steel and by the URD as part of the Sequoia Parkway project. In order to qualify for State of Oregon financing, we must have jurisdiction of the road. NW Territorial is undergoing development and we are having difficulties with permitting due to conflicts between City and County road standards.

Recommendation

Staff recommends that the Council approve Resolution 970.

Rationale

Our agreement with Clackamas County allows road transfers when pavement surface is fully improved, or when funds are transferred to cover needed improvements. Both road surfaces have been inspected and approved for transfer by the Canby Public Works Department. The transfer of NW Territorial Road will be accompanied by a \$9,625.00 payment to the City to cover approximately 620 lineal feet of needed road improvements.

Development is occurring along both of these roads, and has been difficult for developers due to conflicts between the County's rural road standards and our more urban standards. We would prefer to be in control of the road for permitting and design purposes as these actions take place.

The transfer on Township Road is required immediately in order for the City's loan application for Sequoia Parkway and Township improvements to proceed. This must be approved on January 2 or the project timeline will be impacted.

The down side, of course, is that we will be responsible for pavement maintenance on both of these roads. But on the whole, staff believes that Canby should eventually have jurisdiction over all roads (except 99E) within City limits. This would clear up jurisdictional issues relating to construction standards, access limitations, and maintenance responsibilities. The County does not prioritize maintenance on roads within City limits.

Background

The proposed transfer on Township extends from the RR tracks to Mulino Road. The transfer on NW Territorial extends from just west of Holly to Birch Street.

Option 1. Do not accept jurisdiction of these roads. This will save the city maintenance costs in the future but may make it more difficult to quickly make needed infrastructure improvements for the Pioneer Industrial Park.

Attached Resolution 970

RESOLUTION NO. 970

A RESOLUTION REQUESTING CLACKAMAS COUNTY TO SURRENDER JURISDICTION OF APPROXIMATELY 0.27 MILES OF NW TERRITORIAL ROAD AND APPROXIMATELY 0.48 MILES OF S. TOWNSHIP ROAD TO THE CITY OF CANBY.

WHEREAS, development in Canby will require widening and improvement of certain portions of S. Township Road and NW Territorial Road; and

WHEREAS, the City Council has determined that it would be advantageous to have local control over the design and permitting of these improvements since the roads and development will be within the City of Canby; and

WHEREAS, S. Township Road is improved to acceptable standards for jurisdictional transfer and will be further improved through development of the Canby Pioneer Industrial Park; and

WHEREAS, NW Territorial Road requires improvements valued at \$9,625.00 and Clackamas County has agreed to transfer this amount to the City per the existing agreement between the County and City governing jurisdictional transfers; and

WHEREAS, pursuant to ORS 373.270(6)(a), the City Council may initiate the surrender of county jurisdiction over a county road by passage of appropriate municipal legislation;

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

- (1) Clackamas County is hereby requested to surrender jurisdiction over S. Township Road from Mulino Road west to the railroad tracks, a distance of approximately 0.48 miles.
- (2) Clackamas County is hereby requested to surrender jurisdiction over NW Territorial Road from the current end of County jurisdiction just west of Holly Street to Birch Street, a distance of approximately 0.27 miles.

This resolution will take effect on January 2, 2008.

ADOPTED this 2nd day of January, 2008 by the Canby City Council.

Melody Thompson, Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder, Pro-Tem

ORDINANCE NO. 1261

AN ORDINANCE CREATING AND IMPOSING A TAX ON MOTOR VEHICLE FUEL DEALERS; PROVIDING FOR ENFORCEMENT, ADMINISTRATION, AND COLLECTION OF THE TAX; AND AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.40, "MOTOR VEHICLE FUEL TAX."

