



**PLANNING COMMISSION
Meeting Agenda
Monday – January 24, 2011
7:00 PM - Regular Meeting
City Council Chambers – 155 NW 2nd Avenue**

**Chair Dan Ewert – Vice Chair Janet Milne
Commissioners Sean Joyce, Charles Kocher, John Proctor, Misty Slagle and Randy Tessman**

- 1. CALL TO ORDER**
- 2. CITIZEN INPUT ON NON-AGENDA ITEMS**
- 3. PUBLIC HEARINGS**

This application proposes a new chapter in Title 2 of the Canby Municipal Code, and amends specific sections of chapter 16 of the Canby Municipal Code to create and implement a Public Art Mural Program for murals located within Canby's Urban Renewal District. The Public Art Mural Program will be administered by the Director of the Canby Urban Renewal Agency. Mural Projects are managed by the City of Canby's Senior Long Range Planner. **TA 11-01 – Staff – Matilda Deas, AICP, Senior Planner** **Page 2**

- 4. NEW BUSINESS**

Extension of Development Agreements and Decisions; Omnibus Extension Request. Request by Staff to extend five existing land use approvals (including one Development Agreement) for three years (relative to their current status) or when substantial code changes occur. Economic conditions outside the control of the applicants have caused these projects to be delayed. **Staff – Markus Mead, Associate Planner** **Page 19**

- 5. FINAL DECISIONS**

Note: These are final, written versions of previous oral decisions. No public testimony.

TA 11-01 – Text Amendment for Public Art Mural Program **Page 23**

- 6. MINUTES**

November 29, 2010 **Page 26**

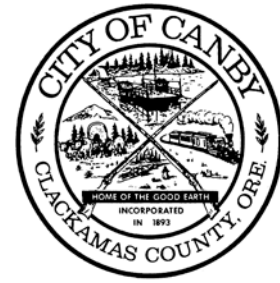
- 7. ITEMS OF INTEREST/REPORT FROM STAFF**

- 8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

- 9. ADJOURNMENT**

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting to Jill Thorn at 503-266-7001.

*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.*



STAFF REPORT

TITLE: Public Art Mural Program

APPLICANT: City of Canby

FILE #: TA 11-01

STAFF: Matilda Deas, AICP, Senior Planner

REPORT DATE: January 14, 2011

HEARING DATE: January 24, 2011

I. APPLICATION SUMMARY

This application proposes a new chapter in Title 2 of the Canby Municipal Code, and amends specific sections of chapter 16 of the Canby Municipal Code to create and implement a Public Art Mural Program for murals located within Canby's Urban Renewal District. The Public Art Mural Program will be administered by the Director of the Canby Urban Renewal Agency. Mural Projects are managed by the City of Canby's Senior Long Range Planner.

II. APPLICABLE CRITERIA

Section 16.88.160 Amendments to text of title

This is a legislative land use amendment. In judging whether or not this title should be amended, the Planning Commission and City Council shall consider:

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

The Planning Commission will hold a public hearing and make a recommendation to the City Council on this proposal. The City Council will make their decision based on the record of the Planning Commission's hearing and deliberations and may choose to hold its own hearing.

III- A. PROPOSED AMENDMENTS

The proposed text amendments are included towards the end of Attachment “A”. **Red** text is new code language, while text to be deleted is shown in ~~striketrough~~.

III- B. PROPOSED NEW CODE

The proposed new code section 2.80 is included at the end of Attachment “A”. Attachment “A” is the complete packet of information presented and approved by the Urban Renewal Agency, and includes a complete description of Canby’s Public Art Mural Program and accompanying documents.

IV. FINDINGS AND CONCLUSIONS

1. Staff concludes that the proposed new code and accompanying amendments comply with the Comprehensive Plan of the City, and the plans and policies of the County, State, and local districts, and will preserve functions and local aspects of land conservation and development;
2. Staff concludes that there is a public need for the change. *Changes are required in order to implement the City of Canby’s Public Art Mural Program within the City of Canby’s Urban Renewal District.*
3. Staff concludes that the proposed amendments will serve the public need better than any other change which might be expected to be made. *Having Canby’s Public Art Mural Program administered and funded all or in part with public Urban Renewal funds enables the City to solicit and select murals that embody the spirit of Canby’s Economic Development strategy of promoting the City as “Canby, the Garden Spot”. This specificity would not be possible with a City-wide mural program not funded all or in part with public funds.*
4. Staff concludes that the proposed amendments will preserve and protect the health, safety, and general welfare of the residents of the community; and
5. Staff concludes that the proposed amendments comply with the Statewide Planning Goals.

V. RECOMMENDATION

Based upon previous public meetings and the findings and conclusions stated in this report, and without benefit of a public hearing on the matter, staff recommends that the Planning Commission recommend approval of **TA 11-01** to the City Council.

VI. ATTACHEMENTS

- A. URA Packet

TO: *Chair Thompson and Urban Renewal Agency*
FROM: *Matilda Deas, Senior Long Range Planner*
THROUGH: *Catherine Comer, Director of Economic Development and URA*
DATE: *October 19, 2010 for Agency Meeting October 27, 2010*

Issue: **New Urban Renewal Agency Mural Program**

Summary

The URA approved up to \$15,000 in the current fiscal year URD budget under Beautification and Marketing. The attached documents outline the program.

Recommendation

Staff recommends that the Agency approve this request
Recommended motion *“I move to approve the City of Canby Public Art Mural Program, through the Canby Urban Renewal Agency and recommend forwarding to the Canby Planning Commission and Canby City Council for adoption”*

Rationale

Staff has worked since January in developing a Public Art Mural Program that will embody the spirit of the City’s economic development strategy to promote Canby as the “garden spot” which in turn will increase community identity and foster a sense of place and enclosure.

