

AGENDA

CANBY CITY COUNCIL MEETING

April 5, 2006, 7:30 P.M.

Council Chambers

155 NW 2nd Avenue

Mayor Melody Thompson

Council President Teresa Blackwell

Councilor Randy Carson

Councilor Walt Daniels

Councilor Roger Harris

Councilor Wayne Oliver

WORK SESSION

6:30 P.M.

City Hall Conference Room

182 N Holly

The City Council will be meeting in a work session to discuss a new police facility.

CITY COUNCIL MEETING

1. CALL TO ORDER

- A. Pledge of Allegiance and Moment of Silence
- B. Swearing In of New City Councilor
- C. Promotional Ceremony for Police Lieutenant

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 Accounts Payable \$455,415.55
- B. Approval of Minutes of the March 6, 2006 City Council Work Session
- C. Approval of Minutes of the March 15, 2006 City Council Work Session, Regular Meeting & Executive Session
- D. IGA for Mutual Aid, Mutual Assistance, and Interagency Cooperation Among Law Enforcement Agencies Located in Clackamas County, Oregon

Pg. 1

7. RESOLUTIONS & ORDINANCES

- A. Res. 919, Authorizing City to Apply for Local Government Grant from the Oregon Parks and Recreation Department for Maple Street Park Pg. 9

8. NEW BUSINESS

- A. Discussion Regarding Basketball Hoops in Public Right-of-Way Pg. 11
B. Discussion Regarding Compensation for Municipal Court Judge

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. EXECUTIVE SESSION: ORS 192.660(2)(d) Labor Negotiations and 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 and Canby City Council
From: Chief Greg A. Kroeplin
CC: Mark Adcock, City Administrator
Date: March 29, 2006
Re: Staff Report / Intergovernmental Agreement

Issue: This Agreement is between those participating agencies whose names appear at the end of this Agreement concerning mutual aid in critical law enforcement incidents.

Background: Emergency situations often require augmented law enforcement capabilities to restore order or assist victims. The agency's mutual aid agreement should provide all the information necessary to initiate mutual aid activities either on behalf of the agency or at the request of a neighboring law enforcement agency.

Recommendation: Staff recommends that the Mayor sign the attached Agreement on behalf of the City of Canby.

Intergovernmental Agreement for Mutual Aid, Mutual Assistance, And Interagency Cooperation Among Law Enforcement Agencies Located in Clackamas County, Oregon

This Intergovernmental Agreement is made and entered into by and among the undersigned units of local government located in Clackamas County, Oregon, and additional Oregon law enforcement agencies as may be added.

WHEREAS, the parties desire to establish an accepted means to coordinate the efficient and effective delivery of mutual aid and mutual assistance between and among their law enforcement agencies, and;

WHEREAS, the parties desire to provide mutual aid and mutual assistance to one another at a reasonable cost by eliminating duplication where feasible and making the most efficient and effective use of their resources; and

WHEREAS, the parties desire to provide for an efficient system of implementing and coordinating interagency cooperation between their law enforcement agencies;

NOW, THEREFORE, under authority of Chapter 190, Oregon Revised Statutes, the parties agree as follows:

1. **Definitions:** The following definitions shall be used in construing the following terms used in this agreement.

Agency: A public body as defined in ORS 30.260(4)(b) or 30.260(4)(c).

Mutual Aid: The provision of additional personnel, equipment, or expertise by one law enforcement agency for the primary benefit of another law enforcement agency to assist in responding to a situation and the personnel responding act under the direction and control of the requesting agency.

The term includes, but is not limited to, the provision of additional personnel, equipment, or expertise by one law enforcement agency to another law enforcement agency in relation to major crimes investigation and/or the enforcement of narcotics laws, as provided in any memorandum of understanding agreed to by the undersigned participating agencies, so long as the terms of the memorandum of understanding are consistent with the terms of this Agreement.

- C. Mutual Assistance: The provision of additional personnel, equipment, or expertise on an occasional basis such as assisting another agency with

routine calls for service or to provide a cover car. Mutual Assistance includes, but is not necessarily limited to, those situations where one agency requests a second agency handle a call for service in an adjoining jurisdiction due to a shortage of personnel in that jurisdiction, or a request to provide a cover officer. An officer providing Mutual Assistance shall remain under the supervision and control of his or her own agency, and shall not be under the direction or control of the agency to whom the Mutual Assistance is provided.

Requesting Agency: The agency requesting mutual aid.

Police Officer, Peace Officer, General Authority Oregon Police: Officer means a full-time, fully compensated police officer commissioned by the State of Oregon or any full-time, fully compensated police officer commissioned by a public agency or unit of local government of the State of Oregon to enforce the criminal laws of Oregon and includes the definitions contained or employed on ORS 181.610 and ORS 190.472, as now enacted or hereafter amended.

2. **Mutual Aid - Authority to Request, Grant, Refuse, or Terminate Aid**
Every police officer of every law enforcement agency participating in this agreement has the authority to request mutual aid, to grant or refuse a request for mutual aid, and to terminate the provision of mutual aid once granted.