WHEREAS, revenues from existing sources, including the State Motor Fuel Tax and the City's Construction Excise Tax, are not adequate to maintain the City of Canby's street system; and

WHEREAS, the condition of the City of Canby's street system has been declining each year as demonstrated by detailed inventories performed in 2000, 2002, and 2005; and

WHEREAS, poorly maintained streets create a variety of problems including increased wear on vehicles and increased safety hazards; and

WHEREAS, regular maintenance of streets is cost-effective for the City and for citizens because deteriorated streets are expensive to repair and maintain and cause increased wear on vehicles; and

WHEREAS, a well-maintained street system provides for increased safety, supports property value appreciation, prolongs the life of public and private vehicles, and contributes to a more attractive community; and

WHEREAS, the City of Canby has prepared a Street Maintenance Program, attached as Exhibit A, working with a citizen Task Force and professional consultants, to address these issues; and

WHEREAS, additional funding is required in order to fund increased maintenance of the City of Canby's street system; and

WHEREAS, Canby is an Oregon home-rule municipal corporation having the authority and power under the terms of its Charter to exercise all the powers and authority that the Constitution, statutes, and common law of the United States and Oregon expressly or implicitly grant or allow as though each such power was specifically enumerated therein; and

WHEREAS, the City's authority and power includes the authority to impose a tax on the sale of motor vehicle fuel sold within the City limits of Canby; and

WHEREAS, the City Council wishes to exercise that power and to limit the use of any revenues generated by the tax to purposes associated with the administration, construction, reconstruction, improvement, repair, maintenance, operation, and use of the public highways, streets, and roads within the City limits of Canby; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby's Municipal Code is amended by adding a new Chapter 3.40, "Motor Vehicle Fuel Tax," to read as shown in the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage. The taxation imposed by Section 1 shall commence July 1, 2008.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, December 5, 2007; ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 2, 2008, commencing at the hour of 7:30 pm at the Council Meeting Chambers at the Canby City Hall, 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 2nd day of January, 2008, by the following vote:

YEAS _____

NAYS _____

Melody Thompson
Mayor

ATTEST:

Kimberly Scheafer, CMC
City Recorder Pro-Tem

Chapter 3.40
MOTOR VEHICLE FUEL TAX

Sections:

3.40.020	Definitions
3.40.030	Tax Imposed
3.40.040	Amount and Payment
3.40.050	Permit Requirements
3.40.060	Permit Applications and Issuance
3.40.070	Failure to Secure Permit
3.40.080	Revocation of Permit
3.40.090	Cancellation of Permit
3.40.100	Remedies Cumulative
3.40.110	Payment of Tax and Delinquency
3.40.120	Monthly Statement of Dealer and Fuel Handler
3.40.130	Failure to File Monthly Statement
3.40.140	Billing Purchasers
3.40.150	Failure to Provide Invoice or Delivery Tag
3.40.160	Transporting Motor Vehicle Fuel in Bulk
3.40.170	Exemption of Export Fuel
3.40.180	Sales to Armed Forces Exempted
3.40.190	Fuel in Vehicle Coming into City Not Taxed
3.40.200	Refunds
3.40.210	Examination and Investigations
3.40.220	Limitation on Credit for Refund or Overpayment and on Assessment of Additional Tax
3.40.230	Examining Books and Accounts of Carrier of Motor Vehicle Fuel
3.40.240	Records to be Kept by Dealers and Fuel Handlers
3.40.250	Records to be Kept Three Years
3.40.260	Use of Tax Revenues
3.40.270	Administration
3.40.280	Severability

3.40.020 Definitions

As used in this chapter, unless the context requires otherwise:

(A) "City" means City of Canby and any person, agency or other entity authorized by the City to act as its agent related to administration of the Motor Vehicle Fuel Tax Ordinance or collection of the Motor vehicle fuel tax.

