

## **AGENDA CANBY CITY COUNCIL**

**Work Session 6:00 PM – Virtual Meeting/ Council Chambers**  
**Regular Meeting 7:00 PM - Virtual Meeting/ Council Chambers**  
*Meetings can be viewed on CTV Channel 5 or YouTube*

**July 15, 2020**  
**222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor**  
**Mayor Brian Hodson**

**Council President Tim Dale**  
**Councilor Trygve Berge**  
**Councilor Traci Hensley**

**Councilor Greg Parker**  
**Councilor Sarah Spoon**  
**Councilor Shawn Varwig**

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### **Work Session – 6:00 PM**

- 1. CALL TO ORDER**
- 2. DISCUSSION REGARDING POLICE DEPARTMENT POLICIES – CHIEF SMITH**
- 3. ADJOURN**

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### **Regular Meeting – 7:00 PM**

- 1. CALL TO ORDER**
- 2. PRESENTATIONS**
  - a. Swearing in of New Police Officer
  - b. Canby Disposal Rate Increase Proposal
- 3. COMMUNICATION**
- 4. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** This is an opportunity for audience members to address the City Council on items not on the agenda. Each person will be given 3 minutes to speak. Staff and the City Council will make every effort to respond to questions raised during citizens input before the meeting ends or as quickly as possible thereafter. **\*\*\*If you would like to speak virtually or in person, please email or call the City Recorder by 5:00 pm on July 15<sup>th</sup> with your name, the topic you'd like to speak on and contact information: [bissetm@canbvoregon.gov](mailto:bissetm@canbvoregon.gov) or call 503-266-0733. Once your information is received, you will be sent instructions to speak. Please note that Council will be attending this meeting virtually.**
- 5. MAYOR'S BUSINESS**
- 6. COUNCILOR COMMENTS & LIAISON REPORTS**

7. **CONSENT AGENDA:** This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion. An item may be discussed if it is pulled from the consent agenda to New Business.
- a. Approval of Minutes of the June 17, 2020 City Council Regular Meeting.
  - b. New Limited On-Premises OLCC Liquor License for B's Bake Shoppe.
  - c. Appointment of Jessica Hines to the Library Board.
  - d. Appointment of Warren Holzem, Alex Vice, Paul Waterman to the Transit Advisory Committee.

8. **RESOLUTIONS & ORDINANCES**

- a. **Resolution No. 1339:** A Resolution authorizing a rate increase and establishing a new rate schedule for garbage collection by Canby Disposal within the City of Canby.
- b. **Resolution No. 1340:** A Resolution to ratify the contract between the City of Canby (City) and the Local 350-6 AFSCME Council 75 AFL-CIO (Union) for the period from July 1, 2020 through June 30, 2021; and repealing Resolution No. 1273.
- c. **Ordinance No. 1530:** An Ordinance authorizing the Mayor and Interim City Administrator to execute a contract with CURRAN-McLEOD, Inc. Consulting Engineers for engineering services to complete improvements to N Locust Street Reconstruction; and declaring an emergency. *(First Reading)*
- d. **Ordinance No. 1531:** An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby; and establishing an effective date. *(First Reading)*
- e. **Ordinance No. 1532:** An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date. *(First Reading)*

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

- a. Bi-Monthly Reports – in packet

10. **CITIZEN INPUT**

11. **ACTION REVIEW**

12. **ADJOURN**

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\*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 Melissa Bisset at 503.266.0733. A copy of this Agenda can be found on the City's web page at [www.canbyoregon.gov](http://www.canbyoregon.gov). **City Council and Planning Commission Meetings are broadcast live and can be viewed on CTV Channel 5.** For a schedule of the playback times, please call 503.263.6287.

**\*\*We are requesting that rather than attending in person you view the meeting on CTV Channel 5 or on YouTube: <https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>**

**If you do not have access virtually,  
there are a small number of chairs provided inside to allow for physical distancing.**



# City of Canby

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## City Council Staff Report

DATE: July 15, 2020  
TO: Honorable Mayor Hodson and City Council  
FROM: Melissa Bisset, City Recorder  
ITEM: Work Session on Police Department Policies

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### Summary

Police Chief Smith will provide an update on various police policies. He has included information in the meeting packet for the Council's reference and highlighted sections in red to be taken note of.

### Attachments

1. Professional Ethics and Standards
2. Training
3. Use of Force
4. Use of Force Instrumentality
5. Law Enforcement Brady Agreement
6. Letter of Expectation – Standing in the Gap
7. New Recruit Letter Template
8. Profiling Compliant Certification Form for LECC 2020

## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 1.01

Subject: Professional Ethics and Standards

Effective: December 6, 2002

Revised: February 5, 2013

Reviewed: February 26, 2007; June 2011; June 2014

OAA Ref: 1.1.1, 1.1.2, 1.2.1, 1.3.1, 1.3.3, 1.4.1, 1.4.6, 1.7.2

Approved: BRET J. SMITH, CHIEF OF POLICE

### **I. PURPOSE**

The purpose of this policy is to provide the members of this Department with clearly articulated expectations of their performance relative to employment with the City of Canby and the Canby Police Department.

### **II. POLICY**

#### **A. Preamble**

Whereas, peace officers are vested with a public trust which requires that they consistently demonstrate the highest degree of integrity and good moral character; and Whereas, the need to maintain high standards of moral character, integrity, knowledge, and trust is advanced by the establishment of Standards of Conduct for members of the law enforcement profession; Whereas, the establishment of Standards of Conduct, which includes a Code of Ethics, Canons of Ethics, Oath of Office, Mission Statement and Minimum Standards, requires the granting of authority to enforce these Standards of professional conduct through disciplinary action as necessary for the protection of the health, welfare and safety of the public; therefore, the need to maintain high standards of moral character, integrity, knowledge, and trust require that members of the Law Enforcement Profession establish and conform to Standards of Conduct.

#### **B. General statement**

Members of the law enforcement profession are granted a public trust which requires they consistently demonstrate the highest degree of integrity. To be worthy of this public trust, and to ensure that their professional conduct is above reproach, members of the law enforcement profession must conform to these Standards of Conduct and must abide by these Canons of Ethics, adopted as a means of internal regulation.



The essence of a profession is that it requires, in addition to prescribing a desired level of performance, established minimum standards of ethical conduct with prescribed rules for internal discipline to ensure compliance. Accordingly, these Standards of Conduct have been established for the law enforcement profession.

Nothing in the Standards of Conduct is intended to limit or supersede any provision of law relating to the duties and obligations of peace officers or the consequences of a violation thereof. Where these rules specify certain conduct as unprofessional, this is not to be interpreted as approval of conduct not specifically mentioned.

Nothing in the Standards of Conduct is intended to limit the authority of this agency to adopt and enforce rules and regulations that are more stringent or comprehensive than those that are contained here.

Standards of Conduct are established with the belief they are reasonably related to the business needs of the Canby Police Department. Business need is generally, but not exclusively described as the type of performance that can be expected for the orderly, efficient, effective and safe operation of the Department. Additionally, because we, in policing, are obligated by our oath to affect the rules of a civilized society, it is reasonable that we be held to the highest of standards in our professional and personal conduct. The enormity of potential situations in which a member may become involved then, requires extensive discussion to define acceptable and unacceptable conduct. It is the policy of this Department therefore, to provide clear written direction of expected and prohibited activities by members of this agency.

### III. DEFINITIONS

***Peace Officer:*** A sworn commissioned regular officer, and by extension and where applicable any other paid or volunteer member of the Canby Police Department.

***Canons:*** Statements which express in general terms standards of professional conduct expected of peace officers in the relationship with the public, the criminal justice system and the profession. They embody the general concepts from which the Ethical Standards and the Disciplinary Rules are derived.

***Ethical Standards:*** Statements that represent the objectives toward which every peace officer shall strive. They constitute guiding principles that can be relied upon by the peace officer in certain specific situations.

***Standards:*** An acceptable level of conduct for all peace officers, regardless of rank or the nature of their assignment. Any peace officer who violates any agency rule that applies to these canons and standards commits unprofessional conduct, and is subject to disciplinary action. Violation of disciplinary rules requires appropriate adjudication and disciplinary action ranging from oral reprimand to termination and/or criminal prosecution or other administrative action sanctioned by law, as

dictated by the individual case.

**Administrative Investigation:** An investigation conducted to determine whether a member has violated any provision of this code, or an agency rule or regulation; or whether an officer is impaired or unfit to perform the duties and responsibilities of a peace officer.

**Formal Discipline:** The final adjudication of administrative or disciplinary charges.

**Controversial Conduct:** Conduct which may damage the reputation of the Department or bring it or the member into disrepute.

#### **IV. LAW ENFORCEMENT CODE OF ETHICS**

The Law Enforcement Code of Ethics is required to be adhered to by all sworn personnel as a standard of conduct for officers of this agency.

*“As a law enforcement officer, my fundamental obligation is to be a responsible public servant. My major duties are to safeguard lives, property, protect the innocent against violence and deception and the weak against oppression and intimidation.*

*While I consider the way I choose to conduct my private affairs a personal freedom, I accept the responsibilities for my actions, as well as inactions, while on duty or off duty, when those actions bring disrepute on the public image or my employer, my fellow workers and the law enforcement profession.*

*I vow to perform all my duties in a lawful, professional and competent manner. I consider the abilities to be courageous in the face of danger and to exercise restraint in the use of my powers and authorities to be the ultimate public trust. I accept that I must consistently strive to achieve excellence in learning the necessary knowledge and skills associated with my duties. I will keep myself physically fit and mentally alert so that I am capable of performing my duties according to the standards of quality expected of my position and which are identified as the essential functions of the job.*

*I vow to be fully truthful and honest in my dealings with others. I deplore dishonesty and half-truths that mislead or do not fully inform those who must depend upon my honesty. I will not lie, steal or cheat or tolerate anyone who does. I will obey the very laws that members of my agency are sworn to uphold.*

*I will seek affirmative ways to comply with the standards of my department and the lawful directions of my supervisors. I vow to be free of any acts that*

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*would adversely reflect on my ability to perform my duties as a police officer; remain in good moral fitness (moral character) with the understanding that any acts that reflect dishonesty, deceit, or misrepresentation adversely reflects on my ability to perform my duties and may make me unfit to perform my duties as a police officer and such conduct will not be tolerated.*

*I vow to treat others with respect and with courtesy at all times. I consider it to be a professional weakness to allow another's behavior to dictate my response. I will not allow others' actions or failings to be my excuse for not performing my duties in a responsible and professional and expected manner.*

*I vow to empathize with the problems of people with whom I come into daily contact. However, I cannot allow my personal feelings, prejudices, animosities, or friendships to influence the discretionary authorities entrusted to my job. I will affirmatively seek ways to avoid conflicts and potential conflicts of interest that could compromise my official authority or public image.*

*I hold the authority inherent in my position to be an affirmation of the public's trust in me as a public servant. I do not take this trust lightly. I recognize the badge and the uniform of our office as a symbol of public faith, and we accept it as a public trust to be held so long as we are true to the ethics of law enforcement.*

*As long as I remain in this position, I will dedicate myself to maintaining this trust and upholding all the ideals of my chosen profession before God, the law enforcement community, and our citizens."*

## **V. OATH OF OFFICE**

*"I, ( name ) being first duly sworn depose and say that I will support and uphold the constitutions of the United States and the State of Oregon, and the Charter and Ordinances of the City of Canby, remaining in compliance with the professional standards established by the department's mission, professional code of ethics, department policies and directives; and will faithfully perform the duties of ( position ) for the City of Canby, Oregon, to the best of my ability."*

## **VI. MISSION STATEMENT**

It is the Mission of the Canby Police Department to protect life and property; enhance community safety and improve quality of life by reducing crime and the fear of crime and to perform in such a manner that promotes the public's trust and confidence, sense of safety and security; while ensuring every member is in

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compliance with the professional standards established by the Oath of Office, Professional Code of Ethics and Department Policies and Directives.