Attached

- A. City of Canby Public Art Mural Program
- B. Artist Application Form
- C. Easement Form
- D. Deaccessioning Policy
- E. Proposed New Code Section
- F. Proposed Code Amendments

CITY OF CANBY
PUBLIC ART
MURAL PROGRAM



A City of Canby Urban Renewal Agency Program

Acknowledgements

Canby Urban Renewal Agency

Melody Thompson
Walt Daniels
Robert Bitter
Brian Hodson
John Henri
Jason Padden
Richard Ayres

Canby City Council

Melody Thompson, Mayor
Walt Daniels, President
Robert Bitter, Councilor
Brian Hodson, Councilor
Richard Ayres, Councilor
John Henri, Councilor
Jason Padden, Councilor

Canby Planning Commission

Dan Ewert, Chairman
Janet Milne, Commissioner
Sean Joyce, Commissioner
Chuck Kocher, Commissioner
Misty Slagle, Commissioner
John Proctor, Commissioner
Randy Tessman, Chairman

Staff

Catherine Comer, Director Economic Development and Urban Renewal Agency; Greg Ellis, Canby City Administrator; Ami Kieffer, Canby Main Street Manager; Matilda Deas, AICP, Senior Long Range Planner/Mural Program Project Manager; John Kelley, City of Canby legal counsel, Barbara Jacobson, Canby Urban Renewal Agency Counsel.

With Assistance

Peggy Kendellen, Regional Arts & Culture Council

Guidelines

BACKGROUND

The Public Art Mural Program is a City of Canby Urban Renewal Agency Program administered by the Director of the Canby Urban Renewal Agency. Mural Projects are managed by the City of Canby's Senior Long Range Planner. Proposed murals are reviewed by the Public Mural Advisory Committee (PMAC), a standing committee of the Urban Renewal Agency. Committee membership includes artists, art advocates and professionals, business owners, city staff, and a representative from Canby's Main Street Design Committee. The program provides funding for murals that embody the spirit of the City's economic development strategy of promoting the City as "Canby, the Garden Spot". The mural program will fund murals that reflect diversity in style and media and encourages artists from diverse backgrounds and range of experience to apply. Murals approved through this program become part of the City of Canby's Urban Renewal Agency's public mural collection for as long as the Mural Art Easement remains in effect. All building owners must sign a Mural Art Easement form that will be recorded with Clackamas County.

All applicants are required to meet with the Mural Project Manager at least one month prior to submitting an application. To set up an appointment, contact Matilda Deas, AICP, Public Mural Project Manager, 503-266-7001 x223 or deasm@ci.canby.or.us

ELIGIBILITY AND FUNDING CRITERIA

Eligibility Criteria

Any individual or organization intending to create a mural on an exterior wall that is visible from the public right-of-way and within the boundaries of the City of Canby's Urban Renewal District can apply for funding through the Public Art Mural Program.

Applicants to the Public Art Mural Program may be:

1. An individual artist or a group of artists
2. Students enrolled in an art program at a degree granting institution
3. Building or business owner; or
4. "Not -for-profit" organization. This includes registered neighborhood associations, citizen based groups and organizations with IRS 501 (c) (3) status. However IRS 501 (c) (3) status is not required. The definition of a "not-for-profit organization" is an organization whose primary purpose is to serve and to provide general benefit to the public and the organization's or group's net earnings are not distributed to those who control it.

Funding Criteria

The number of Public Art Murals awarded funding is dependent on the funds available and the number of applicants submitting each year. Applicants/artists may be funded one time only in each fiscal year (July 1 through June 30).

1. Public art murals approved through this program must be at a minimum partially funded with public funds.
2. Funds will be awarded based on the Public Mural Advisory Committee's evaluation of the mural projects based on:

Artistic quality: strength of the artist's concept and demonstrated craftsmanship;

Context: architectural, geographical, socio-cultural and historical;

Media: paint, collage, relief, etc.;

Scale: appropriateness of scale to the surrounding neighborhood;

Diversity: race, age, style, media, experimentation, range of professional experience;

Feasibility: budget, timeline, etc.;

Originality: uniqueness;

Structural and surface soundness: resistance to vandalism and weather;

Building owner's signed easement form: minimum 5 years unchanged, on site;

Building owner's signed agreement for maintenance: over life of mural;

Community Support: Key neighborhood representatives notified of PMAC review meetings and opportunity to provide comment;

Lighting provisions (if any): as allowed by city code;

Public Safety: meets city codes for safety;

Accessibility: meets city codes for accessibility

3. Projects that include cash and/or in kind contributions may be given priority over projects that do not provide for cash and/or in kind contributions
4. Items not eligible for funding through this program include operating costs for organizations; purchase of equipment; administrative costs of sponsoring

organization; costs related to projects that have already taken place; refreshments, meals and/or beverages.

Approval Process

1. At least one month prior to the deadline, meet with Public Art Mural staff for initial review of imagery, location, funding and building owner's approval. Applicants who fail to meet this requirement will not have their project reviewed and must wait until the next deadline to resubmit.
2. Complete the Public Art Mural Application
3. Provide all required supplementary materials, including
 - a. Jpg image of a color rendering of proposed mural
 - b. Jpg images of site and physical surroundings
 - c. Up to 6 jpg images of artist's past work: if more than one artist, submit 6 images per artist
 - d. Project timeline
4. Mural proposal reviewed by Public Mural Advisory Committee. A meeting notice is sent to adjoining business and property owners within 200 feet of project location. The committee's decision is based upon adopted review criteria for public art murals listed on page 4. If proposal is not approved, applicant may resubmit additional materials as requested. The applicant is not required to attend the meeting.
5. The Urban Renewal Agency Director and Mural Project Manager review/approve the Public Mural Advisory Committee recommendations for funding.