An agency may have internal procedures or regulations that control the exercise of the authority granted by this section so long as the procedures or regulations do not unduly hinder the ability of an agency to make or respond to a request for mutual aid.

Pursuant to ORS 133.235, peace officers have statutory authority to act anywhere within the State of Oregon, regardless of whether the offense occurs within their primary jurisdiction.

3. **Mutual Aid -Procedure to Request, Grant, Refuse, or Terminate**
A police officer of the requesting agency who has authority to request mutual aid must make the request for mutual aid to a police officer of the responding agency who has the authority to grant a request for mutual aid.

The responding agency may grant or deny, in whole or in part, the request to supply aid to the requesting agency.

A police officer of the requesting agency may relieve all or part of the personnel or equipment of the responding agency from mutual aid duty if, in the opinion of the officer of the requesting agency, the personnel or equipment is no longer needed in the requesting agency's jurisdiction.

4. Mutual Aid - Control and Direction of Personnel and Equipment

Once the responding agency decides to supply aid to a requesting agency, then the requesting agency becomes fully responsible for the direction and control of the aid provided. This responsibility shall continue until the requesting agency terminates its request for aid or until the responding agency recalls the aid or withdraws from providing further aid to the responding agency.

The requesting agency shall designate an incident commander who shall be in command of the scene. The personnel and equipment of the responding agency shall be under the direction and control of the requesting agency until the requesting agency relieves the responding agency or the responding agency withdraws assistance. The incident supervisor shall designate radio channels and all agencies will follow either Clackamas Communications or Lake Oswego Communications radio procedures.

If the request for mutual aid involves an Interagency Team, the Team Leader will report to the incident commander for directions as to where and when the team should be deployed, and any rules of engagement. The Incident Commander and Team Leader shall confer regarding the team's mission and its objectives. After agreeing upon the mission, the Team Leader shall deploy the team to accomplish the mission. Notwithstanding any other provision of this agreement, the Team Leader shall retain supervision of the team at all times and shall make decisions regarding tactical deployment of the team, however the overall control and direction for the incident remains with the requesting agency. If the Incident Commander and Team Leader cannot agree upon the deployment of the team, either one may terminate the provision of mutual aid and withdraw or relieve the team.

If the request for mutual aid involves the request for a special tactics team or special skills team, however that team may be named, then all members of the team are to be considered as agents of the requesting agency for purposes of the Oregon Tort Claims Act, except as otherwise set forth in this document. The purpose of this provision is to require the requesting agency to defend and indemnify any such team in the event of civil litigation arising from the actions of the team consistent with Section 5 of this agreement.

The senior officer of the responding agency or the Team Leader of an Interagency Team may recall all or part of the personnel or equipment as needed. The senior officer of the responding agency or the Team Leader of an Interagency Team shall withdraw from an incident if so directed by the incident commander.

5. Mutual Aid - Liability and Indemnity

A responding agency's refusal to provide mutual aid to a requesting agency, or a responding agency's recall of mutual aid already provided to a requesting agency,

shall not be a basis upon which the requesting agency may impose liability for damages upon the responding agency.

The responding agencies employees shall be considered agents of the requesting agency for purposes of the Oregon Tort Claims Act, during such times the responding agency's employees are providing mutual aid under this Agreement. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, the requesting agency agrees to defend and indemnify the responding agency and its employees for any liability claims, actions, suits, or proceedings brought by a third party and arising from the provision of mutual aid under this Agreement.

6. Mutual Aid - Workers compensation

Each agency shall remain solely responsible for workers' compensation claims by its employees, notwithstanding that the injury complained of occurs while under the supervision and control of the requesting agency. Each agency will maintain worker's compensation coverage or self-insurance coverage on its personnel while they are providing assistance pursuant to this agreement. Each agency agrees not to bring any claim, action, suit, or proceeding against any agency involved in requesting or providing mutual aid to recover the cost of worker's compensation benefits paid to employees, volunteers, or their dependents, even if the injuries were caused wholly or partially by the negligence of any other agency or its officers, employees, or volunteers.

7. Mutual Aid - Finance, Costs, and Accounting

Each responding agency shall pay all wages and benefits due any of its personnel, including overtime pay, workers' compensation benefits, and death benefits, as if those employees were on duty working directly for the agency by which he or she is employed.

Each responding agency shall pay for the ordinary wear and tear and routine maintenance of its equipment. Additionally, each responding agency shall pay for the repair or replacement of its own property, if the property is damaged by the sole fault of an employee of the responding agency.

Expenses incurred in the nature of travel, meals and lodging, and other expenses not otherwise specifically mentioned here shall be paid by one or more of the participating agencies in a manner determined on a case-by-case basis.

If a requesting agency needs mutual aid for an emergency event, such as a flood, earthquake, or other natural disaster, the requesting agency shall reimburse the responding agency for costs associated with providing the mutual aid, including wages, benefits, and overtime, if the responding agency provides mutual aid for more than twenty-four hours on any incident unless otherwise agreed to in advance.