The Mission of the Canby Police Department is the foundation upon which all of our operational decisions and administrative directives are grounded. The Mission is the reason why our organization exists.

All members have a legal and ethical duty to perform their jobs and conduct themselves in such a manner that promotes the letter and spirit of the department's mission.

Every member is required to accept the responsibility for the achievement of this mission and be committed to its concepts.

## **VII. ORGANIZATIONAL VALUES**

### **A. Integrity**

Integrity and honesty are paramount to our profession and it is expected of all employees. Integrity produces an atmosphere of credibility and honesty produces an environment of trust. Integrity is our standard; it is the cornerstone of our profession. This is a black and white area without shades of grey and the community we serve must have confidence that their police officers have the highest level of ethics and morals, as set forth in the Mission, Law Enforcement Code of Ethics, Oath of Office, and department administrative policies. We will practice transparency to ensure our citizens the availability of information which is deemed public. As police officers, we recognize that each of us represents not only our department but also the law enforcement profession. We therefore acknowledge and accept that our individual conduct, both on and off duty, must be beyond reproach and our conduct is the same, even when no one is watching. As police officers, we have a solemn obligation to be honest and trustworthy, accurately documenting the available information of an incident in reports and when giving testimony during court, report ethical violations when committed by others, and to serve as a role model for the public.

### **B. Respect**

As police professionals we recognize that our members are our most important resource and this organization proactively supports their goals, as well as empowering them to fulfill their responsibilities with training, knowledge, authority, and appropriate discretion so they can develop to their full potential. We consider all people worthy of high degree and we believe in treating all people with respect and dignity.

We value the diversity of people in our community and we will serve all with equal dedication, respect, fairness and compassion as we safeguard our constitutional

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rights, enforce laws, preserve peace, and protect the lives and safety of our community.

### **C. Service to our Communities**

Our citizens are our most important customer and we are dedicated to enhancing public safety and reducing the fear of and the incidence of crime. We view our relationship with the community as a partnership, jointly working to solve problems and seeking participation in the development of policing strategies.

We encourage this teamwork because it unites the citizens and the members of the police department by sharing talents and expertise that leads to the successful identification of common goals, objectives, and results. We will do our best to actively contribute to the welfare of the community, and to genuinely care about improving the quality of life of those we serve; providing this service in a manner which is fair, courteous, responsive, efficient, and effective.

## **VIII. VISION STATEMENT**

We are dedicated police professionals, committed to the community, sensitive to the needs and interests of our citizens, while holding ourselves accountable to the highest standard of excellence and achievement. We recognize that the authority and responsibility we carry is placed with us by our community, and there is every expectation that we be held accountable for our actions. We willingly take responsibility for our actions, owning up to shortcomings/mistakes, and honoring our obligations and requirements. We hold ourselves accountable not only to the organization but also the public's expectations and to act with integrity as we work towards achieving our department's Mission and Vision.

We believe crime is not only a police problem but a social problem impacting all aspects of the community. We are committed to working with the community to address these issues and actively seek police and community partnerships as a responsible approach to maintaining social order and controlling crime. We view our relationship with our community as a partnership, jointly working to solve all concerns of public safety. We will provide a quality service to our community and assist other agencies to the best of our ability; to everyone regardless of their status in life.

We are committed to proficiency, reliability, and excellence in all aspects of our conduct and performance; being truthful, honest and credible in all actions we take. We reject complacency and we view the essence of professionalism as a person's character reflected in their dedication to duty. It is based upon the belief that honest dealings reveal and honest character and what we do reveals who we are. It makes us want to do a little more and to strive to give our best.

In a spirit of teamwork, the Canby Police Department will strive to be an open, friendly, and community-minded organization devoted to quality public service. Our

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employees strive to provide a level of service consistent with the highest quality possible. We care that our citizens are satisfied with the level of service we provide and that all citizens have equal access to those services. Our approach to teamwork is based upon the principle that each member brings unique experiences and important expertise to our police department. It does not mean everyone's opinion has to be the same, but as individual members of this police department we share a common purpose that allows us to share a sense of fellowship and devotion and to work together. Unity is not the same as uniformity.

Everyone has unique talents and personalities and it through the appreciation of these differences that help us reach our mission. We are committed to creating an environment that fosters open and honest communication that is a core way of working; which identifies common goals and a genuine concern and support for each other. We understand the best solutions come from working together and at times it will mean that the mission of this organization and the overall accomplishment of our goals will require setting aside personal views and desires. We believe teamwork leverages our individual strengths and a team that cooperates well is also effective. We expect everyone to actively participate and we are willing to share what resources we have.

- We are dedicated to the reduction of crime and improving the quality of life in our community; we will work in partnership with our community to solve problems that affect public safety;
- We protect the public through aggressive enforcement and intervention activities;
- We are responsive to community needs and interests; compassionate and sensitive when dealing with citizens, regardless of their circumstances;
- We are professionals dedicated to quality and excellence; demonstrating integrity and honor in all of our actions and taking responsibility and ownership for the standards established by the mission, oath of office, code of ethics, and department policies and directives. We recognize that the authority and responsibility we carry is placed with us by the community, and it is expected that we be held accountable for our actions.

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## **IX. CANONS OF ETHICS**

### **A. Canon One**

PEACE OFFICERS SHALL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE STATE CONSTITUTION AND ALL LAWS ENACTED OR ESTABLISHED PURSUANT TO LEGALLY CONSTITUTED AUTHORITY.

1. Peace officers shall recognize that the primary responsibility of their profession and of the individual officer is the protection of the people

within the jurisdiction of the United States through upholding of their laws, the most important of which are the Constitution of the United States and the State Constitution and laws derived there from.

2. Peace officers shall be aware of the extent and the limitations of their authority in the enforcement of the law.
3. Peace officers shall diligently study principles and new enactments of the laws they enforce.
4. Peace officers shall be responsible for keeping abreast of current law as applied to their duties.
5. Peace officers shall endeavor to uphold the spirit of the law, as opposed to enforcing merely the letter of the law.
6. Peace officers shall respect and uphold the dignity, human rights and Constitutional rights of all persons.

#### **B. Canon Two**

PEACE OFFICERS SHALL BE AWARE OF AND SHALL USE PROPER AND ETHICAL PROCEDURES IN DISCHARGING THEIR OFFICIAL DUTIES AND RESPONSIBILITIES.

1. Peace officers shall be aware of and follow faithfully their lawful authority to use the force reasonably necessary in securing compliance with their lawful enforcement duties.
2. Peace officers shall truthfully, completely and impartially report, testify and present evidence in all matters of an official nature.
3. Peace officers shall follow legal practices in such areas as interrogation, arrest or detention, searches, seizures, use of informants and collection and preservation of evidence.
4. Peace officers shall follow the principles of integrity, fairness and impartiality in connection with their duties.

#### **C. Canon Three**

PEACE OFFICERS SHALL REGARD THE DISCHARGE OF THEIR DUTIES AS A PUBLIC TRUST AND SHALL RECOGNIZE THEIR RESPONSIBILITIES TO THE PEOPLE WHOM THEY ARE SWORN TO PROTECT AND SERVE.

1. Peace officers, as professionals, shall maintain an awareness of those factors affecting their responsibilities.

2. Peace officers, during their tour of duty, shall diligently devote their time and attention to the effective and professional performance of their responsibilities.
3. Peace officers shall safely and efficiently use equipment and material available to them.
4. Peace officers shall be prepared to and shall respond effectively to the demands of their office.
5. Peace officers, with due regard for compassion, shall maintain an objective and impartial attitude in official contacts.
6. Peace officers shall not allow their personal convictions, beliefs, prejudices, or biases to interfere unreasonably with their official act or decisions.
7. Peace officers shall recognize that their allegiance is first to the people, then to their profession and the government agency that employs them.

**D. Canon Four**

PEACE OFFICERS WILL SO CONDUCT THEIR PUBLIC AND PRIVATE LIFE THAT THEY EXEMPLIFY THE HIGH STANDARDS OF INTEGRITY, TRUST, AND MORALITY DEMANDED OF MEMBERS OF THE LAW ENFORCEMENT PROFESSION.

1. Peace officers shall refrain from consuming intoxicating beverages to the extent that it results in impairment which brings discredit upon the profession or the Department, or renders them unfit for their next tour of duty.
2. Peace officers shall not consume intoxicating beverages while on duty, except to the limited degree expressly permitted in the performance of official duties.
3. Peace officers shall not use any narcotics, hallucinogens, or any other controlled substance except when legally prescribed. When such controlled substances are prescribed, officers shall notify their supervisor and discuss any side effects which may affect their ability to perform their duties prior to reporting for duty.
4. Peace officers shall maintain a level of conduct in their personal and business affairs in keeping with the high standards of their profession. Officers shall not participate in any incident involving moral turpitude.
5. Peace officers shall not undertake financial obligations which they know or reasonably should know they will be unable to meet and shall pay all



just debts when due.