After Funding Approval

If awarded funding, the following will apply to all applicants.

1. Building owner provides a notarized Public Mural Art Easement agreement which is then signed by the City of Canby and recorded with Clackamas County.
2. Mural Project Manager sends applicant a contract outlining the terms of the mural project and the payment schedule. Once Mural Project Manager receives the signed agreement, processing of funding begins. Payment is generally made in two or three payments, depending on amount awarded and length of mural project. The final payment is made after the Final Report, documentation and evaluation form are received.
3. Artist signs form agreeing to terms of Public Art Mural Easement and the waiver of any rights covered in the federal Visual Artist Rights Act that would interfere with the performance of all rights under the Public Art Mural Easement agreement.
4. Applicant notifies Public Art Mural Project Manager of completion of mural.
5. Applicant submits a final report within 45 days of completion of the mural summarizing the completed project and detailing the use of Public Art Mural funds. Copies of invoices, receipts and checks are required documentation for the final report.
6. Applicant completes a Public Art Mural Evaluation Form.

All grantees will acknowledge the support by Canby's Urban Renewal Agency Public Art Mural Program in all printed materials related to the mural project.

Deadlines: 5:00 p.m. Wednesdays

March 2, 2011 (for review in April)

May 4, 2010 (for review in June)

July 6, 2011 (for review in August)

After recording return to:
City of Canby
Attn: City Recorder
P.O. Box 930
Canby, Oregon 97013

PUBLIC MURAL ART EASEMENT

THIS AGREEMENT, effective on _____ (month/day/year), is between _____ (“Grantor”), and the City of Canby Urban Renewal Agency, the governing body of the Canby Urban Renewal District (“Agency”).

RECITALS

A. The City has adopted a program for the placement of murals in and on public and private locations within Canby’s Urban Renewal District. Canby’s Urban Renewal Agency Director administers the City’s Public Art Mural Program.

B. Grantor owns the property legally described in Exhibit A (attached hereto and incorporated herein) and is willing to make said property available to the Agency for the placement of public art murals, as defined in Canby Municipal Code section 2.80.20 (hereinafter, “Mural”). Said Mural is described in Exhibit B, attached hereto and incorporated herein.

IN CONSIDERATION of the mutual promises and performances set forth below, the parties agree as follows:

1. Grant of Easement. Grantor conveys, grants and warrants to the Agency, its successors and assigns, an easement for the purpose of installing, maintaining, operating and exhibiting the Mural described in Exhibit B on and in the real property described in Exhibit A, including any building and structure thereon (“property”). The location of the Mural shall be as approved by the Director of the Canby Urban Renewal Agency upon recommendation from the Public Mural Advisory Committee.

2. Term of Easement. This easement shall be for a period of five (5) years from the date of execution. Unless terminated as provided in section 3, below, the easement shall automatically renew thereafter, and shall remain in full force and effect unless and until terminated.

3. Termination.

a) At the expiration of the five year easement period, the easement may be terminated by either party upon 30 days written notice to the other party. Grantor expressly agrees and warrants that upon expiration, the Mural shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the Agency.

b) Within the initial five year easement term or at any time thereafter, the easement may be terminated by Grantor with the Agency’s consent in writing upon Grantor’s showing of any of the following: i) that the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or ii) that the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or iii) that the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Mural; or iv) that circumstances have materially changed and the continued existence of the easement or maintenance of the Mural substantially impedes Grantor’s reasonable use and enjoyment of the Property. The Agency shall not unreasonably withhold consent to termination upon Grantor’s satisfactory demonstration of any of the foregoing conditions of termination.

c) The Agency may terminate the easement at any time at its sole discretion upon 30 days written notice to Grantor, should Grantor fail to substantially perform Grantor’s obligations under Section 4, below. Should the Agency elect to exercise this right of termination, Grantor expressly agrees and warrants that the Mural shall be removed and the Property restored to its prior condition. Such removal shall occur within 30 days of the termination of the easement, unless this period is extended in writing by the Agency.

4. Maintenance and Removal of Mural. Grantor shall be responsible for maintaining and if necessary repairing the Mural described in Exhibit B during the existence of the easement. The Agency may remove the Mural from the property if, in the sole judgment of the Agency, the Mural is being excessively damaged, and Grantor fails or refuses to maintain or repair the Mural after 30 days written notice from the Agency requesting Grantor to do so. If the Agency removes the Mural from the property, the Agency will restore the property to its original condition. Alternatively, at the Agency's sole discretion, the Agency may enter upon the property to maintain or repair the Mural if Grantor has failed to do so after 30 days written notice from the Agency that the Mural requires maintenance or repair.

5. Right of Entry. The Agency shall have the right to enter the property described in Exhibit A during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this agreement.

6. Binding Effect. The easement granted in this agreement shall run with the land and be binding upon and inure to the benefit of the Grantor and the City, and their respective successors or assigns, and any person or entity acquiring any right, title, or interest in the property.

7. Contractual Relationships. Assignment. This agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The parties shall not assign this agreement without the prior written consent of the other.

8. Notice. Notice shall be made to the following addresses, unless otherwise provided for in writing:

City of Canby Urban Renewal Agency

Grantor (name and mailing address)

City of Canby Urban Renewal Director
182 N. Holly Street
Canby, OR 97013

AND

Barbara A. Jacobson, K & L Gates LLP
Canby Urban Renewal Legal Counsel
222 SW Columbia Suite 1400
Portland, OR 97201

9. Amendments. The parties expressly reserve the right to modify this agreement, from time to time, by mutual agreement. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.