(B) "Dealer" means any person who:(1) Supplies or imports motor vehicle fuel for sale, use or distribution in, and after the same reaches the City, but "dealer" does not include any person who imports into the City motor vehicle

fuel in quantities of 500 gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City; or (2) Produces, refines, manufactures or compounds motor vehicle fuels in the City for use, distribution or sale in the City; or (3) Acquires in the City for sale, use or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

(C) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

(D) "Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(E) "Motor Vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

(F) "Motor Vehicle Fuel" Includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

(G) "Person" includes every natural person, association, firm, partnership, or corporation.

(H) "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

3.40.030 Tax Imposed

A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Canby. The City of Canby motor vehicle fuel tax imposed shall be paid monthly to the City.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(B) A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City, upon the sale, use or distribution of the motor vehicle fuel.

3.40.040 Amount and Payment

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the City, in the sale, use or distribution of motor vehicle fuel, shall: (1) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the City as well as all such fuel sold, used or distributed in the City by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month. (2) Pay a motor vehicle fuel tax computed on the basis of three (3.0) cents per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 3.40.200, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.40.050 Permit Requirements

No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

3.40.060 Permit Applications and Issuance

(A) Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing: (1) The business name under which the dealer or fuel-handler is transacting business. (2) The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon. (3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

(D) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.

(E) The City Recorder's Office shall keep on file a copy of all applications and/or permits.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

3.40.070 Failure to Secure Permit

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(B) The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.

(C) Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.40.060, shall be assessed a penalty of \$250.00 unless modified by Section 3.40.270(a), determined by the City Manager or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the City in the amount of the penalty therein stated.

(D) Any tax or penalty so assessed may be collected in the manner prescribed in Section 3.40.110 with reference to delinquency in payment of the tax or by Court action.

3.40.080 Revocation of Permit

The City shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this Ordinance. The City shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

3.40.090 Cancellation of Permit

(A) The City may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

3.40.100 Remedies Cumulative

Except as otherwise provided in Sections 3.40.110 and 3.40.130, the remedies provided in Sections 3.40.070, 3.40.080, and 3.04.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

3.40.110 Payment of Tax and Delinquency

(A) The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer or fuel-handler therefor.

(B) Except as provided in subsection (D) of this section, to any motor vehicle fuel tax not paid as required by subsection (A) of this section, there shall be added a penalty of one percent (1.0%) of such motor vehicle fuel tax.

(C) Except as provided in subsection (D) of this section, if the tax and penalty required by subsection (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this section.

(D) If the City, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (B) and (C) of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.40.070 has been assessed and paid.

(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(F) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City, as required herein.

3.40.120 Monthly Statement of Dealer and Fuel-Handler

Unless modified by Section 3.40.270(b), every dealer and fuel-handler in motor vehicle fuel shall render to the City, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

3.40.130 Failure to File Monthly Statement

If any dealer or fuel-handler fails to file the report required by Section 3.40.120, the City, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The City, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of \$50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City is prima facie evidence of the facts as shown.

3.40.140 Billing Purchasers

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

3.40.150 Failure to Provide Invoice or Delivery Tag

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless

the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

3.40.160 Transporting Motor Vehicle Fuel in Bulk

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the City with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

3.40.170 Exemption of Export Fuel

(A) The license tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on motor vehicle fuel: (1) Exported from the City by a dealer; or (2) Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.

(B) In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the City an export certificate in such form as shall be prescribed, prepared and furnished by the City, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the City and the dealer from whom the motor vehicle fuel was originally purchased of his act.

(E) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.

(F) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.40.180 Sales to Armed Forces Exempted

The motor vehicle fuel tax imposed by Sections 3.40.030 and 3.40.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the City; but every dealer shall be required to report such sales to the City, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.40.190 Fuel in Vehicles Coming Into City Not Taxed

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3.40.030 and 3.40.040, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

3.40.200 Refunds

Refunds will be made pursuant to ORS. 319.280 to 319.320.

3.40.210 Examination and Investigations

The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City pursuant to the

requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as maybe necessary to correct the errors by its examinations or investigations.

3.40.220 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax

(A) Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

(B) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

3.40.230 Examining Books and Accounts of Carrier Motor Vehicle Fuel

The City or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this ordinance.