6. Peace officers shall not engage in illegal political activities.
7. Peace officers shall not engage in any strike, work obstruction or abstention, in whole or in part, from the full, faithful and proper performance of their assigned duties and responsibilities.
8. Peace officers shall maintain a neutral position with regard to the merits of any labor dispute, political protest or other public demonstration, while acting in an official capacity.

#### **E. Canon Five**

PEACE OFFICERS SHALL RECOGNIZE THAT OUR SOCIETY HOLDS THE FREEDOM OF THE INDIVIDUAL AS A PARAMOUNT PRECEPT WHICH SHALL NOT BE INFRINGED UPON WITHOUT JUST, LEGAL AND NECESSARY CAUSE.

1. Peace officers shall not use their official position to detain any individual, or to restrict the freedom of any individual, except in the manner and means permitted or prescribed by law.
2. Peace officers shall recognize the rights of individuals to be free from capricious or arbitrary acts which deny or abridge fundamental rights as guaranteed by law.

#### **F. Canon Six**

PEACE OFFICERS SHALL ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE PEACE OFFICER PROFESSION.

1. Peace officers shall recognize that every person in our society is entitled to professional, effective and efficient law enforcement services.
2. Peace officers shall perform their duties in such a manner as to discourage double standards.
3. Peace officers shall conduct themselves so as to set exemplary standards of performance for all law enforcement personnel.
4. Peace officers shall maintain the integrity of their profession through complete disclosure of those who violate any of these rules of conduct, violate any law or who conduct themselves in a manner which tends to discredit the profession.
5. Peace officers shall have responsibility for reporting to proper

authorities any known information which would serve to disqualify candidates from transferring within or entering the profession.

6. Peace officers shall be responsible for maintaining a level of education and training that will keep them abreast of current techniques, concepts, laws and requirements of the profession.
7. Chief Executive peace officers shall accept the responsibility of utilizing all available resources and the authority of their office to maintain the integrity of their agency and competency of their officers. These Canons and Ethical Standards shall be applied to all legally defined peace officers regardless of rank.
8. Peace officers shall assume a leadership role in furthering their profession by encouraging and assisting in the education and training of other members of the profession.

#### **G. Canon Seven**

PEACE OFFICERS SHALL COOPERATE WITH OTHER OFFICIALS AND ORGANIZATIONS WHO ARE USING LEGAL AND ETHICAL MEANS TO ACHIEVE THE GOALS AND OBJECTIVES OF THE LAW ENFORCEMENT PROFESSION.

1. Peace officers, within legal and agency guidelines, shall share with personnel both within and outside their agency, appropriate information that will facilitate the achievement of criminal justice goals or objectives.
2. Peace officers, whether requested through appropriate channels or called upon individually, shall render needed assistance to any other officer in the proper performance of their duty.
3. Peace officers shall, within legal and agency guidelines, endeavor to communicate to the people of their community the goals and objectives of the profession, and keep them apprised of conditions which threaten the maintenance of an ordered society.

#### **H. Canon Eight**

PEACE OFFICERS SHALL NOT COMPROMISE THEIR INTEGRITY, NOR THAT OF THE DEPARTMENT OR PROFESSION BY ACCEPTING, GIVING OR SOLICITING ANY GRATUITY.

1. Peace officers shall refuse to offer, give or receive gifts, favors or gratuities, either large or small, which can be reasonably interpreted as capable of influencing official acts or judgments. This standard is not intended to isolate peace officers from normal social practices, or to preclude gifts among friends, associates, or relatives where

appropriate.

2. Peace officers shall not consider their badge of office as a license to obtain special favor or consideration.

## **I. Canon Nine**

PEACE OFFICERS SHALL OBSERVE THE CONFIDENTIALITY OF INFORMATION AVAILABLE TO THEM THROUGH ANY SOURCE, AS IT RELATES TO THE PEACE OFFICER'S PROFESSION.

1. Peace officers shall be aware of and shall meticulously observe all legal restrictions on the release and dissemination of information.
2. Peace officers shall treat as confidential the official business of their employing agency, and shall release or disseminate such information solely in an authorized manner.
3. Peace officers shall treat as confidential that information confided to them personally. They shall disclose such information as required in the proper performance of their duties.
4. Peace officers shall neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.
5. Peace officers shall treat as confidential all matters relating to investigations, internal affairs and personnel, to the extent authorized or required by law.

## **X. PROFESSIONAL CONDUCT**

As most police work is necessarily performed without close supervision, the responsibility for the proper performance of an officer's duty lies primarily with the officer. An officer carries a responsibility for the safety of the community and fellow officers. An officer discharges that responsibility by the faithful and diligent performance of any assigned duty. Anything less violates the trust placed in the officer by the people, and nothing less qualifies as professional conduct. In the performance of this duty to serve society, an officer is often called upon to make difficult decisions.

The officer must exercise discretion in situations where his/her rights and liabilities and those of the Department hinge upon the officers' conduct and judgment. An officer's decisions are not easily made, and occasionally they involve a choice which may cause the member hardship or discomfort. An officer must be faithful to the oath of office, the principles of professional police service, and the objectives of the Department; and in the discharge of duty s/he must not allow personal motives to govern his/her decisions and conduct.

## **A. Respect for Constitutional Rights**

No person has a constitutional right to violate the law; neither may any person be deprived of constitutional rights merely because the person is suspected of having committed a crime. The task of determining the constitutionality of a statute lies with an appellate court of proper jurisdiction, not with an officer who seeks to properly enforce the law as it exists.

Therefore, an officer may enforce any federal, state, or local statute which is valid on its face without fear of abrogating the constitutional rights of the person violating that statute. An officer who lawfully acts within the scope of authority does not deprive persons of their civil liberties. The officer may within the scope of authority make reasonable inquiries, conduct investigations, and arrest on probable cause. However, when an officer exceeds authority by unreasonable conduct, the officer violates the sanctity of the law which s/he is sworn to uphold.

## **B. Integrity**

The public demands the integrity of its law enforcement officers be above reproach, and the dishonesty of a single officer may impair public confidence and cast suspicion upon the entire Department. Succumbing to even minor temptation can be the genesis of a malignancy which may ultimately destroy an individual's effectiveness and may contribute to the corruption of countless others. An officer must scrupulously avoid any conduct which might compromise the integrity of himself/herself, his/her co-workers or the Department.

## **C. Courtesy**

Effective law enforcement depends on a high degree of cooperation between the Department and the public it serves. The practice of courtesy in all public contacts encourages understanding and appreciation; discourtesy breeds contempt and resistance. The majority of the public are law abiding citizens who rightfully expect fair and courteous treatment by Department employees. While the urgency of a situation might preclude the ordinary social amenities, discourtesy under any circumstances is indefensible. The practice of courtesy by an officer is not a manifestation of weakness; it is, on the contrary, entirely consistent with the firmness and impartiality that characterizes a professional police officer.

## **D. Truthfulness**

Members shall be truthful when testifying, making reports, or conducting any other Department business. There may be a valid business necessity during undercover operations when this article would be non-applying conduct. Members shall not deliberately make a false or misleading statement to a

supervisor or fellow employee.

**E. Conforming to Policy**

Members shall not establish a pattern of behavior that deviates from Department directives, policies, or procedures nor behavior in a pattern that is significantly different from the compliance rates of other members. Members shall not challenge policies, procedures, or practices without providing objective and documented facts, in writing, to support justification for such challenge unless the operational situation justifies such action.

**F. Compliance with Lawful Orders**

The Department is an organization with a clearly defined hierarchy of authority. This is necessary because unquestioned obedience of a superior's lawful command is essential for the safe and prompt performance and the positive encouragement of a willingness to serve. However, negative discipline may be necessary where there is a willing disregard of lawful commands, orders or directives.

**G. Investigative Procedures**

1. Peace officers, including Department members, under investigation for an alleged violation of any of these standards or Department rules shall be afforded, at a minimum, the rights established by law, labor agreement, and Department procedure to ensure fair and just treatment in the enforcement of disciplinary rules of conduct or similar expectations.
2. Exercise of Rights: By reason of the lawful exercise of rights, officers/members shall not be discharged, disciplined, demoted, transferred, or denied promotion or reassignment, or discriminated against with regard to employment, nor threatened with any such action.
3. Criminal Investigations: When the investigation focuses on an officer for prosecution of a crime, the officer/member shall be afforded the same constitutional rights, privileges, or guarantees enjoyed by any person. Nothing shall prevent the Department from pursuing an investigation administratively when it is warranted.

**H. Agency Appeal or Review Process**

To ensure due process, officers/members shall be provided with an internal administrative appeal or review process or procedure, established by the Department.

## **CANBY POLICE DEPARTMENT**

# **GENERAL ORDER**

Number: 3.12

Subject: Training

Effective: June 3, 2002

Revised: November 23, 2007

Reviewed: June 2003, 2004, 2005, 2006; June 2011; June 2014

OAA Ref: 1.1.3, 1.8.1, 1.8.2, 2.1.6

Approved: BRET J. SMITH, CHIEF OF POLICE

### **I. PURPOSE**

To establish a procedure by which requests for training are processed within the department, to establish instructor requirements for preparation of departmental training, to establish procedures for uniformly conducting and documenting departmental training, and to describe the method of recording outside training received by members of this department. This policy also:

- Instructs individual members on how to apply for training.
- Instructs supervisors on their responsibilities.
- Instructs the Training Sergeant on his/her responsibilities.

### **II. POLICY**

It is the policy of the Canby Police Department to provide excellent initial and on-going training to its members that meets the needs, safety and career goals of the individual, the department, and the community. All training requests shall be properly processed, and the completed training documented.

### **III. PROCEDURES**

#### **A. Training Goals**

During the department's Annual Planning session, overall training goals for the organization will be developed as well as goals for the different sections. Training requests will constantly be evaluated against those goals to determine approval or disapproval.

B. Resources

Department members can obtain information regarding upcoming training from the training board, teletypes, and training sergeant.

C. Responsibilities of the member

1. Members requesting training shall complete the department Training Request Form.
2. Members shall complete the request explaining the content of the training and the reasons for attending the training, as well as the anticipated cost of the training. The member will then forward the request to the training sergeant.