10. Remedies. The parties acknowledge that breaches of this Agreement will effect substantial harm to the public interest which harm is difficult or impossible to prove as actual damages in an action hereunder. The parties agree that the prevailing party in an action for the breach of this agreement shall be entitled to a) liquidated damages in an amount of \$2500 per material breach; b) specific performance of the terms of this agreement, and each of them; c) reasonable attorney's fees; and d) any other remedies available at law or in equity. The rights under this agreement are cumulative. The failure to exercise on any occasion any right shall not operate to forfeit the right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

11. Invalidity of Particular Provisions. Should any term, provision, condition or other portion of this agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

12. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this agreement.

13. Term. This agreement may be terminated upon delivery of a letter of termination executed by any party, provided that any such letter shall provided for a 180 day period for the Mural to be removed.

IN WITNESS WHEREOF, the City of Canby Urban Renewal Agency, Canby, Oregon, has caused this instrument to be executed by its duly authorized representative(s) on _____(date).

CITY OF CANBY, OREGON

By: _____

(print name of Canby Urban Renewal Agency representative)

(print title of Canby Urban Renewal Agency representative)

IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by its duly authorized representative(s) on _____.

GRANTOR:

By: _____

"NAME OF GRANTOR REPRESENTATIVE"

(print name of grantor representative)

(print title of grantor representative)

STATE OF _____)

) ss.

County of _____)

This instrument was acknowledged before me on _____, 20____ by _____ as _____ of the Grantor.

Notary Public – State of _____

POLICY FOR DEACCESSIONING PUBLIC ART MURALS
City of Canby Urban Renewal Agency

Policy

Deaccessioning is a procedure for the withdrawal of public art mural from the public collection. Deaccessioning should be considered only after ten years have elapsed from the date of installation or under special circumstances (e.g., the mural has been damaged beyond repair). Deaccessioning will be considered only after a careful and impartial evaluation of the mural within the context of the collection as a whole. At the beginning of the process, Public Art Mural staff will make reasonable effort to notify any living artist whose mural is being considered for deaccessioning.

Deaccessioning Procedure

A Deaccessioning Subcommittee of the Public Art Mural Advisory Committee (PMAC) will be appointed. This subcommittee will consist of no more than five arts professionals/experts (including 4 members of the PMAC).

As part of the ongoing evaluation of the collection, the Deaccessioning Subcommittee of the PMAC will review the collection when deemed appropriate. Public Art Mural Manager will be responsible for recommending murals for consideration/evaluation for deaccessioning. The Deaccessioning Subcommittee reserves the option of hiring a consultant.

Criteria for Deaccessioning

The PMAC may consider the deaccessioning of a public art mural for one or more of the following reasons:

1. The condition or security of the mural cannot be reasonably guaranteed.
2. The mural has been damaged or has deteriorated and repair is impractical or unfeasible.
3. The mural is destroyed by severely altering its relationship to the site.
4. The mural has been determined to be significantly incompatible or inferior in the context of the collection.
5. The Urban Renewal Agency wishes to replace the mural with a work of more significance by the same artist.
6. The mural requires excessive maintenance or has faults of design or workmanship.
7. There has been sustained and overwhelming public objection to the mural.

Sequence of Action

1. A Subcommittee appointed by the PMAC determines that a mural meets one of the criteria listed above.
2. The Public Art Mural Manager prepares a report that includes:

- a. The opinion of the Urban Renewal Agency Attorney on any restrictions which may apply to this specific work.
 - b. Approval of appropriate Agency authority
3. The PMAC reviews report at its regularly scheduled meeting. The Committee may seek additional information regarding the work from the artists, art galleries, curators, appraisers or other professionals prior to making a recommendation to the Urban Renewal Agency Director
 4. A recommendation for action is sent to the Urban Renewal Agency for approval. Upon confirmation of its recommendation, the PMAC shall take action to have the mural removed.

DRAFT

CHAPTER 2.80 PUBLIC ART MURAL PROGRAM

Section

2.80.010	Purpose
2.80.020	Definitions
2.80.030	Guidelines
2.80.040	Ownership
2.80.050	Implementation

§2.80.010 Purpose

The purpose of this Title and the policy of the City of Canby are to permit and encourage Public Art Murals located within Canby's Urban Renewal District for acquisition by the Urban Renewal Agency. Public Art Murals are to be placed on public wall space and paid for in full or in part with Urban Renewal Funds administered by Canby's Urban Renewal Director. The City Council recognizes that public murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.

§2.80.020 Definitions

A public art mural means an original, two-dimensional work of visual art comprised of paint, executed by hand directly upon an exterior wall of a building, which is accessible to the public, and which has been approved by the Canby Urban Renewal Agency Director upon recommendation by the Public Mural Advisory Committee (PMAC).

Public Art Mural Advisory Committee (PMAC) means a group responsible for reviewing proposed public art murals and making recommendations to the Canby Urban Renewal Agency Director on the selection of Public Art Murals. Committee membership shall include artists, art advocates and professionals, business owners, city staff, and a representative from Canby's Main Street Design Committee.

§2.80.030 Guidelines

The Canby Urban Renewal Agency Director in consultation with the Public Mural Advisory Committee and staff shall adopt guidelines to:

- A. Provide for annual reporting to the Agency;
- B. Provide a method for the appointment of representatives to the Public Mural Advisory Committee;
- C. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art Murals;
- D. Determine a process for the ongoing care, maintenance and conservation of public art murals;

- E. Determine a process to deaccession public art murals;
- F. Set forth any other matter appropriate to the administration of this Chapter.