8. Mutual Assistance - liability

Notwithstanding any other provision of this agreement, providing Mutual Assistance shall not be a basis for one agency imposing liability upon another agency. Each agency shall retain supervision and control of its own officers at all times during the requesting, receiving, or providing of Mutual Assistance. No agency requesting, receiving, or providing Mutual Assistance shall be liable for the acts and omissions of any other agency as a result of requesting, receiving, or providing Mutual Assistance.

9. Commencement and Duration of Agreement

This agreement shall take effect when it has been signed by more than one of the parties to it. The agreement shall be reviewed in January of every odd year.

10. Additional Parties

Any Oregon law enforcement agency not a party to this agreement, when it first becomes effective, may become a party to it by signing the agreement after being authorized to do so by its governing body. Upon the signing of the agreement by the additional party, the agreement shall become binding among all the parties that have signed the agreement.

11. Termination, Suspension, or Withdrawal from Agreement

Upon mutual consent of all the parties, this agreement may be amended or terminated at any time. Any party may withdraw from this agreement upon giving written notice to the other participating agencies, provided that such notice shall not be given while the agency seeking to withdraw is actively receiving mutual aid from any other participating agency.

12. Waiver

The failure of any party to enforce a provision of this agreement shall not constitute a waiver by it of that or any other provision.

13. Captions

Captions and heading used in this agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of the agreement.

14. Partial Invalidity

Whenever possible, each provision of this agreement shall be interpreted in such a way as to be effective and valid under applicable law. If any provision of this agreement is adjudged invalid, such adjudication shall not affect the remainder of such provision or the remaining provisions of this agreement, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this agreement.

15. Amendments

Only a written instrument, executed by all of the parties to it, may amend this agreement.

16. Resolution of Disputes

Resolution of any dispute or disagreement concerning application of any provision of this agreement shall be resolved according to the provisions of ORS Chapter 190.

17. Signatories' Authority to Enter into Agreement

Every person signing this agreement hereby represents to all the others that they are duly authorized by their unit of local government to enter into this agreement.

IN WITNESS WHEREOF the parties, by the signatures of their authorized representatives, have executed this agreement effective on the date shown below each signature.

City of

By: _____

Printed Name: Melody Thompson

Title: Mayor

Date: April 5, 2006

City of

By: _____

Printed Name: _____

Title: _____

Date: _____

City of

By: _____

Printed Name: _____

Title: _____

Date: _____

City of

By: _____

Printed Name: _____

Title: _____

Date: _____

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Date: _____

City of

By: _____

Printed Name: _____

Title: _____

Date: _____

City of

By: _____

Printed Name: _____

Title: _____

Date: _____

County

By: _____

Printed Name: _____

Title : _____

Date: _____

DATE: March 28, 2006

MEMO TO: Honorable Mayor Thompson and City Councilors

FROM: Beth Saul, Library and Parks Director

RE: Resolution #919, State Grant Application

Through: Mark Adcock, City Administrator

Issue:

An application is being prepared for the Oregon State Parks Department Local Grant program, and one requirement is a resolution of support from the local governing body. This grant proposal is to build a new restroom/concession building in Maple Street Park, and thanks to the partnership grant from Clackamas County there is enough matching money for this project.

Recommendation:

Staff recommends approval of Resolution #919 so that the grant application packet can be completed and sent to the Oregon State Parks Department by the April 14, 2006 deadline for consideration.

Background:

Maple Street Park is nearly 30 years old and has been enthusiastically used by the Canby community during its entire existence and is showing its age. The Park and Recreation Advisory Board worked with the various stakeholders and neighbors over two years ago to develop a plan to renovate the park. Last year the sports fields were renovated through a local grant from Oregon State Parks matched by the Parks Restoration Fund. The next phase is to raze the existing concession stand and restroom and build a new combined facility to meet current ADA standards and maintenance standards.

Budget Impact:

The Park Restoration fund in the Capital Reserve combined with the County partnership grant is sufficient for the match of up to \$90,000 towards this project. The present estimate is that the project will total around \$175,000.

THIS HAS BEEN REVIEWED
BY THE FINANCE DIRECTOR

C. Seifried 9

RESOLUTION NO. 919

A RESOLUTION AUTHORIZING THE CITY OF CANBY TO APPLY FOR A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR MAPLE STREET PARK AND DELEGATING AUTHORITY TO THE CITY ADMINISTRATOR TO SIGN THE APPLICATION.

WHEREAS, the Oregon Parks and Recreation Department is accepting applications for the Local Government Grant Program; and

WHEREAS, the City of Canby desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation acquisitions, improvements and enhancements; and

WHEREAS, the Parks and Recreation Advisory Committee, Budget Committee, City Council, and Staff have identified replacement of the restroom/concession facility at Maple Street Park as a high priority need in the City of Canby; and

WHEREAS, the City of Canby, as the recipient of a partnership grant of \$50,000 from Clackamas County and through usage of the Parks Restoration Fund, is able to offer a match of up to \$100,000 towards a grant proposal to replace the current deteriorating restroom/concession facilities with a new combined facility, a project that would continue the rehabilitation of Canby's only municipal ball park, which has already benefited from rehabilitation of the playing fields in 2004-2005; and

WHEREAS, the applicant hereby certifies that the matching share for this application is readily available at this time; now therefore

IT IS HEREBY RESOLVED that the City of Canby Parks Department through the City Administrator is authorized to apply for a Local Government Grant from the Oregon Parks and Recreation Department for Maple Street Park as specified above.