D. Responsibilities of the Training Sergeant

1. Processing training requests;
2. Recommendations for distribution of training monies;
3. The Training Sergeant will be responsible for making reservations and arrangements for training once approved.
4. The training sergeant will schedule the employee's approved training using all resources available to ensure the employee is able to attend the approved training. The Lieutenant shall be consulted when scheduling appears to prohibit the training request. Only serious operational constraints should result in the denial of the training approved by the Training Sergeant.
5. Maintain a training summary of scheduled training which will be posted on the training board.
6. Post all mandatory training as determined by the Chief of Police.

E. Appeal

When a request for training is denied during any step of the process the

requesting officer has the recourse of appealing the decision. The appeal must be in writing. The order of appeal is as follows:

1. If the request is denied by the Training Sergeant it may be appealed to the Lieutenant.

The officer making the appeal may be present during the Lieutenants review of the appeal to explain further the officer's reasons in requesting the training. Any decision made by the Lieutenant is final.

#### **IV. TRAINING DOCUMENTATION**

##### **A. In-House Training**

1. Instructors are responsible for sufficient preparation to assure the training they are conducting is organized and relevant to departmental needs.
2. Instructors are required to submit an outline to the Training Sergeant for each class prior to conducting the class. If more than one topic is taught, the number of hours dedicated to each topic and who the instructor(s) were for each topic will be included with the information submitted to the Training Sergeant.
3. Instructors are responsible for recording all activities of the class.
4. At the conclusion of the class, instructors will prepare a memorandum routed to the Training Sergeant containing the following information:
  - a. A roster of attendees.
  - b. Documentation of the actual hours of training. (Do not include time spent preparing for the class, time spent in transit to the training location, or time spent on lunch breaks.)
  - c. A revised class outline for the presentation if it is different than the pre-class outline.
  - d. If performance is measured by testing, a recording of test scores of those attending. The scores will be given to the Training Sergeant for filing.



5. The Training Sergeant will be responsible for recording the training as follows:
  - a. The Training Sergeant must first have verified and documented the qualifications of an instructor for a particular course prior to that person making the presentation. Instructors should have completed, in addition to training in the area they are presenting, a certified instructor course through the Department on Public Safety Standards and Training or have an equivalent amount of training or experience that would qualify them as an instructor.
  - b. The individual training record of the attendees will be credited with the hours of training.

A. Outside Training

1. Individual department members are responsible for reporting content and hours of training received to the Training Sergeant.
2. Document the actual hours of training. (Do not include non-training portions of business meetings, time spent in transit to the training location, or time spent on lunch breaks.)
3. All personnel who are authorized for training are required to attend. Exceptions will be made for court, illness, or other pre-approved reasons.
4. Training records will be maintained to reflect that information. Maintenance of the training files is the responsibility of the Training Sergeant.

B. Tactical Teams

1. The Canby Police Department does have a Tactical Entry Team (TET). All team training must be documented by the Sergeant assigned to supervise this team. The team Sergeant will be responsible for providing all documented training to the Training Sergeant.

## **V. FIELD TRAINING AND EVALUATION PROGRAM (FTEP)**

- A. This department subscribes to the theory of the FTEP program. All newly hired sworn personnel will complete an FTEP training period. The FTEP

program is facilitated by a FTEP Training Coordinator, who is appointed to the position by the Chief of Police. The length of the FTEP training program is (14) weeks.

- B. FTO's will be selected by the Chief of Police or his/her designee. FTO's shall complete formal DPSST approved training prior to undertaking an FTO assignment.
- C. FTO's shall receive periodic in-service training to update and sharpen skills as an FTO. In selecting an FTO, management will appoint only those employees whose values, tactics and attitude reflect that of the organization and who is willing and capable of transmitting these values to trainees or recruits. FTO's report the trainee/recruits progress directly to the trainee/recruits supervisor and to the FTO Program Coordinator, who will be appointed by the Chief of Police or designee.
- D. The FTO will use department authorized forms to report progress and evaluate the trainee/recruit. Forms used will include, but not be limited to, the Daily Observation Report (DOR), the Weekly Observation Report and the End of Phase Report. The primary FTO will be responsible for completion of an end of program report, detailing the trainee/recruits strengths, weaknesses and the FTO's recommendation of the trainee/recruits readiness for release from the FTEP program.
- E. FTO's who are actively involved with a trainee/recruit will be supervised by their shift supervisor.
- F. The FTEP program consists of a number of phases for each position that the Recruit needs to successfully complete. For example, the recruit Officer program consists of fifteen weeks. The recruit is assigned to a number of trained instructors, referred to as Field Training Officers (FTO.) The FTO is responsible for completing a formal training program, which is documented in a Field Training Manual. The Manual becomes a permanent record of training received, and becomes part of the employee's personnel file. The manual also serves the dual purpose of becoming the recruit's Department of Public Safety Standards and Training (DPSST) Police Field Training Manual. When completed, the signed assurance is forwarded to DPSST so that the recruits basic Police Officer Certificate can be awarded.
- G. The FTEP coordinator is responsible for the FTEP program. These duties include overseeing the program, evaluating the program on a continuing basis, maintaining in-service training for the Field Training Officers, and acting as a liaison between the department and the Academy in the matter of training for entry level police officers.

## **VI. POLICE OFFICER TRAINING**

- A. In addition to completing the FTEP program, a police recruit is required to successfully complete the basic police academy. This is a State of Oregon requirement, as outlined in Oregon Administrative Rule (OAR) 259-08-060. Basic certification is mandatory for continuing employment as a police officer in the State of Oregon, and for serving as a Police Officer for the City of Canby Police Department.
- B. All sworn officers will complete DPSST recruit training or DPSST approved equivalent training prior to assignment requiring the carry of a weapon or being in a position to make an arrest, except as part of a formal Field Training Program (FTEP).
- C. Each Police Officer of this department will receive DPSST required maintenance training and, at a minimum, 30 hours of in-service continuing training per year. This training will be provided outside of routine briefings training. Topics of instruction will include any training required for areas that require renewal proficiency. Annual in-service training will include, but not be limited to, such areas as Legal Updates, Agency Policy Changes, Use of Force, Report Writing, Evidence Collection, Prison Rape Elimination Act (PREA) and High Liability issues. This, and all, training will be documented by the Training Sergeant, and attached to each members training file.

## **VII. FIRST LEVEL SUPERVISOR TRAINING**

Every employee appointed or promoted to a first level supervisor position, will successfully complete the 40 hours DPSST Supervision Course plus an additional 40 hours of supervision training, or equivalent within one year of appointment or promotion. The provisions of award for the Supervisory Certificate include the successful completion of this class, plus other requirements, which are outlined in OAR 259-08-060.

## **VIII. ADMINISTRATIVE POSITION TRAINING**

Every employee appointed or promoted to a management or mid-management position will successfully complete the 80 hours DPSST Management Course, or equivalent within one year of appointment or promotion. The provisions of award for the Management Certificate include the successful completion of this class, plus other requirements, which are outlined in OAR 259-08-060. Every person appointed to an administrative command position must be awarded the Management Certificate.

## IX. TRAINING REQUIREMENTS

Law enforcement as a profession has a desire and a responsibility to improve officer safety and wellness. The need for new and regular training for law enforcement personnel at all levels is ever increasing. For those officers interested in pursuing training of interest that will improve the overall effectiveness and efficiency of the department or who seek advanced training associated with specialized law enforcement assignments (i.e. Supervision & Leadership, D.U.I. enforcement, Crisis Negotiation Team (CNT), Special Weapons and Tactics (SWAT), Homicide and Child Abuse investigations) will be evaluated and approved based on the needs of the department. Such training not only allows officers to stay current with new laws and legislation but also remain competent and proficient with new police tactics and evolving trends in criminal activities.

Training is constantly evolving and updated. While not inclusive and limited to, the Canby Police Department requires the following training to be part of an on-going training curriculum:

- Law Enforcement Data System (LEDS)
- Criminal Justice Information System Security & Awareness (CJIS)
- Statistical Transparency of Policing (STOP)
- Prison Rape Elimination Act (PREA)
- Hazmat First Responder Awareness
- CPR / First Aid
- AED
- Airborne and Blood Borne Pathogens
- Active Shooter
- Defensive Tactics
- Firearms / Use of Force
- Less Lethal
- Taser
- Implicit Bias / Racial Profiling
- De-Escalation and Minimizing Use of Force
- Crisis Intervention
- Officer Wellness & Mental Health Awareness
- Anti-Harassment in the Workplace
- Ethics in Law Enforcement
- Emergency Vehicle Operation Course (EVOC)
- Supervision & Leadership (As required by DPSST)

## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 5.01

Subject: Use of Force

Effective: March 2, 2004

Revised: April 13, 2007

Reviewed: March 2007; June 2011; June 2014

OAA Ref: 1.3.1, 1.3.2, 1.3.3, 1.3.5, 1.3.6, 1.3.7

Approved: BRET J. SMITH, CHIEF OF POLICE

### I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of deadly and non-deadly force.

### II. POLICY

The Canby Police Department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Because a police officer's duties often present situations in which the use of force, including deadly force, may be necessary, the law and Department policy authorize the use of such force in certain circumstances and require that the officer be armed while on regular duty. It is the policy of this Department that use of force by its members be:

- Justified under applicable state law;
- Consistent with the more specific policies which follow;
- Professionally accomplished according to approved training and with approved equipment, unless a weapon of necessity is employed based on unusual circumstances;
- In all cases used to accomplish a legitimate tactical objective;
- Limited to that degree and duration which the officer reasonably

believes necessary to accomplish that objective; and

- Applied by the officer and reviewed by the Department based upon those facts which are reasonably believed by the officer at the time, applying legal requirements, Department policy, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision to use force.

Therefore, it is the policy of this Department that police officers shall use only that force which is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others. Only after receiving and demonstrating their understanding of this directive will sworn personnel be authorized to employ any use of force, or carry any firearm/weapon.

### **III. DEFINITIONS**

*Deadly force:* Any use of force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

*Non-deadly force:* Any use of force other than that which is considered deadly force.

*Force Continuum:* A graphic description of the escalation/de-escalation of force used by police personnel in response to actions taken by a suspect or offender. The continuum illustrates the legal duty of an officer to use only reasonable force in response to the threat perceived by the officer.

*Serious Physical Injury:* Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

*Reasonable Belief:* A reasonable belief in facts or circumstances which if true would in law constitute an offense.

### **IV. FORCE CONTINUUM**

#### **A. The Force Continuum Components**

The Force Continuum is divided into six specific component parts:

- Threat Assessment;

- Considerations of Force Escalation;
- Levels of Resistance;
- Levels of Force;
- Justification; and
- Control Techniques.