§2.80.040 Ownership

All Public Art Murals acquired pursuant to this Chapter shall be acquired in the name of the City of Canby Urban Renewal Agency, and title shall vest in the City of Canby Urban Renewal Agency.

§2.80.050 Implementation

The Canby Urban Renewal Agency Director in consultation with the Public Mural Advisory Committee and Mural Program Staff shall implement the provisions of this Chapter, in cooperation with all participating city departments.

DRAFT

16.42.025

B. Exemptions ~~Exempted Signs~~

9. Approved Public Art Murals as defined in CMC Chapter 2.80.020

16.49.030 Site and design review plan approval required.

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

j. Approved Public Art Murals as defined in CMC Chapter 2.80.020

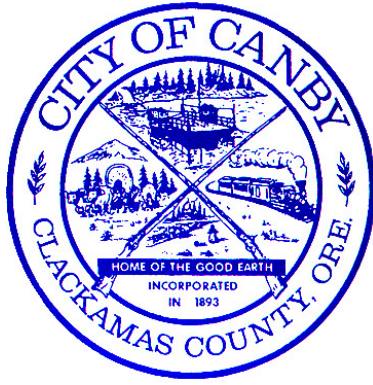
16.41.020 Applicability

C. The DCO does not apply to approved Public Art Murals as defined in CMC Chapter 2.80.020

16.38.025 Exemptions.

The following are exempt from the requirements of CMC 16.38.

A. Approved Public Art Murals as defined in CMC Chapter 2.80.020



City of Canby

Planning and Building Department

TO: *Planning Commission Members*
FROM: *Markus Mead, Associate Planner*
DATE: *January 24, 2011*
SUBJECT: *Extension of Development Agreements and Decisions; Omnibus Extension Request*

Summary:

This is a request by Staff to extend five existing land use approvals (including one Development Agreement) for an additional three years or when code or other applicable regulatory changes occur. Economic conditions outside the control of the applicants have caused these projects to be delayed.

Background:

The sudden nationwide economic downturn drastically changed the real estate and development market. Development projects that were to be developed in phases and projects that were approved just before the crash (approximately 2008) were the most affected. They were presented with a land use approval but without the ability to act on that approval or develop the properties.

In the past month, Staff has issued additional extensions for two of the below projects. Issuing individual extensions and tracking project status is time consuming for both Staff and the applicant. The proposed omnibus extension would create efficiencies for both parties.

According to Canby's Municipal Code, a land use decision is valid for one year. The Planning Director has the authority to grant one, 1-year extension. Additional extensions must be granted by the Planning Commission which has the authority to grant additional extensions. As the national and local economy is still unsettled, these projects would likely all be requesting additional extensions by the Planning Commission. The proposed "omnibus" extension method would create efficiencies for Staff, the applicant and the Planning Commission.

The following is a summary of each subject project for which the extension is requested:

Case No./Address	Applicant	Type	Decision Year
SUB 05-12 Northwoods Estates/ North of NW 9th Ave, South of NWTerritorial Rd., East of Birch St., and West of Grant St.	Northwoods Investments	41-Lot Subdivision Phased (Development Agreement)	March 27 2006, (Dev. Agreement January 26, 2007)
MLP 08-05 Zimmer Property TL 100 / Southeast of intersection of S.E. 1st Ave and S.E. Walnut Street)	AAI Engineering	Minor Land Partition of approximately 23.4 acres of land into 3 parcels ranging in size from 96,893 to 714,194 square feet. South of S.E. 1 st Avenue between S.E. Walnut Street and S. Mulino Road (identified by Clackamas County Assessor Map and Tax Lot No. 31E34-00100).	January 26, 2009
DR-08-01/ 486 N.E. 3rd Ave, 463 N.E. 4th Ave	Paul Snegirev	Subdivision & Site and Design Review: subdivide approximately 16,021 square feet of land into 5 lots ranging in size from 5,013 to 2,029 square feet. The applicant is also requesting that Planning Commission grant concurrent variances and access spacing exception. This project initially had a subdivision (SUB-08-01); which the applicant has knowingly allowed to expire; this proposal would only extend the Development Review.	April 13, 2009
CPA-08-01, ZC-08-01/ 1793 SE 1st Ave, 1907 SE 1st Ave	Root Holdings	Zone Change and Comp Plan Amendment (No Decision: Waived 180-Day Deadline)	March 18, 2009
SUB-08-03/ Southwest of intersection of S.E. 1st Ave and S.E. Walnut Street	AAI Engineering	Subdivision: subdivide approximately 20.21 acres of land into 7 lots ranging in size from 79,553 to 175,278 square feet. The applicant is also requesting that Planning Commission grant concurrent variances and access spacing exception.	Jan. 26, 2009

Staff Analysis:

According to Section 16.68.020 of Canby's Municipal Code, a land use Decision for a subdivision, Section 16.58.060.E for a lot line adjustment, 16.60.060.D for a minor land partition, and Section 16.49.060.2 for site and design review, is valid for one year. The Planning Director has the authority to grant one, 1-year extension. Additional extensions must be granted by the Planning Commission which has the authority to grant additional extensions. There is no limitation to the extension parameters. The Planning Director and / or the Planning Commission may review changes to the City's Municipal Code, state statute and / or public comment or other relevant regulation or policy to restrict the extension's validity.