This resolution shall take effect on April 5, 2006.

ADOPTED this 5th day of April, 2006 by the Canby City Council.

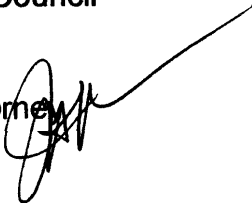
Melody Thompson
Mayor

ATTEST:

Kimberly Scheafer
City Recorder Pro Tem

Memo to: Mayor and City Council

From: John Kelley, City Attorney



Date: March 7, 2006

Re: Complaint about portable basketball hoops on sidewalks.

On February 15, 2006, the city received a letter from Rick Myers complaining about portable basketball hoops that are being placed on public sidewalks forcing people to walk into the street or the homeowner's yard to go around them. Mr. Myers states that he feels it is a safety hazard, particularly with small children that may be forced into the street/traffic and points out that there are neighborhoods in Canby where these hoops are located as close as every 3-4 houses.

Mr. Adcock and I did a drive around in the Tofte Farms subdivision and noticed there truly is a proliferation of these portable hoops, both blocking sidewalks and some even permanently installed into concrete along the planter strip of the public right of way. The basketball court for these hoops is the public street, not a private driveway. Some courts have actually been painted onto the asphalt street.

You asked me to give you some background on this problem and I do remember one prior complaint, probably ten years or so ago, where a hoop was installed at the end of a cul-de-sac under a street light. The kids would play all times of the day and night and a neighbor complained about the noise created, especially the noise at night. The council at that time decided not to require the property owner that installed the hoop to take it down, but cautioned him to control the noise. There was no further complaint, but I believe the offended neighbor ultimately moved. The Council didn't want to stop the basketball playing and consequently, the word around the code enforcement office was to leave the hoops alone. Keep in mind, the number of basketball hoops at that time were attached to poles in the ground and were not nearly the same number as today. I'm not sure the portable hoops of today even existed then.

I sampled some local jurisdictions about the problem and received interesting replies. For instance, the City of Woodburn says its official position is that the street/sidewalks are public rights of way and not are intended for basketball playing. However, enforcement is a huge problem and not a priority, so they ignore the issue.

Grants Pass, likewise, says that if the hoops are in the right of way, the city will warn and remove them if they receive complaints. The City Attorney for Newport, said he believes there are limits upon the City's ability to install or allow installation of facilities, including hoops, in the right of way and would have trouble approving hoops placed on sidewalks or in the right of way that create an impediment/hazard to pedestrians.

On the other hand, Beaverton allows fixture of a hoop to a pole affixed into the ground in residential neighborhoods only. I have attached the Beaverton provisions for you to review.

Milwaukie permits hoops in the public rights of way where the pole is within the area which would be either within a planter strip or the equivalent of such space. Milwaukie does not allow fixed hoops where the pole would be installed through the sidewalk concrete or the street asphalt. I have attached the provisions for your review. Mike Swanson tells me the ordinance predates portable hoops, but they haven't experienced any problems that he's aware of. To his knowledge, no one has raised the question of portable hoops blocking the sidewalks.

Tualatin also permits hoops in that City. Unfortunately, I have not received a copy of its ordinance at this time. I hope to have it by the meeting on March 15th.

Regarding risk management issues, I spoke with Mark Rauch of CIS and his advice was that you can, if you choose, allow basketball hoops in the City, as does Beaverton, Tualatin and Milwaukie. However he cautioned that if you put conditions on the users, such as distances from intersections, locations only in residential neighborhoods and control the type of installation, etc., you must then assume the responsibility of enforcing the regulations you impose. If you impose regulations and thereafter fail to enforce, you could expose the City to potential liability.

If you choose to not permit the use of public rights of way for basketball purposes, then you have no risk management issues, but the City still must attempt to control violators. You may make a council decision that the City does not have the financial resources to enforce the prohibition and that will give you a discretionary immunity defense in the event you are sued by someone injured by an illegally placed basketball hoop. I would suspect that you would need to make findings regarding budget shortfalls and the need to use existing police personnel for matters that involve the commission of criminal acts rather than code enforcement.

We can discuss this concept (discretionary immunity) in more detail at the meeting.

Canby City Council

RECEIVED

February 15, 2006

FEB 15 2006

Mayor and Council,

CITY OF CANBY.

I am writing this letter in hopes that you will address the issue of the basketball hoops that are placed on the public sidewalks, forcing pedestrians to walk in the street rather than the sidewalks. I have noticed and had concerns for several years regarding this issue but had felt that the city would enforce their current ordinance regarding obstruction of city sidewalks. It appears that they are becoming so prevalent that in some areas they are every 3-4 homes apart.