## **B. Threat Assessment**

Every situation contains impact factors which define the threat assessment. The officer must continuously Assess, Plan, and Act. The term "threat" is used to describe any person or animal capable of causing physical injury, serious physical injury or death. The threat must exhibit intent, means, and opportunity to justify the use of force.

## **C. Considerations Of Force Escalation**

The officer must select the most reasonable option relative to the situation, taking into account:

1. The totality of the circumstances.
2. If the Threat had the opportunity to comply with the officer's commands, or if commands were even possible and appropriate.
3. If the current course of action is achieving control or compliance.
4. If the option selected warrants the risk of injury to the officer, others or the Threat.

## **D. Levels Of Resistance**

1. Static (passive)

The Threat refused to comply with commands such as balking, becoming dead weight, or grasping a solid object.

2. Active

The Threat physically resists the officer's verbal commands and/or

attempts to gain physical control by means such as pulling away, attempting to run, or powering through a control hold.

3. Ominous (assaultive)

The Threat demonstrates the willingness to engage in combat through verbal challenge, threats and/or aggressive behavior.

4. Lethal

The Threat possesses both the intent and the means to inflict serious physical injury or death. The means can be with a weapon or empty handed.

*Example: The Threat uses a deadly weapon (handgun, knife, shank) or a dangerous weapon (lead pipe, broken bottle, tire iron, hammer) to inflict or attempt serious physical injury. Or the Threat inflicts serious injury through superior size, strength or combative skill.*

## **E. Levels Of Force**

An officer employing force against any person(s) or animal(s) may continue that application until the resistance or threat that caused the officer to take the action has been stopped or controlled. The levels of force and the circumstances under which they may be used, beginning with the least and escalating up the scale to deadly physical force are:

1. Presence

The officer has an expectation that inappropriate behavior will stop as the officer properly identifies his/her police authority.

2. Verbal commands (tactical communications)

The questioning of a subject, the attempt to persuade a subject, or giving a direct order to a subject.

3. Physical contact

Directing a subject by touch, use of physical restraints such as handcuffs or controlling a subject with an escort hold.



4. Physical control holds

Use of chemical or organic weapons, pressure points, joint manipulation techniques, or physical control holds, canines, and tasers.

5. Serious physical control

Focused blows, impact weapons.

6. Deadly force

Any force capable of causing serious physical injury or death, which includes the carotid restraint.

**F. De-Escalation**

Members shall use de-escalation techniques, when time and circumstances reasonably permit. De-escalation techniques provide members the opportunity to stabilize the scene or reduce the necessity for or intensity of force so that more time, options and resources are available to resolve the confrontation. Members shall take proactive steps to eliminate the immediacy of the threat, establish control and minimize the need for force.

De-escalation techniques include, but are not limited to:

1. Using verbal techniques to calm an agitated subject and promote rational decision making;
2. Allowing the subject appropriate time to respond to direction;
3. Communicating with the subject from a safe position using verbal persuasion, advisements, or warnings;
4. Decreasing exposure to a potential threat by using distance, cover, or concealment;
5. Placing barriers between an uncooperative subject and an officer;
6. Ensuring there are an appropriate number of members on scene;
7. Containing a threat;

8. Moving to a safer position;
5. Avoiding physical confrontation, unless immediately necessary;
10. Members shall consider a disengagement plan when the benefits to be gained by police intervention are clearly outweighed by the risks associated with the call. Considerations include whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
  - a. Medical conditions;
  - b. Mental impairment;
  - c. Developmental disability;
  - d. Physical limitation;
  - e. Language barrier;
  - f. Drug or alcohol impairment; and
  - g. Mental health crisis.
11. When practical and appropriate, members shall consult with and/or call specialized units to respond, including but not limited to those related to behavioral health, tactics and/or negotiation, to assist in de-escalating the situation or devising a disengagement strategy or otherwise assist in safely resolving the incident.

#### **G. Justification**

1. Levels of force that may be applied vary and in most situations may be affected by the officer's training, experience, and the information and circumstances known to the officer at the time. When dealing with suspects and offenders, officers shall attempt to apply the Force Continuum, starting at the lowest appropriate level.
2. The mere presence of uniformed police personnel may be enough to control a suspect/offender's actions. Should aggression or resistance escalate, officers should respond with the level of force appropriate to control the situation. If during a situation a suspect's resistance de-escalates, officers should decrease the level of force to an appropriate level to maintain control.

3. If control is lost, the officer may escalate to the level of force necessary to regain and maintain control, or consider disengaging as a tactical option. Some situations encountered may not be controllable with on-site assets. If further escalation of the force continuum would not be warranted, and continued contact may result in unacceptable risk to the officer(s) or others, disengagement may be exercised as the most proper option until the situation can be properly addressed.
4. It is important to recognize that a situation may require an officer to start at the highest level or to pass over levels due to suspect actions. By properly applying the Continuum of Force concept, officers will respond lawfully by using only *the force necessary to control a situation*.

## **H. Control Techniques**

### **1. Verbal Command**

In the majority of situations requiring police intervention the officer's verbal command is the only force necessary. The officer's confidence, tone of voice and attitude, the clarity of directions, and choice of words are factors which bear on the effectiveness of a verbal command.

### **2. Physical Control**

If the use of a verbal command is not effective, or is not likely to be effective in controlling an individual, an officer may need to resort to the second level of force which is the use of physical control or an aerosol subject restraint. When using physical control or aerosol subject restraint, the officer may only use that force necessary to control the individual. This force may range from a gentle but firm hold of a person's arm to the use of escort/control holds. Once a person complies, the force used is reduced in proportion to the compliance and is maintained at a level necessary to maintain control.

If an officer is unable (or if the officer believes s/he will be unable) to control a subject by use of physical controls, the officer is justified in using a higher level of force, or prior to making any physical contact, may opt to use an aerosol restraint where there is a likelihood of injury to the officer or any other person.

### **3. Irritants**

The use of irritants to subdue a person who is resisting arrest or is otherwise combative is authorized when resistance or threats of violence represents potential escalation of necessary force and officers fear potential injuries to the officer(s), the arrestee, or others present. The officer should consider that the officer utilizing chemical or organic irritants may be affected to a greater degree than the person who is resisting.

4. Impact Weapons

The baton is a defensive weapon designed for blocking, jabbing, and striking. The use of the baton is proper to overcome force of resistance and to control.

5. Deadly Physical Force

No action on the part of a law enforcement officer can have more far-reaching consequences for the officer, Department and community than the use of deadly physical force. Deadly physical force, therefore, can only be justified in the protection of the officer or another from serious physical injury or death or to prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

## **V. USE OF REASONABLE PHYSICAL FORCE**

Officers are permitted to use only that force which she/he reasonably believes is necessary to protect others or themselves from bodily harm or to affect any other lawful police action. The officer's authority to use physical force is provided for under ORS 161.235 and this policy is intended to conform to the provisions of this statute.

### **A. Non-Deadly Force**

Every use of force carries the risk that some injury or even death may result, even though the type of force used is not categorized as "deadly" force. The goal in every use of non-deadly force is to gain control over the action of the person in order to take and maintain custody, overcome resistance to arrest, prevent the immediate commission of dangerous or criminal acts, prevent injury to the officer or others, or a combination of those objectives. Once the goal is achieved, further use of physical force

must be discontinued. Until that goal is achieved, the level and extent of force used must be limited to that which is reasonably believed necessary by the officer to achieve the goal.

## **B. Deadly Force**

When circumstances justify the use of deadly force, the unavoidable risk is that someone will be killed or seriously injured. Although an officer has no specific intent or desire to kill the person, death may be the result.

Circumstances justifying the use of deadly force often happen quickly in situations of great physical and mental stress. It is rarely possible for the officer to direct the use of deadly force to a nonfatal area of the threat. The goal in using deadly force is neither to kill nor to wound without killing. It is simply and exclusively to incapacitate the Threat to produce voluntary surrender or render that person or animal incapable of continuing the dangerous conduct which justified the use of deadly force in the first place.

Where deadly force is justified, an officer may continue its use until satisfied the goal has been achieved. The officer must then discontinue its use. Officer safety and the safety of persons other than the Threat must be a continuing consideration to the officer using deadly force.

# **VI. GUIDELINES GOVERNING THE USE OF FORCE**

While the use of force may be necessary in situations which cannot be otherwise controlled, force may not be used unless other reasonable alternatives have been exhausted or would be ineffective under the particular circumstances.

## **A. Reasonableness**

The unnecessary or excessive use of force against any person or animal is prohibited. What may be reasonable force under one set of circumstances may be unreasonable force under a different, though similar, set of circumstances. **Under no circumstances will a member use force solely because another member is using force. Members must individually justify each independent application of force. When feasible, members shall re-evaluate the need for continued force in between independent uses of force.**

## **B. Medical Treatment**

Appropriate medical treatment will be made available for any person

injured as a result of an officer's use of force, and will be provided by officers, ambulance or emergency medical staff, and/or hospital personnel when:

- Persons subjected to irritants such as oleo capsicum resin, shall have the affected areas flushed with water as soon as safe and practical, utilizing the eye wash and flush equipment furnished in the patrol cars, police department, or correctional facility. Trained medical personnel will be called to check any person that has been sprayed with oleo capsicum resin.
- All physical injuries shall be promptly treated as soon as safe and practical by trained medical personnel. Any injuries other than minor bruises, cuts or abrasions shall be examined and treated as required at the hospital emergency room.
- Any person in custody reasonably alleging to have been injured by an officer shall be transported, preferably by ambulance, to the hospital for examination and/or treatment.
- A person losing consciousness as a result of a use of force will be examined by trained medical personnel.

## VII. GUIDELINES GOVERNING THE USE OF DEADLY FORCE

These guidelines re-state legal principles of justification for the use of force, which are represented by the Force Continuum. Officers are directed by these general guidelines:

### A. Deadly Force Warning

Wherever practical under the circumstances (if time, safety and circumstances permit), an officer shall give some warning before using deadly force. **However, warning shots from firearms should not be used unless the totality of the circumstances dictates such action.**

### B. Use Of Deadly Force

Deadly force will be used only for the protection of life or the prevention of serious bodily injury or to prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life, should escape occur.

**C. Exhaust Reasonable Means**

Reasonable and practical attempts for protection or apprehension will be exhausted before using deadly force. Reasonableness and practicality are to be judged based upon the circumstances which actually exist and are perceived by the officer at the time and at the place that deadly force is used.