16.68.020 Submittal of subdivision plat.

Within one year after approval of the tentative plat, the subdivider shall cause the subdivision or any part thereof to be surveyed and a plat prepared in conformance with the tentative plat, as approved. The subdivider shall submit the original hardboard drawing, a Mylar copy, and any supplementary information to the city. If the subdivider wishes to proceed with the subdivision after the expiration of the one-year period following the approval of the tentative plat, he must formally request an extension of time, in writing, stating the reasons therefore. The City shall review such requests and may, upon finding of good cause, allow a time extension of not more than six additional months, provided that the request for the time extension is properly filed before the end of the one-year approval period. (Ord. 740 section 10.4.40(C)(9)(b), 1984; Ord 1237, 2007)

16.58.060 City liability - compliance.

E. The Planning Director may approve a single one-year extension to the original one-year period. Applicants must file a request for such extension in writing, stating the reasons the request is needed. The Planning Director shall review such requests and may issue the extension after reviewing any changes that may have been made to the text of this title and any other pertinent factors, including public comment on the original application. (Ord. 740 section 10.4.20(E), 1984; Ord. 955 section 27, 1996; Ord. 1080, 2001)

16.60.060 Final procedures and recordation.

D. The Planning Director may approve a single one-year extension to the original one-year period. Applicants must file a request for such extension in writing, stating the reasons the request is needed. The Planning Director shall review such requests and may issue the extension after reviewing any changes that may have been made to the text of this title and any other pertinent factors, including public comment on the original application. (Ord. 740 section 10.4.30(D), 1984; Ord. 1080, 2001)

16.49.060 Time limit on approval.

Site and Design Review Board approvals shall be void after twelve (12) months unless:

1. *A building permit has been issued and substantial construction pursuant thereto has taken place, as defined by the state Uniform Building Code; or*
2. *The Planning Department finds that there have been no changes in any ordinances, standards, regulations or other conditions affecting the previously approved project so as to warrant its resubmittal. (Ord. 848, Part III, section 4, 1091)*

The extension for CPA-08-01, ZC-08-01 would allow the fees to not expire. The applicant paid the fees for a Comprehensive Plan Amendment and Zone Change and then Waived their 180-Day Decision deadline due to an incomplete application. The application was deemed “incomplete” because the applicant’s Traffic Impact Analysis was waiting for the updated Transportation System Plan. Approval of this extension would not extend a Land Use Decision, but would allow the applicant to complete their application within the extension timeline without paying additional fees. Authority to do this is found in CMC 16.49.060.2

In general, extending these timelines would result in some projects gaining more benefit than others respective to their current extension status and timeline. For example, an application that has used the initial Decision annual time with an extension would benefit more than one that has just been granted an extension. This Request would create uniform extension dates for all these projects. This method would create efficiencies for both Staff and the Planning Commission as well as the applicants. The alternative of granting longer extensions to each Case respective of their initial approvals would create more administrative work for Staff.

There have been no substantive changes to the City’s applicable development codes to alter the subject Cases’ compliance with that Title. There have been no substantive changes to the State Statute or other regulations which would conflict with these Cases. Some of the above Cases received concurrent variances. Upon review, these variances are not in conflict with the public need and Staff recommends including them in the extension request.

RECOMMENDATION:

Staff recommends that the Planning Commission **APPROVE** the extension request including concurrent variances to applicable Cases.

Recommended Motion:

I move that the Planning Commission approve extend existing land use approvals (including one Development Agreement) SUB 05-12 MLP 08-05, DR-08-01/SUB-08-01, CPA-08-01/ ZC-08-01, and SUB-08-03 for an additional three years or when substantial code or other applicable regulatory changes occur.



**BEFORE THE PLANNING COMMISSION
OF THE
CITY OF CANBY**

**A REQUEST FOR APPROVAL TO CREATE)) FINDINGS, CONCLUSION & ORDER
A NEW CHAPTER IN TITLE 2 OF THE CANBY)
MUNICIPAL CODE, AND AMEND SECTIONS)
OF TITLE 16 OF CANBY'S MUNICIPAL CODE) TA 11-01
TO CREATE A PUBLIC ART MURAL PROGRAM) (City of Canby)**

NATURE OF APPLICATION

This application proposes a new chapter in Title 2 of the Canby Municipal Code, and amends specific sections of chapter 16 of the Canby Municipal Code to create and implement a Public Art Mural Program for murals located within Canby's Urban Renewal District.

HEARINGS

The Planning Commission held a public hearing to consider this application at its meeting of January 24, 2011.

CRITERIA AND STANDARDS

Section 16.88.160 – Amendments to text of title

This is a legislative land use amendment. In judging whether or not this title should be amended, the Planning Commission and City Council shall consider:

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

FINDINGS AND REASONS

The Planning Commission deliberated on all testimony presented at the January 24, 2011 public

hearing and incorporates the January 14, 2011 staff report and Attachment “A” and Commission deliberations as support for its decision. The Planning Commission hereby accepts and incorporates the findings in the January 14, 2011 staff report and Attachment “A”, and finds:

1. That the proposed new code and accompanying amendments comply with the Comprehensive Plan of the City, and the plans and policies of the County, State, and local districts, and will preserve functions and local aspects of land conservation and development;
2. That there is a public need for the change. *Changes are required in order to implement the City of Canby’s Public Art Mural Program within the City of Canby’s Urban Renewal District.*
3. That the proposed amendments will serve the public need better than any other change which might be expected to be made. *Having Canby’s Public Art Mural Program administered and funded all or in part with public Urban Renewal funds enables the City to solicit and select murals that embody the spirit of Canby’s Economic Development strategy of promoting the City as “Canby, the Garden Spot”. This specificity would not be possible with a City-wide mural program not funded all or in part with public funds.*
4. That the proposed amendments will preserve and protect the health, safety, and general welfare of the residents of the community; and
5. That the proposed amendments comply with the Statewide Planning Goals.