It was the other days near tragedy that prompted this request. I have three children a 10 year old an 8 year old and a 4 year old, they were walking home from a friends house 5-6 houses down the street, I was in the front yard watching for them and doing some weeding, that is when I heard the screech of tires and saw my 4 year old and my 10 year old close to a car that had stopped abruptly. I questioned the kids later to find out what had happened and found out that they were in the street because of the basketball hoops and the 4 year old decided to wonder into the road more than she should have at the same time a car came by thus resulting in the poor woman driver feeling panic and stopping abruptly. It is my belief that this practice has many levels of concerns

- 1) Violation of Canby city ordinance.
- 2) Violation of the Federal Americans with Disabilities Act
- 3) An accident or tragedy waiting to happen

As I was growing up in another area of the metro area we placed our hoop above the garage or in our driveway. Just for your general knowledge.

Thank you for taking the time to read this letter of concern. I will sign my name but I wish my name to be kept silent if you decide to read this on the air. I am sure this is not going to be a popular issue to deal with in lieu of the amount of people that now own these hoops.

Sincerely,

Rick Myers

Milwaukee Municipal Code**^ Up << Previous >> Next * Main - Collapse ? Search # Print**

Title 12 STREETS, SIDEWALKS AND PUBLIC

Chapter 12.28 BASKETBALL HOOPS IN PUBLIC RIGHTS-OF-WAY

12.28.010 Use regulations.

The city feels that it is important to regulate uses which may protrude into the public right-of-way. Use of basketball hoops in the public right-of-way is allowed under the following conditions and guidelines:

- A. Playing hours shall be limited to nine-thirty a.m. to nine-thirty p.m.
- B. Hoop structure shall be placed in that portion of the right-of-way actually maintained by the installer of the hoop.
- C. Hoop structure shall not be placed on any public utility pole.
- D. The central post supporting the hoop structure shall not be closer than twenty feet from the adjacent property owner's line, with the exception of an installation where consent has been obtained from the adjacent property owner.
- E. Hoops shall not be placed within seventy-five feet from the near side of the traffic lane of the cross street at intersections.
- F. No hoops shall be placed on through streets longer than one-quarter mile long, with the exception of streets that are not through streets.
- G. Any exceptions requested or proposed by a potential hoop installer shall be reviewed by the traffic safety commission.
- H. All players utilizing the hoops shall yield to the flow of traffic. (Ord. 1405 § 1, 1978)

12.28.020 Abatement by city.

If a hoop is installed in violation of this chapter, the city may proceed with summary abatement by having the hoop removed at the expense of the installer of the hoop. (Ord. 1405 § 2, 1978)

12.28.030 Violation—Deemed public nuisance.

Violation of this chapter shall constitute a public nuisance, and may be abated as such. (Ord. 1405 § 3, 1978)

12.28.040 Violation—Penalty.

Any person violating any provision of this chapter shall be subject to a fine not to exceed two hundred fifty dollars. (Ord. 1503 § 1 (part), 1981; Ord. 1405 § 4, 1978)

12.28.050 Violation—Deemed separate.

- A. Each day of a violation of a provision of this chapter constitutes a separate offense.
- B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional

remedy. Imposition of a penalty does not relieve the person of the duty to abate the nuisance. (Ord. 1405 § 5, 1978)

Beaverton Hoop Ordinance

9.01.200 Short Title. BC 9.01.200 - .235 shall be known and may be cited as the "Basketball Hoop and Backboard Ordinance" and may be referred to herein as "this ordinance." [BC 9.01.200, amended by Ordinance No. 3814, 6/15/92]

9.01.205 Purpose and Scope. This ordinance is intended to regulate the duties and responsibilities associated with affixing a fixture consisting of a basketball backboard, hoop, net and supporting apparatus to the public right-of-way. [BC 9.01.205, amended by Ordinance No. 3814, 6/15/92]

9.01.210 Definitions. For the purpose of this ordinance, the following mean:

Basketball fixture - Any part of a basketball backboard, hoop, net or supporting apparatus.

Pedestrian - Any person afoot or confined in a wheelchair.

Public roadway - The improved portion of the public right-of-way designed for vehicular travel. The term is not intended to refer to off-street bicycle paths.

Sidewalk - The improved portion of the public right-of-way designed for preferential or exclusive use by pedestrians.

Supporting apparatus - The post, pole or similar object that is affixed into the ground and that supports the basketball backboard, hoop and net. [BC 9.01.210, amended by Ordinance No. 3814, 6/15/92]

9.01.215 Permissible Locations. The place where the supporting apparatus of a basketball fixture is affixed to the public right-of-way must be:

- A. Zoned for residential use;
- B. Apart from any sidewalk or public roadway;
- C. Abutting a public roadway designated in the Functional Classification Plan of the Beaverton Area Comprehensive Plan as a residential local road, class L-2 or L-3, where vehicular traffic is limited to a maximum speed of 25 miles-per-hour or less;
- D. At least 150 feet from the nearest lateral curb line or boundary line of any intersection of two or more public roadways; however, this subsection shall not apply to an L-shaped intersection of two public roadways, class L-2 or L-3, provided that all other requirements of this section are met;
- E. At least one foot back from the nearest curb line or boundary line of a public roadway; and
- F. Outside of the sight clearance area required by Beaverton Ordinance 2050, section 60.60.50, if calculated without regard to driveways or other private access ways. [BC 9.01.215, amended by Ordinance No. 3814, 6/15/92; Ordinance No. 4059, 9/15/99]

9.01.220 Abutting Landowner's Duties and Liabilities.

A. Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball fixture is affixed shall properly, safely and responsibly construct, maintain, inspect, repair, use and supervised the use of the fixture.