**D. Safety Of Bystanders**

The use of any weapon must be done with proper regard for the safety of bystanders or other people in the immediate area.

**E. Officer Discretion**

Even when an officer may be permitted to use deadly force, the officer may refrain from doing so if s/he believes the use of such force is inadvisable under the particular circumstances.

**F. Decision To Display Firearms**

An officer's decision to draw or exhibit a firearm shall be based on the tactical situation and the officer's reasonable belief there is a substantial risk the situation may escalate to the point where deadly force may be justified. When an officer determines the use of deadly force is not necessary, the officer should, as soon as practical, secure or holster the firearm. These judgments are matters committed to the discretion of the officer in each instance and will be documented in the officer's incident report. The officer must decide what actions are necessary in order to maintain control.

**G. Justification On The Use Of Deadly Force**

1. An officer may not use deadly force simply to arrest or prevent the escape of persons committing a crime. The only exception is if any such felons present an immediate threat to the life of an officer or another person, should their immediate apprehension not be made.
2. An officer is authorized to employ deadly force whenever the officer reasonably believes there is no reasonable alternative under the following circumstances:
  - a. The use of deadly physical force is necessary to protect the

officer or any other person from the use or threatened imminent use of deadly physical force;

- b. The use of deadly physical force is necessary to protect the officer or any other person from death or serious physical injury;
- c. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant and immediate threat to human life should escape occur.

## **VIII. REPORTING THE USE OF FORCE**

Whenever an officer must employ an amount of force capable of causing injury, a case number will be assigned to the incident. If that force is employed in the course of effecting an arrest, overcoming resistance, or controlling a dangerous situation (assault), appropriate criminal allegations should be charged against the suspect as soon as practicable. This section, VIII, also applies anytime a member discharges a firearm, other than in training or for lawful recreational purposes.

### **A. Involved Officers**

The officer(s) involved in the use of non-deadly force and any other officer notified by a supervisor shall report the use of non-deadly force in the narrative section of a written report when:

- 1. Any injury is apparent or alleged to an officer or citizen;
- 2. Medical treatment is required or requested;
- 3. When a non-lethal weapon is used on a person or animal.
- 4. The force used relates to a criminal charge, irrespective of whether or not the incident results in an arrest.

### **B. Use of Force Report**

- 1. The incident narrative shall describe in detail:
  - a) The type and level of force used;
  - b) The articulated facts and beliefs observed and held by the



officer that led the officer to decide the level of force used was justified;

- c) Any and all witnesses;
  - d) The weapon(s) used;
  - e) Injuries and medical care received;
  - f) Details of the altercation; and
  - g) If possible, a copy of medical records shall be attached.
- 2. The written report shall be submitted by the end of the officer's shift.
  - 3. The officer's immediate supervisor shall complete a "Supervisor's Review" and submit it along with a copy of the written report flagged "Use of Force Review" to the lieutenant for administrative review through the chain of command.
  - 4. Officers involved in the use of deadly force will not be required to write an incident narrative, even though a case number will be assigned to the incident. Instead, other officers will be assigned by the Chief of Police or his/her designee to investigate the incident. These investigating officers may be from another agency, if the Chief of Police or his/her designee decides to ask another agency to conduct the investigation. The department shall follow the Critical Incident Policy to provide assistance to members of the Canby Police Department involved in a critical incident.

### **C. Incident Review**

- 1. Determinations will be made at each level of the chain of command whether or not all Department guidelines were followed. Each level in the chain of command will recommend actions in regard to those officers involved in the use of force incident.
- 2. The Chief of Police, based on the Use of Force Review, may convene an Administrative Hearings Board to examine the use of force incident. Based on the result of the hearing the Chief of Police may take appropriate action. The Use of Force Review process will be completed as expeditiously as possible.
- 3. The Department review shall be based upon those facts which are reasonably believed by the officer at the time, applying legal

requirements, Department policy and procedures, and approved training to those facts. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision regarding use of force.

4. The lieutenant will complete an annual report and review on all use of force incidents which resulted in a "Supervisor's Review" and an incident report being forwarded through the chain of command. The purpose of the review will be to examine use of force incidents which may be useful in identifying Department policy and/or training needs.

## **IX. WEAPONS AUTHORITY**

The legal authority for the use and carry of weapons in the performance of duties for members of this Department is derived from Oregon Revised Statutes.

- Dangerous weapons are those as defined by ORS 161.015, 1
- Deadly weapons are those defined by ORS 161.015, 2
- Peace Officer is defined by ORS 133.005, 3
- Arrest by a peace officer; procedure is defined in ORS 133.235
- Use of physical force in making an arrest or preventing an escape is defined in ORS 161.235
- Use of deadly physical force in making an arrest or preventing an escape is defined in ORS 161.239
- "Reasonable belief" described; status of unlawful arrest is defined in ORS 161.245
- Carrying of concealed weapons is defined in ORS 166.240
- Unlawful possession of firearms is defined in ORS 166.250
- Persons not affected by ORS 166.250 is defined in ORS 166.260
- Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school is defined in ORS 166.370

**Use of Force Saving Clause:**

The Agency realizes and acknowledges that in tense, uncertain, and/or rapidly evolving confrontations, an officer may have to reasonably use techniques, weapons, and/or improvised weapons that are:

- (a) Not a part of the agencies formal training program.
- (b) Or that may not be covered in this policy.

All officers' actions that are deemed reasonable in retrospect will be considered to be within policy, even if the specific action and/or operation are not specifically addressed here.

**WARNING**

**This directive is for Department use only and does not apply in any criminal or civil proceeding. The Department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for Departmental administrative sanctions.**

## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 5.02

Subject: Use of Force, Specific Instrumentality

Effective: March 24, 2004

Reviewed: March 2007; June 2011; June 2014

OAA Ref: 1.3.3, 1.3.4, 1.3.5, 1.3.6

Approved: BRET J. SMITH, CHIEF OF POLICE

### I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of specific forms of deadly and non-deadly force, to include governing the use of authorized less - lethal weapons by agency personnel.

### II. POLICY

(Refer to "Policy" S.O.P. 5.01, Use of Force)

### III. DEFINITIONS

*Deadly force:* Any use of force that, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

*Non-deadly force:* Any use of force other than that which is considered deadly force.

*Carotid Restraint:* A carotid restraint is any physical hold applied to the neck of another person that is intended to inhibit blood flow through the carotid arteries of the neck by exerting pressure, to one or both sides of the neck through the member's use of hands, arms, or any other instrument. The Canby Police Department recognizes the application of the carotid restraint as a level of deadly force.

*Chemical Irritants:* Substances, either natural or man-made, the design and use

of which is to temporarily incapacitate a suspect.

*Firearm:* Any weapon, by whatever known name, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

*Impact Weapon:* Police baton, side-handle baton, collapsible baton, or any other such instrument or device designed or used to block, jab, strike, or temporarily restrain or control a suspect by way of physical impact or extending the officer's ability to use control holds.

*Less-Lethal Projectiles:* Fired from a firearm or similar device, less-lethal projectiles are designed to stun or incapacitate a person/animal temporarily without penetrating the body or causing serious physical injury or death.

*Patrol Canine:* A canine trained for and employed by law enforcement officers, the use of which includes, but is not limited to, handler protection and the location and apprehension of suspects.

*Restraints/Handcuffs:* Handcuffs, flex-cuffs, hobbles, belly chains, and all such devices the design or use of which is to temporarily restrain a person for the purpose of officer safety or to prevent injury to the person or another.

*Vehicular Use of Force:* Deployment of a motor vehicle as a use of force to stop or control a suspect or vehicle, beyond that of a traffic stop or normal vehicular operation.

#### **IV. DEFENSIVE TACTICS INSTRUCTOR**

A defensive tactics instructor who has been designated by the Chief of Police and reports to him/her through the chain of command. His/her responsibilities and duties include but are not limited to:

- Training facility command, control and safety.
- Initiate and coordinate survival skills training, and instructors who are DPSST recognized.
- Serve as advisor to Department staff in reference to survival skills needs of the Department.
- Approval of survival skills weapons and training, excluding firearms.

- Issuance and recording of make, model, serial number (if applicable) and assignee of all issued weapons, excluding firearms.
- Monitoring and replacement of expired weapons, excluding firearms.

## **V. WARNING OF USE**

Officers should issue a warning of the impending use of force except where impractical or tactically disadvantageous; such as, in situations where the warning would endanger the officer or another, alert the suspect to escape, or allow actions to be taken which aid or abet a crime.

## **VI. USE OF FORCE RELATED INJURIES**

Once a person is in police custody, it is the responsibility of the officer(s) to render or obtain any medical aid required. With any use of physical force where an injury has occurred or is alleged to have occurred, the officer shall observe and evaluate, treat or obtain medical aid, document, and photograph and report the incident.

### **A. Observe and Evaluate**

If a person in custody has an apparent injury the officer shall observe and evaluate the injury to assure the appropriate level of care is provided. If a person in custody alleges an injury and none is apparent, the officer will summon appropriate trained medical response for an evaluation.

### **B. Treat or Obtain Medical Aid**

Appropriate medical treatment shall be provided any person injured or allegedly injured as a result of a use of force. This may include, but is not limited to:

1. Flushing the eyes and skin of a person subjected to oleoresin capsicum or other irritant, and monitoring the person for complications.
2. Obtaining trained medical attention and ambulance transport to medical facilities for persons with more serious injuries.

### **C. Documentation**

Officers shall take all practical measures to fully document the injuries:

1. Note location, extent, and appearance of the injury.
2. Photograph the injury as soon as possible.
3. Obtain witness names and statements of others, including medical personnel, at the scene.
4. Obtain all medical records possible if the subject is treated by emergency medical personnel or at a hospital facility.
5. Note specific statements made by the suspect.

**D. Reporting Use of Force Injuries**

See S.O.P. 5.01 "Use of Force."

## **VII. CAROTID RESTRAINTS**

Carotid restraint constitutes "Deadly Force" level of force and shall be employed in a manner consistent with S.O.P. 5.01, "Use of Force."

**A. Department Policy on the Carotid Restraint**

A carotid hold may **ONLY** be applied to a person for the protection of life, for the prevention of serious bodily injury.

**B. Training**

Only those officers instructed in the use of the "carotid hold" in authorized training and whose skills are current may use such a hold. Such officers shall also be currently certified in the use of cardiopulmonary resuscitation (CPR).

Training and current proficiency documents shall be in the officer's training file.