CONCLUSION

The Planning Commission of the City of Canby concludes that based on the findings and conclusions contained in the January 14, 2011 staff report, testimony at the January 24, 2011 public hearing and Commission deliberations, TA 11-01 will comply with all applicable criteria.

ORDER

IT IS RECOMMENDED BY THE PLANNING COMMISSION of the City of Canby that the Canby City Council approve **TA 11-01**.

I CERTIFY THAT THIS ORDER recommending approval of **TA 11-01** to the Canby City Council was presented to and **APPROVED** by the Planning Commission of the City of Canby.

DATED this 24th day of January, 2011.

**Daniel K. Ewert, Chairman
Canby Planning Commission**

**Matilda Deas, AICP
Senior Planner**

ATTEST:

ORAL DECISION January 24, 2011

AYES:

NOES:

ABSTAIN:

ABSENT:

WRITTEN FINDINGS January 24, 2011

AYES:

NOES:

ABSTAIN:

ABSENT:

MINUTES
CANBY PLANNING COMMISSION
7:00 PM – November 29, 2010
City Council Chambers – 155 NW 2nd Avenue

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

ABSENT: Commissioner Randy Tessman

STAFF: Bryan Brown, Planning Director; Matilda Deas, AICP, Project Planner; Markus Mead, Associate Planner; Jill Thorn, Planning Staff; and Chris Maciejewski of DKS Associates

OTHERS PRESENT: Peggy Savage, Charles Burden, Randy Carson, Buzz Weygandt, Lisa Weygandt, Kathleen Polley, Tim Dale, Mike Diggles, Jackie Jones, Erik Berkey, Roger Skoe, Bob Zimmer, Bev Doolittle, Doug Thomas, Florence Ball, Richard Ball, Chris Kittridge, Cynthia Schuster, Susan Myers, Chris German, Sandy Woods, Neale Inahara, Matt English, Craig Gingerich, Dan Edwards, Therese Carson

1. CALL TO ORDER

2. CITIZEN INPUT None

3. PUBLIC HEARINGS

a. Conditional Use Permit, Site and Design Review and Lot Line Adjustment CUP 10-01/DR 10-02/LLA 10-05 – The applicant is requesting a Conditional Use Permit, Site and Design Review and Lot Line Adjustment to construct a new 9,470 square foot, 16-resident Memory Care Community. The proposed building is mostly one story with an 8,700 square foot footprint with a small upper level at the corner of 2nd and Fir which will be used for storage and administrative office spaces.

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

Markus Mead, Associate Planner, entered the November 10, 2010, staff report into the record.

Commissioner Milne asked about surface materials and why 48% was acceptable when the standard was 70%. Mr. Mead responded that the applicant should be able to answer the question.

Commissioner Joyce asked for clarification on the roofing material and why that was not in compliance. Mr. Mead responded that the applicant should be able to answer the question.

Commissioner Ewert asked how state requirements affect not meeting the standards. Mr. Brown said the two-story corner presence was the way to meet the requirement.

Applicant - Cynthia Schuster, LRS Architects, 720 NW Davis in Portland spoke for the applicant. She said the application was for a residential care facility that will home for 16 people. She said the stone would equal the base thus the percentage was low. She said they had no issues with the conditions of approval.

Chris Kittredge of Kittredge Engineering, 6975 SW Sandberg Street in Tigard, said the swales would take the roof and sidewalk water and the grates would allow the water to disburse into the swales rather than onto the street and this plan will allow for full sidewalks to be available.

Commissioner Ewert asked if the alley would be improved. Mr. Brown stated the alley would be improved.

Commissioner Ewert asked about the laundry facilities. Ms Schuster said the laundry would be done across the street and there would be some shared employees between the two buildings.

Commissioner Slagle asked if the mechanical equipment would be housed on the roof of the building. Ms. Schuster said it would be in the back of the building and not visible.

Commissioner Joyce asked about the non-compliance on the roofing materials. Ms. Schuster responded that it would be compost shingle and would last longer.

Proponents: Bev Doolittle, Canby Area Chamber of Commerce, stated this was good redevelopment for the downtown area.

Kathy Polley stated she worked for Marquee an at home service company and had visited Countryside and found it to be very comfortable.

Opponents: None

Neutral: None

Rebuttal: None

Chair Ewert closed the Public Hearing

Commissioner Milne said she was aware of the need and importance for care facilities. She realized the site had been vacant for some time and did not like seeing historic older homes torn down, but realized it was not practical to renovate this building. She felt the applicant had met all the criteria.

Commissioner Ewert felt it was a good plan and glad to see the applicant was working with staff. He felt the facility was a great use for downtown. He had a little concern about the crossing between the two buildings, but felt extra reflectors could help.

Commissioner Kocher felt the application met the criteria and suggested that the crosswalks needed to be more visible.

Commissioner Slagle moved that the Planning Commission approve application DR 10-02/CUP 10-01/LLA 10-05 – Countryside Living as presented in the staff report. It was seconded by Commissioner Kocher. The motion passed 6-0.

b. Canby Municipal Code Amendment TA 10-02/CPA 10/01 - Recommendation to City Council for a Comprehensive Plan and Land Development and Planning Ordinance Amendment pertaining to adoption of the 2010 Transportation System Plan. The TSP identifies existing and future transportation needs to guide future transportation investment in the City and determine how land use and transportation decisions can build on one another. It identifies specific transportation improvement projects and programs needed to support the City's goals and policies, serve planned growth through the year 2030, and improve safety and mobility for all travel modes in Canby.

Chair Ewert read the public hearing format.

Matilda Deas, AICP, Project Planner entered the September 17, 2010 staff report into the record.