B. A person who is injured or otherwise damaged by reason of any violation of this section shall have a cause of action for the actual damages sustained and, when appropriate, punitive damages. [BC 9.01.220, amended by Ordinance No. 3814, 6/15/92]

9.01.225 City Immunity from Liability.

A. No recourse whatsoever shall be had against the City, its Council, Mayor, employees or agents for damage or loss to person or property arising out of the negligent or otherwise wrongful construction, maintenance, inspection, repair, use or supervision of use of any basketball fixture affixed to the public right-of-way or for any act or omission in violation of this ordinance.

B. In consideration for the City allowing a person owning, possessing, occupying or having control of property that abuts the public right-of-way to construct, maintain, inspect, repair, use or supervise the use of a basketball fixture affixed to the public right-of-way, such person shall indemnify, defend and hold the City, its Council, Mayor, employees and agents harmless against any claim, suit or action made against the City, its Council, Mayor, employees and agents as a result of any person's failure to satisfy any obligation imposed by this ordinance. [BC 9.01.225, amended by Ordinance No. 3814, 6/15/92]

9.01.230 Removal of Fixtures. Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball fixture is affixed in violation of this ordinance shall remove the fixture. [BC 9.01.230, amended by Ordinance No. 3814, 6/15/92]

9.01.235 Penalty.

A. Violation of any provision of this ordinance constitutes a class 2 civil infraction and shall be processed in accordance with the provisions of BC 2.10.010 - .050.

B. Each day that a violation exists constitutes a separate infraction.

C. The penalties imposed by this ordinance are in addition to and not in lieu of any other lawful remedies available to the City. [BC 9.01.235, amended by Ordinance No. 3814, 6/15/92]

(Reserved)

PLACEMENT OF SIDEWALK BENCHES, TRANSIT SHELTERS NEWSRACKS AND OTHER FACILITIES

9.01.300 Placement Permit.

A. The uncontrolled placement of sidewalk benches, transit shelters, newsracks and other similar facilities in the public rights of way presents an inconvenience, aesthetic annoyance and danger to the safety and welfare of the public.

B. Sidewalk benches, transit shelters, newsracks and other similar facilities so located as to cause an inconvenience or danger to persons using public rights of way, and unsightly sidewalk benches, transit shelters, newsracks and other similar facilities constitute public nuisances.

C. BC 9.01.300-.330 are intended to provide a procedure for application and issuance of permits for placement of sidewalk benches, transit shelters, newsracks and other similar facilities in public rights of way pursuant to BC 5.05.115, subsection E 11. [BC 9.01.300, amended by Ordinance No. 3373, 6/5/84; amended by Ordinance No. 3520, 6/16/86]

\$150 fine 32
2.10.045

Canby City Council

RECEIVED

February 15, 2006

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Mayor and Council,

CITY OF CANBY

I am writing this letter in hopes that you will address the issue of the basketball hoops that are placed on the public sidewalks, forcing pedestrians to walk in the street rather than the sidewalks. I have noticed and had concerns for several years regarding this issue but had felt that the city would enforce their current ordinance regarding obstruction of city sidewalks. It appears that they are becoming so prevalent that in some areas they are every 3-4 homes apart.

It was the other days near tragedy that prompted this request. I have three children a 10 year old an 8 year old and a 4 year old, they were walking home from a friends house 5-6 houses down the street, I was in the front yard watching for them and doing some weeding, that is when I heard the screech of tires and saw my 4 year old and my 10 year old close to a car that that had stopped abruptly. I questioned the kids later to find out what had happened and found out that they were in the street because of the basketball hoops and the 4 year old decided to wonder into the road more than she should have at the same time a car came by thus resulting in the poor woman driver feeling panic and stopping abruptly. It is my belief that this practice has many levels of concerns

- 1) Violation of Canby city ordinance.
- 2) Violation of the Federal Americans with Disabilities Act
- 3) An accident or tragedy waiting to happen

As I was growing up in another area of the metro area we placed our hoop above the garage or in our driveway. Just for your general knowledge.

Thank you for taking the time to read this letter of concern. I will sign my name but I wish my name to be kept silent if you decide to read this on the air. I am sure this is not going to be a popular issue to deal with in lieu of the amount of people that now own these hoops.

Sincerely,

Rick Myers

*Basketball hoops
in ROW*

ORDINANCE NO. 906-93

A GENERAL ORDINANCE REGULATING BASKETBALL HOOPS IN THE
PUBLIC RIGHT-OF-WAY AND AMENDING ORDINANCE NUMBER 242-74

THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall be known and may be cited as the "Basketball Hoop Ordinance" and may be referred to herein as "this ordinance."