**C. Use of the Carotid Restraint**

The Carotid Restraint may be used as a controlling maneuver when other control techniques have failed and the officer needs to protect him/herself or another person from death or serious physical injury.

Medical attention by qualified medical personnel shall be sought and administered immediately or as soon as practical following an unconscious state resulting from the application of the Carotid Restraint.

## **VIII. CHEMICAL IRRITANTS**

Chemical Irritants are considered a "Physical Control" level of force and shall be employed consistent with S.O.P. 5.01, "Use of Force."

### **A. Department Issued Chemical Irritants**

Officers will carry only Department issued Chemical Irritants as authorized and issued by the Chief of Police.

#### **1. Personal Issue**

Officers whose normal duties/assignments require them to make arrests or supervise arrestees may, while on duty, carry Department authorized and issued chemical agents approved by the Chief of Police. Nothing precludes an officer from purchasing a personal chemical irritant for personal defense while off-duty.

### **B. Training**

Only officers who have completed the prescribed OC course of instruction, as determined by the Training Sergeant, are authorized to carry the device.

1. Officers will be instructed in the Department's Use of Force policy and applicable laws prior to being issued a chemical irritant.
2. Officers will receive orientation and training regarding the use of oleoresin capsicum, its affects, ingredients, means of delivery and first aid to be administered which will be included in the officer's training file, prior to being issued OC.
3. Officers will receive training and will demonstrate a proficient knowledge on the proper use of chemical irritants as determined by the Chief of Police.
4. The OC training and proficiency will be documented in the officer's training file.



### **C. Use of Irritants**

1. Oleoresin capsicum may be used when:
  - a. Verbal dialogue failed to bring about the subject's compliance; and
  - b. The subject has signaled, physically or verbally, his/her intent to actively resist the officer's efforts to make the arrest.
  - c. An officer reasonably believes an animal exhibiting aggressive behavior may injure the officer or other person present.
2. The effects of OC vary among individuals. Therefore, all suspects shall be handcuffed as soon as possible after being sprayed.

Officers should be prepared to employ other means to control the suspect, including, if necessary, other force options consistent with agency policy, if the suspect does not respond sufficiently to the spray and cannot otherwise be subdued.
3. An officer may use deadly force to protect himself/herself from the use or threatened use of OC when the officer reasonably believes deadly force will be used against him/her if s/he becomes incapacitated.
4. Once a suspect is incapacitated or restrained, the use of OC is no longer justified unless the officer reasonably believes the suspect is a continuing threat because of the tactical situation or other articulated reasons.

### **D. Additional Considerations**

Within several seconds of being sprayed by OC, a person will normally display symptoms of temporary blindness, have difficulty breathing, burning sensation in the throat, nausea, lung pain and/or impaired thought processes.

Consistent with Department training in the use of Oleoresin capsicum, the officer using the chemical irritant should be aware of additional considerations including, but not limited to:

1. Collateral Effects

- a. Whenever possible, officers should be upwind from the suspect before using OC.
  - b. Officers should avoid entering the spray area.
  - c. Officers should maintain a safe distance from the suspect of between two and 10 feet.
  - d. Use of OC should be avoided, if possible, under conditions where it may affect innocent bystanders.
  - e. Assistance shall be offered to an individual(s) who feel the effects of the agent resulting from an accidental OC exposure.
2. Treatment of Affected Persons/Vehicles/Buildings
- a. Once the suspect has been restrained, officers shall assist him/her by rinsing with clean water and drying the exposed area. The officer shall immediately summon emergency medical aid (Canby Fire Department) to assess the suspect's condition.
  - b. Any vehicles or interiors of buildings should be ventilated.
  - c. Suspects that have been sprayed shall be monitored continuously for indications of medical problems and shall not be left alone while in police custody.

**E. Maintenance**

- 1. Replacements of OC spray canisters shall occur when the unit has been discharged in any significant amount. If the canister appears damaged or inoperative, the canister will be replaced. Replacement is accomplished by contacting the shift supervisor.
- 2. OC canisters shall be inspected periodically by the officer it is issued to, and turned in for replacement when expired, damaged, inoperable or depleted.

## **IX. ELECTRONIC RESTRAINT DEVICES**

The Canby Police Department does not issue or deploy, on or off duty, electronic restraint devices, therefore the use of electronic restraint devices by members of this Department is prohibited.

## **X. FIREARMS**

Use of firearms constitutes a "Deadly Force" level of force and shall be used only in situations where the use of deadly force is justified in accordance with S.O.P. 5.01, Use of Force.

### **A. Department Issued Firearms**

Officers will carry only Department issued firearms and ammunition, or those specifically authorized in the Department firearms policy, S.O.P. 8.20, Firearms.

Other firearms may be issued as necessary to the purposes of law enforcement as authorized by the Chief of Police or Range Master including, but not limited to, those whose specific purpose or design is delivery of chemical irritants, full automatic firing capability, or precision long range shot placement.

### **B. Training**

Officers will carry and use only those weapons, both lethal & less lethal, which they have received training and demonstrated proficiency in the use of.

1. Officers will be instructed in all applicable laws on the use of deadly force and Department Use of Force policy prior to being issued any firearm.
2. Officers will successfully complete the Basic Police Academy course on firearms instruction or its accepted equivalent.
3. Officers will receive firearms training at least quarterly and demonstrate an acceptable level of proficiency with each firearm they are authorized to carry.
4. Levels of proficiency and frequency of qualifications with each weapon will be set by the Department Range Master and the

officer's performance will be documented in the officer's training file.

### **C. Use of Firearms**

Use of firearms by law enforcement officers in the performance of their duties constitutes one of the most closely scrutinized aspects of the profession. Officers are authorized to use firearms when necessary:

1. To protect the officer or another from serious physical injury or death;
2. To prevent the escape of a fleeing felon whom the officer has probable cause to believe poses a significant and immediate threat to human life should escape occur;
3. To destroy or deter a dangerous animal or, with permission from a supervisor, to destroy a badly injured animal to prevent further suffering; or
4. At a firing range pursuant to all safety rules and regulations.

### **D. Unauthorized firearms Uses**

1. Discharging a firearm is not authorized as a signal, warning, or communication method.
2. Any accidental discharge of a firearm by an officer occurring during a law enforcement related function will be immediately reported to the on duty supervisor.
3. Officers will not display their weapons for casual civilian observation.
4. Firearms shall not be used to threaten or intimidate persons.
5. A moving vehicle does not presumptively constitute a deadly force threat. Members shall not shoot at a moving or fleeing vehicle unless an immediate risk of death or serious physical injury to the member or others exists. If there is an immediate risk of death or serious physical injury, members shall consider whether the threat to the member or other persons (including all vehicle occupants) is increased by incapacitating the vehicle operator. If the operator is incapacitated, the unguided vehicle may remain a threat to anyone in its path. Members shall weigh the threat of incapacitating the

driver against the threat posed by allowing the driver to maintain control of the vehicle. Members must be aware that shooting at a moving vehicle presents unique challenges of target and backstop.

Members shall not use poor tactics or positioning as justification for shooting at or from a moving vehicle.

#### **E. Maintenance**

1. Any firearm authorized by the Department to be carried by an officer will be maintained in a clean and operational condition. Firearms are subject to unannounced inspections by a supervisor or member of the firearms team at any time.
2. Firearms will be inspected as part of each scheduled firearms range training sessions.

### **XI. IMPACT WEAPONS**

Use of impact weapons to extend a control hold may range upward from a "physical control hold" level of force. Use of impact weapons to block, jab, or strike constitutes a "serious physical control" level of force per S.O.P. 5.01 "Use of Force."

#### **A. Department Authorized lethal & less - lethal Weapons**

Officers will carry only Department Authorized and approved weapons. These weapons are listed below:

1. Collapsible Baton (Asp)
2. Straight Baton
3. Side Handled Baton (PR-24)
4. Kubaton
5. Chemical Weapons
6. Flashlight (Weapon of Opportunity)
7. Taser - Model X26
8. Less Lethal Shotgun - Flexible Baton
9. Knives (Weapon of Opportunity)
10. Handgun
11. Rifle
12. Shotgun
13. Flash Bangs, (Distraction Device.)
14. Riot Baton

The Department may issue, during times of civil unrest or emergency, a riot baton for use with units assigned to riot and crowd control functions.

15. Impromptu Weapons (Weapons of Opportunity)

Nothing in this section precludes an officer from using an impromptu weapon (such as the police issue flashlight, or knife, both folding and fixed or any other item when other alternatives are exhausted or are unavailable) when the officer is justified in its use to protect himself/herself or another from serious physical injury or death.

**B. Training**

Only officers who have received Department approved training and demonstrated proficiency in the use of impact weapons are authorized to carry and use them.

1. Officers will be instructed in the Department's Use of Force policy and applicable laws prior to being issued an impact weapon.
2. Officers will receive training in the proper use of impact weapons prior to the weapon being deployed with the officer. This will be documented in the officer's training file.
3. Officers will receive annual in-service training in the proper use of impact weapons and will demonstrate proficiency in their use. This will be documented in the officer's training file.

**C. Use of Impact Weapons**

Only that amount of force reasonably believed necessary to protect persons from bodily harm or to affect a lawful police action may be used.

1. Impact weapons may be used as an extension of an officer's ability to apply a control hold to overcome "static" or higher levels of resistance. This includes, but is not limited to leverage applications, wrist or other joint locks, arm bars, come-along holds, and take-downs.
2. Impact weapons may be used as a blocking, jabbing, or striking weapon to overcome "active" or higher levels of resistance. This

includes, but is not limited to jabs and rakes or strikes to major muscle groups intended to stun or gain compliance, or strikes to areas such as wrists or shins designed to disarm or incapacitate.

3. Impact weapons may be used on targets identified as potentially lethal, such as the head or groin, only in situations where the use of deadly force is justified.

#### **D. Unauthorized Use**

1. Impact weapons shall not be used to threaten, intimidate or punish any person. They are not approved for off-duty use.
2. Impact weapons shall not be used for other than law enforcement purposes.
3. Officers shall exercise restraint and consideration before demonstrating or displaying an impact weapon. Impact weapons shall not normally be subject to casual civilian observation.

#### **E. Maintenance**

Department issued impact weapons will be kept in a clean, operational condition at all times. The impact weapon will be inspected at least monthly by the officer. If an impact weapon opens poorly, or appears damaged or inoperable, the impact weapon shall be replaced. If the weapon was issued by the department, the officer will notify his/her supervisor.