3.40.240 Records to be Kept by Dealers and Fuel Handlers

Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City or its authorized officers or agents.

3.40.250 Records to be Kept Three Years

Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or its duly authorized agents for all travel, lodging, and related expenses

incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

3.40.260 Use of Tax Revenues

(A) The City Administrator shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, and maintenance of public highways, roads and streets within the City of Canby.

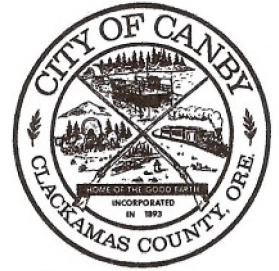
(D) The net revenue shall be used for the street maintenance program established under Chapter 3.30.

3.40.270 Administration

The City Administrator or his designate is responsible for administering this ordinance. In addition, the City Administrator may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply: (a) The fuel handler's penalty of Section 3.40.070(C) shall be reduced to \$100.00. And if the Division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 3.40.070 and this section may be waived. (b) The fuel handler's monthly reporting requirements of Section 3.40.120 and 3.40.130 shall be waived.

3.40.280 Severability

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.



M E M O R A N D U M

TO: *Honorable Mayor Thompson and City Council*
FROM: *John R. Williams, Community Development & Planning Director*
DATE: *December 10, 2007*
THROUGH: *Mark C. Adcock, City Administrator*
RE: *Revised Ordinance 1262*

Synopsis

The City Council held a hearing on Ordinances 1261 and 1262 on December 5. The Mayor & Council approved Ordinance 1261, creating a local Motor Vehicle Fuel Tax, on first reading. Staff was directed to return with several changes to Ordinance 1262, creating a Street Maintenance Fee.

Recommendation

Based on previous Council direction, staff recommends that the City Council adopt Ordinance 1262.

Rationale

Following the Council's December 5 hearing, staff was directed to bring Ordinance 1262 back for first reading with the following changes:

- Delete the Street Maintenance Advisory Committee proposed by the Task Force. The work of this Committee will now be done by the City Council and Budget Committee.
- Remove reference to a street cutting moratorium in Section 3.30.030(D). Instead, staff will work to toughen the City's street repair regulations.

Exhibit A of Ordinance 1262 has been revised accordingly. If you have any questions, please contact me.

ORDINANCE NO. 1262

AN ORDINANCE AMENDING THE CANBY MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.30, "STREET MAINTENANCE PROGRAM," AND REQUIRING PAYMENT OF A STREET MAINTENANCE FEE.

WHEREAS, revenues from existing sources, including the State Motor Fuel Tax and the City's Construction Excise Tax, are not adequate to maintain the City of Canby's street system; and

WHEREAS, the condition of the City of Canby's street system has been declining each year as demonstrated by detailed inventories performed in 2000, 2002, and 2005; and

WHEREAS, poorly maintained streets create a variety of problems including increased wear on vehicles and increased safety hazards; and

WHEREAS, regular maintenance of streets is cost-effective for the City and for citizens because deteriorated streets are expensive to repair and maintain and cause increased wear on vehicles; and

WHEREAS, a well-maintained street system provides for increased safety, supports property value appreciation, prolongs the life of public and private vehicles, and contributes to a more attractive community; and

WHEREAS, the City of Canby has prepared a Street Maintenance Program, attached as Exhibit A, working with a citizen Task Force and professional consultants, to address these issues; and

WHEREAS, additional funding is required in order to fund increased maintenance of the City of Canby's street system; now therefore

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The City of Canby's Municipal Code is amended by adding a new Chapter 3.30, "Street Maintenance Program," to read as shown in the attached Exhibit A.

Section 2. This ordinance shall take effect 30 days after passage. The fee imposed by Section 1 shall commence July 1, 2008.

SUBMITTED to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, January 2, 2008; ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, January 16,