Section 2. Purpose and Scope. This ordinance is intended to regulate the duties and responsibilities associated with placing and using a basketball backboard, hoop, net or supporting apparatus in the public right-of-way by setting locational standards which are designed to reduce the risk of injury and damage to pedestrians and motorists in their shared use of public roadways. The attitudes of nearby residents is an important aspect of the determination of whether a proposed basketball hoop will interfere with or negatively affect such resident's use of the public roadway. This ordinance is not intended to regulate the placement or use of basketball hoops on private property. This ordinance is intended to apply to all basketball hoops, both portable and permanent, in the right-of-way regardless of when they were erected.

Section 3. For the purpose of this ordinance, the following mean:

(1) Basketball Hoop or Hoop - Except where the context clearly indicates some specific part, any part of a backboard, hoop, net or supporting apparatus designed or intended to be used for play with a ball of any kind.

(2) Pedestrian - Any person afoot or confined in a wheelchair.

(3) Public Roadway or Roadway - The improved portion of the public right-of-way designed for vehicular travel. The term is not intended to refer to off-street bicycle paths.

(4) Sidewalk - The improved portion of the public right-of-way designed for preferential or exclusive use by pedestrians.

(5) Supporting Apparatus - The post, pole or similar object that is either:

- (a) Affixed into the ground and supports a basketball hoop, or
- (b) Attached to a moveable support base, and that supports a basketball hoop.

Section 4. Permissible Locations and Hours of Use.

(1) No basketball hoop shall be erected in the right-of-way, if the driveway of the adjacent private property is of a suitable size and slope for playing basketball. A driveway having a slope of 3/4" to one (1) foot or less and an area of at

least 400 square feet is considered suitable for playing basketball.

(2) If a hoop cannot be installed along the driveway under subsection (1) of this section, basketball hoops located within the public right-of-way shall comply with the following standards:

- (a) in a Residential Planning District;
- (b) Abutting a public roadway designated in the Tualatin Development Code as a local residential street;
- (c) Not attached to any light or utility pole, street sign or traffic control device or street tree.
- (d) Outside of any sidewalk, pedestrian or bikepath or public roadway, but abutting the owner's property in the planter strip;
- (e) Not adjacent to roadways with striped, on-street bikeways, but may be placed adjacent to shared roadways;
- (f) At least five (5) feet from manholes, catch basins, traffic signs, fire hydrants, electrical transformers, mail boxes, telephone, cable boxes and street light poles;
- (g) Where possible, hoops should be at least 15 feet from street trees; in any event they shall be centered between adjacent, existing or future street trees and no closer than five feet from such trees. If no trees have been planted, the Parks and Recreation Department shall first determine the location of any future street trees.
- (h) A hoop backboard shall not extend over the public roadway beyond the face of the roadway curb.
- (i) A hoop ring shall be at least 10 feet above the surface of the street, measured vertically from the public roadway.
- (j) At least 150 feet from the nearest lateral street curb line which intersects at 90 degrees, except if located on a cul-de-sac, the hoop shall be at least 50 feet from the nearest lateral street curb line of the intersection;
- (k) At least 165 feet unobstructed view as measured 10 feet out from the face of the curb and five feet high along the public roadway in both directions. There shall be no obstructions resulting from curves in such roadway, elevation changes, landscaping or other fixtures located alongside such roadway, except if on a cul-de-sac, the hoop shall have an unobstructed view of at least 50 feet;
- (l) At least 150 feet from the nearest other hoop in the right-of-way as measured along the curb line. This subsection applies only to basketball hoops placed after the adoption of this ordinance.

- (m) Prior to installation or excavation, the installer shall inquire about and receive information from the utility locator service and avoid interfering with or damaging utilities.

(3) The use of a basketball hoop which satisfies the conditions set forth in subsection (2) of this section may occur only as follows:

- (a) Between 9 a.m. and sunset;
- (b) The written approval of the specific basketball hoop location shall be obtained from property owners and/or an adult representative of each household whose property lies within a 150' radius of the hoop. Such approval shall become effective only after adoption of this ordinance, shall be maintained by the hoop owner and shall continue in effect until the hoop is removed in a permanent fashion. Changes in ownership or the attitudes of persons on property which lies within such 150' radius of the hoop shall not affect the approval of the hoop previously given on behalf of such property.

(4) A basketball hoop which complies with the requirements of subsection (2) of this section and later, due to changed conditions fails to comply with subsection (2), shall be deemed a violation of this ordinance and subject to removal and any other available remedies. The requirements of subsection (2) of this section are intended to be continuously complied with.

Section 5. Abutting Landowner's Duties and Liabilities.

(1) Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball hoop is placed or located shall properly, safely and reasonably construct, maintain, inspect, repair, use and supervise its use and shall be responsible for compliance with the requirements of this ordinance. A basketball hoop located within the public right-of-way shall be presumed to have been placed with the knowledge and consent of the owner of the abutting private property. Damage to the basketball hoop which occurs during the lawful, nonnegligent use of the public right-of-way shall be the responsibility of the hoop owner.

(2) A person who is injured or whose property is damaged by reason of any act or omission constituting a violation of subsection (1) of this section shall have a cause of action for any and all damages sustained, including punitive damages, against a person or persons referred to in subsection (1) of this section, whose acts or omissions result in a violation of subsection (1) of this section. The person or persons who actually cause such injury or damage by reason of their negligence, wrongful or intentional misconduct shall also be liable.