Chris Maciejewski of DKS Associates presented an overview of the proposed changes and modifications.

Commissioner Slagle asked how removing the turning on First and Ivy help. Mr. Maciejewski said it pulls traffic to Grant Street.

Commissioner Milne asked what will tell you that you can't turn. Mr. Maciejewski said there would be a loop through the parking lot and over time people will be trained that they can't turn.

Commissioner Proctor asked what kind of curb would be there. Mr. Maciejewski said that would be in a design phase.

Ms Deas said the City would be moving forward on the redevelopment of First Avenue.

Commissioner Joyce asked if there were triggers in the revisions. Mr. Maciejewski said that he didn't delve into triggers when the one-way streets went away.

Chair Ewert announced he would take testimony on the changes presented by the consultant and staff; then other issues people wanted to comment on.

Bev Doolittle, Canby Area Chamber of Commerce, stated that directing traffic through the parking lot did not seem right.

Susan Myers expressed concerns about the turn onto 3rd Avenue at Ivy when a train is passing.

13th Avenue – Industrial Park

Therese Carson, Canby Bike and Pedestrian Committee, said she was opposed to adding the 13th Avenue to Sequoia Parkway into the plan. Thus she supported the current proposals in the plan.

Matt English favored adopting the plan as presented.

Sandy Woods stated she was a realtor and was concerned about the home values if the connection between Sequoia and 13th Avenue was completed. She also was concerned about hazardous materials that truck could be transporting.

Mike Diggles said that by supporting the draft TSP he agreed that there should be no truck route on 13th Avenue because of the three schools, adult center, City Park, and athletic fields.

Lisa Weygandt submitted a letter and spoke of her property which is in the Canby Pioneer Industrial Park that not completing the Sequoia Parkway to 13th Avenue would leave future property owners without adequate access. Commissioner Ewert asked if the Otto Road connection would not serve that purpose. Ms Weygandt stated it would not.

Ms Weygandt also gave the Commission a letter from American Steel. Chair Ewert read the letter to the Commission. He felt the City should continue to honor the agreements to the property owners in the industrial park.

Buzz Weygandt read a letter of his opposition to the draft TSP which he felt did not adequately address the issues of the industrial park property owners.

Charles Burden read his letter opposing the draft TSP because as a property owner in the industrial park he felt the transportation needs would not be met.

Kathy Polley read a letter opposing the draft TSP because she did not feel the property owners in the industrial park would be well served.

Bob Zimmer stated he was one of the original owners of property in the industrial park. He suggested that further studies should be done to deal with the 13th Avenue options.

Chris German presented a letter in favor of the TSP as presented and said she was an advocate for the Safe Routes to School program.

Craig Gingerich, Hope Village administrator, said he was in favor of the TSP as proposed.

Tim Dale presented a letter supporting the draft TSP and felt the 13th Avenue corridor was “child rich”.

Susan Myers asked what the commitment to American Steel was. Commissioner Ewert said the general consensus was that Sequoia Parkway would be extended to 13th Avenue. She also read a letter for the record supporting the draft TSP plan.

Chair Ewert closed the public hearing.

Commissioner Joyce said he felt that the industrial park property owners and the property owners along the 13th Avenue corridor should work together for a solution.

Commissioner Slagle said she felt it was a good plan and the City Council needs to make it right with all of the property owners.

Mr. Brown reminded the Commission that only the City Council could commit money.

Commissioner Joyce felt the plan needs to have trigger points; 13th Avenue – Sequoia Parkway extension should be designed to keep as much traffic off of 13th Avenue as possible and the City Council should look at agreements that have been made.

Commissioner Kocher felt the plan should be approved with the City involved to solve the industrial park issues.

Commissioner Proctor said he agreed with the other commissioners that the plan should be approved as presented.

Commissioner Ewert asked about traffic calming on 13th Avenue. Mr. Maciejewski stated there were numerous tools that could be implemented. Commissioner Ewert stated he felt that 13th Avenue should be livable with robust traffic calming.

Commissioner Milne said that two things stood out in her mind. One was that the Canby Pioneer Industrial Park was a critical component of the community and two was that the integrity of the neighborhood should be preserved. She favored moving the plan to the City Council and urged the Council to deal with the commitments to the industrial park property owners.

Commissioner Joyce moved that the Planning Commission recommend to the City Council approval of TA 10-02/CPA 10-02, based on the record of the November 29th Planning Commission public hearing and findings in the November 12, 2010 Planning Commission staff report with the downtown circulation improvements be triggered by Canby's new mobility standards; robust traffic calming for SE and SW 13th Avenue; at such time that a connection from Sequoia Parkway to SE 13th Avenue be deemed necessary and prior to construction, a traffic mitigation plan for SE and SW 13th Avenue shall be developed and adopted in collaboration with local areas residents; and 13th Avenue will be a collector. It was seconded by Commissioner Slagle. The motion passed 6-0.

4. NEW BUSINESS None

FINAL DECISIONS

a. DR 10-02/CUP 10-01/LLA 10-05 – Countryside Living - It was moved by Commissioner Milne to approve the written findings for DR 10-02/CUP 10-01/LLA 10-05 – Countryside Living – as presented. It was seconded by Commissioner Slagle. The motion passed 6-0.

5. MINUTES

September 27, 2010 - Commissioner Slagle moved to approve minutes of September 27, 2010 as presented. Motion seconded by Commissioner Milne and passed 3-0-3 with Commissioners Joyce, Milne and Proctor abstaining.

6. ITEMS OF INTEREST FROM STAFF None

7. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION None

8. ADJOURNMENT at 11:00 PM.