Section 6. City Immunity from Liability.

(1) No recourse whatsoever shall be had or available against the City, its officers, employees or agents for damage, injury or loss to any person or property arising directly or indirectly out of the negligent or otherwise wrongful construction, maintenance, inspection, repair, use or supervision of use of any basketball hoop placed in the public right-of-way or for any act or omission in violation of this ordinance.

(2) In consideration for the City allowing a person owning, possessing, occupying or having control of property that abuts the public right-of-way to construct, maintain, inspect, repair, use or supervise the use of a basketball hoop placed in or alongside the public right-of-way, such person shall indemnify, defend and hold the City, its officers, employees and agents harmless against any claim, suit or action made against the City, its officers, employees and agents as a result of any person's failure to satisfy any obligation imposed by this ordinance.

(3) Nothing contained herein shall be construed as a conveyance, grant or transfer of a property interest or permanent private right in any public right-of-way. The City retains the right to revoke the privilege allowed under this ordinance.

Section 7. Unlawful Use of Basketball Hoops.

(1) No person shall use a basketball hoop located within the public right-of-way other than in accordance with the requirements of Section 4 of this ordinance.

(2) Persons who use a basketball hoop located in the public right-of-way shall comply with the requirements of Oregon law with respect to yielding the right-of-way to vehicles upon a roadway.

(3) No parent, guardian or other person having custody of another person who is under eighteen (18) years of age shall permit or allow such other person to violate either subsection (1) or (2) of this section.

Section 8. Removal of Fixtures.

(1) Any person owning, possessing, occupying or having control of property that abuts the public right-of-way where a basketball hoop or similar apparatus is placed in violation of this ordinance shall remove the basketball hoop or similar apparatus. Except as otherwise specifically provided in Section 4, subsection (2)(1), basketball hoops located alongside or within the right-of-way, upon adoption of this ordinance, shall comply with the requirements of this ordinance.

(2) The City may require the owner of abutting property to remove a basketball hoop in the right-of-way which due to its location or use is a nuisance. For purposes of this section a basketball hoop in the right-of-way is a nuisance under either of the following circumstances:

- (a) when it is used on three or more occasions within a thirty (30) day period at times prohibited by Section 4, subsection (3)(a) of this ordinance which causes annoyance to or disturbs another person; or

(b) when it is or has been placed in violation of Section 4, subsection (1), (2) or (3)(b) of this ordinance.

(3) If a basketball hoop is or becomes a nuisance as defined in subsection (2) of this section, the City may order the basketball hoop to be removed. An order to remove a basketball hoop shall be delivered to the owner of the property in person or by first class mail return receipt requested. A person to whom an order of removal of a basketball hoop is sent shall remove the basketball hoop together with any support structure within ten (10) days of delivery of the order, unless within said ten (10) days such person delivers to the City Planning Director a written request for hearing, which shall stay the time frame for removal of the basketball hoop. If a person submits a timely request for a hearing on whether the basketball hoop should be removed as provided in the City's order, the matter shall be submitted to the Municipal Judge for determination. The hearing shall be conducted in the manner provided for civil infractions and the City shall have the burden of establishing by a preponderance of the evidence that the basketball hoop is a nuisance, as defined in subsection (2) of this section. If the Municipal Judge finds the basketball hoop to constitute a nuisance, the basketball hoop may be ordered removed, and the owner thereof may in addition be ordered to pay reasonable costs and disbursements for the hearing. In addition, the Court may condition further use of the basketball hoop in a manner which the Court considers just. The decision of the Municipal Judge shall be final.

(4) A person who fails to remove a basketball hoop as provided in this section shall be liable to the City for its costs, including but not limited to labor and materials, for removal of the basketball hoop and any supporting apparatus, as well as costs, disbursements and attorney fees incurred for collection. The City shall not be liable for any damage to the basketball hoop or other property resulting from the nonnegligent removal of the basketball hoop. When a basketball hoop has been removed due to a nuisance condition, defined under Section 8, subsection (2)(a), it shall be unlawful for the owner of the abutting property to erect or allow the placement of a basketball hoop within the right-of-way along any portion of said property for two years after removal of the basketball hoop.

Section 9. Penalty.

(1) Violation of any provision of this ordinance or an order or judgment of the Municipal Court concerning the status of the basketball hoop as a nuisance constitutes a civil infraction.

(2) Each day that a violation exists constitutes a separate infraction.

(3) The penalties imposed by this ordinance are in addition to and not in lieu of any other lawful remedies available to the City.

Section 10. Ordinance Number 242-74, Section 1(6) is amended to read:

"(6) Object or matter. Any inanimate object or thing other than a vehicle or car, or basketball hoop and supporting apparatus located and placed in accordance with City regulations.

Section 11. Severability Clause. It is intended that if any part of this ordinance is held unconstitutional or unenforceable, the remaining parts shall remain in force. This section shall be construed in accordance with ORS 174.040.

INTRODUCED AND ADOPTED this 11th day of October, 1993.

CITY OF TUALATIN Oregon

BY


Mayor

ATTEST:

BY


City Recorder