## **XII. LESS-LETHAL PROJECTILES**

Use of less-lethal projectiles constitutes a "Serious Physical Control" level of force per S.O.P. 5.01, "Use of Force." They are not approved for off-duty use.

#### **A. Department Authorized Less-Lethal Projectiles**

Officers will carry and deploy only Department issue less-lethal projectiles.

1. Shotgun Launched Less-lethal Projectiles

The Department issues 12-gauge beanbag loads for designated shotguns for deployment as less-lethal projectiles, deployed at a patrol level. Only authorized department issued beanbag loads will

be used.

## **B. Training**

At least one less-lethal shotgun should be assigned to a qualified and trained officer per shift. The shotgun is designated as a less-lethal projectile launcher and shall be readily identified as such, to avoid any possible confusion. When used at the patrol level, the sole purpose of this weapon is to launch less lethal projectiles, and should not be loaded with lethal rounds.

1. Only officers trained in the use of the less-lethal weapons are authorized to use them.
2. Officers will be trained in and demonstrate knowledge of applicable laws and Department Use of Force Policy when assigned to less-lethal projectile duty.
3. Officers will receive training in the proper deployment and use of less-lethal projectile weapons prior to being authorized to carry them on duty.
4. Officers will, at least annually, demonstrate proficiency in the use of less-lethal projectile weapons.
5. Training and demonstrations of proficiency shall be documented in the officer's training file.

## **C. Use of Less Lethal Weapons**

1. Less-lethal weapons are used in situations where a serious physical control or higher level of force is justified, and other means have not been effective or are not practical.
1. Less-lethal projectiles are directed at large muscle groups to temporarily stun or incapacitate a subject so that s/he may be safely taken into custody, or to persuade the subject to surrender without physical resistance.
2. Situations justifying the use of a less-lethal weapon may be, but are not limited to:
  - a. As an alternative to the use of deadly physical force if the tactical situation allows for the option;



- b. To induce a cornered, dangerous suspect into custody without necessitating officers approaching into the danger area. This may include breaking of windows or shooting at doors;
- c. To stop the escape of a fleeing fugitive, where pursuit is likely to endanger the officer or others;
- d. To accomplish a lawful police action in situations where lesser levels of force have been ineffective and a substantial danger exists for the officers or others if the action is not taken; or
- e. To deter a dangerous or aggressive animal.

#### **D. Maintenance**

The same maintenance and inspection standards apply to less-lethal weapons as apply to other firearms.

### **XIII. RESTRAINTS/HANDCUFFS**

Use of restraints such as handcuffs, leg irons, flex cuffs, or hobbles constitute a "physical contact" level of force per S.O.P. 5.01 IV "Levels of Force."

#### **A. Department Authorized Restraints**

Officers will carry only Department authorized restraints.

- a. Handcuffs (Approved for on and off-duty use)

Officers may carry additional personally owned sets of handcuffs so long as they are of a similar design and quality of authorized handcuffs.

- b. Other Restraints (Not approved for off-duty use)

The Department offers additional restraints which may be used by officers to make arrests, transport or supervise prisoners:

- a. Hobble

To prevent a violent prisoner from kicking persons or damaging property.

b. Belly Chain

To further restrain the arms of a prisoner who is unusually flexible, violent, or dangerous.

c. Flex-cuff

A temporary means to secure additional suspects. Officers should be aware of the danger of a suspect cutting, burning, or slipping out of flex cuffs and exercise additional caution, checking the flex-cuffs frequently.

**B. Training**

Officers shall successfully complete annual defensive tactics in-service training on the proper use and application of restraints.

1. The training shall include instruction in the Department's Use of Force policy.
2. The training shall be documented in the officer's training file.

**C. Use of Restraints**

Every person taken into custody shall be handcuffed with their hands behind the back, unless such handcuffing is impossible (e.g., an amputee) or impractical. In such an event, an officer shall use appropriate safeguards to secure the person. Additional restraints shall be used, as needed, if the officer reasonably believes they are necessary because:

1. The prisoner is violent and constitutes a continuing threat to the officer even though handcuffed.
2. The prisoner constitutes an escape risk unless further restrained.
3. The prisoner damages or attempts to damage property even though restrained.
4. The prisoner acts in a manner that is likely to injure himself or others.
5. The prisoner is accused of crimes of a serious nature that merit additional security.
6. The prisoner has a past record of violent behavior or escapes.

#### **D. Unauthorized Uses of Restraints**

Restraints shall not be used as punishment, or to humiliate or degrade any person.

#### **E. Maintenance**

All restraints carried by or in the care of officers shall be maintained in a clean and operational condition.

### **XIV. CANINE AS A USE OF FORCE**

Police canine are not normally deployed as a "Use of Force." When utilized as such, canine is considered to be a "Physical Control" level of force, S.O.P. 5.01, "Use of Force." They are not approved for off-duty use.

Canine as a "Use of Force" policy is located in the Law Enforcement Canine section of this chapter, S.O.P. 5.50, "Canine Operations."

### **XV. VEHICULAR USES OF FORCE**

Vehicles are not designed as, nor are they normally deployed as a "Use of Force." When utilized as such, a vehicle is considered a "Deadly Force" level of force, S.O.P. 5.01 "Use of Force."

Vehicular Use of Force is located in the Use of Vehicles section of this chapter, S.O.P. 5.15, Vehicular Use of Force."

### **XVI. TRAINING SERGEANT FUNCTION**

Survival skills weapons and tactics are constantly being modified and improved by the industry. As such, the department needs to constantly assess products and tactics that are newly available in the police market, and also the products that the department is currently using. The review and assessment of weapons, tactics and associated equipment for this department is constant, and not periodic.

The Training Sergeant is responsible for monitoring the current trends of the survival weapons, tactics, and related accessories market. When a product appears that the committee feels is beneficial to the department, the Training Sergeant will offer to the Chief a written proposal suggesting use of the new product. The Chief, with input from other supervisory staff, will decide whether or not to initiate the change. If a change is made, the change will be issued to the

rest of the department members in written or electronic form, and a specific effective date.

The supervisory staff will evaluate and review the department's current survival weapons, tactics, and associated equipment. If an improvement is found, the suggestion will be forwarded to the Chief of Police.

Any member can offer suggestions for new or different survival weapons, tactics, or associated equipment by contacting the Training Sergeant and offering his/her suggestion, in writing. A requested review of current equipment would be accomplished using this same process. The Training Sergeant will present the suggestion to the Chief.

### **WARNING**

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## **PROTOCOL REGARDING *BRADY* EVIDENCE AND LAW ENFORCEMENT WITNESSES WHO ARE EMPLOYEES/OFFICERS**

### **I. PURPOSE**

Consistent with state and federal law, this protocol is intended to promote consistency in disclosure practices of potentially exculpatory and impeachment evidence contained in law enforcement agency files, protect officers from unwarranted invasions of their privacy, and prevent chilling the law enforcement agency's interest in fully investigating its employees.

Law enforcement agencies in Clackamas County recognize that prosecutors have an affirmative duty to disclose to defendants in criminal cases evidence that is favorable to the defendant and may be material to the guilt and/or punishment of the defendant. This information may be exculpatory in nature, that is, may be evidence that tends to show the defendant is not guilty of the crimes alleged, or may be evidence useful to impeach the testimony of a witness who the state intends to call to testify against a defendant.

Potential impeachment evidence may include, but is not limited to, specific instances of misconduct relating to the officer's bias, credibility or character for truthfulness. Such evidence may be found in the employee personnel, internal affairs or other files maintained by the law enforcement agency.

Law enforcement agencies also recognize that police employees have a privacy interest in the files that agencies maintain, and there is an interest in protecting and respecting that confidentiality.

### **II. THE *BRADY* RULE**

"Suppression by the prosecution of evidence favorable to an accused . . . violates due process where evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 US 83, 87 (1963).

"The three elements of a claim for a *Brady* violation are that '[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" *Gentry v. Sinclair*, 693 F3d 867, 887 (9<sup>th</sup> Cir 2012) (quoting *Strickler v. Greene*, 527 US 263, 281-82 (1999)).

### III. DEFINITIONS – WHAT IS *BRADY* INFORMATION?

*Brady* information is information that is favorable to the defendant and material to the case.

#### **Favorable Evidence**

Evidence is favorable to the accused if it has either exculpatory or impeachment value. The prosecution must disclose materials that are *potentially* exculpatory or impeaching. Exculpatory evidence is that evidence which tends to exonerate the defendant's guilt, or which may mitigate the defendant's sentence.

Impeachment evidence is evidence that demonstrates that a witness is biased or prejudiced against a party, has some specific articulable motive to fabricate testimony, has a reputation for being untruthful or has past specific incidents that are probative of the witness' truthfulness or untruthfulness. Prior inconsistent statements are impeachment evidence.

#### **Materiality**

Evidence is material if there is a reasonable probability that had the evidence been disclosed to the defense the result of the proceeding would have been different. A "reasonable probability" is established when the failure to disclose the evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Such evidence must have a specific, plausible connection to the case, and must demonstrate more than minor inaccuracies. Evidence is material if it is facially apparent as exculpatory.

#### **Suppression**

In order for a *Brady* violation to occur, the favorable evidence at issue must have been suppressed by the prosecution, and suppression may be either intentional or inadvertent. In order to ensure compliance with these rules, the United States Supreme Court has urged the "careful prosecutor" to err on the side of disclosure. *Kyles v. Whitley*, 514 US 419, 440 (1995).

### IV. GUIDELINES FOR *BRADY* DISCLOSURE

The following non-exclusive list of substantiated circumstances or conduct that will implicate *Brady* and therefore must be disclosed by the law enforcement agency to the prosecutor:

- Untruthfulness in a formal setting: testimony, affidavit, police report, official statement, internal affairs investigation (was there a finding of dishonesty in IA investigation?)
- Tampering with or fabricating evidence
- Deliberate failure to report criminal conduct by other officers

- Knowingly making a false statement to another officer on which other officer relies in official setting
- Criminal conduct that is fraudulent in nature - *e.g.* perjury, forgery, theft
- Dishonesty during internal affairs investigation and/or following a *Garrity* warning
- Other deceitful acts that demonstrate disregard for constitutional rights of others or the laws, policies and standards of proper police practice

## **V. LAW ENFORCEMENT AGENCY DUTIES**

### **Generally**

Law enforcement agencies must collect and document exculpatory and impeachment information discovered pursuant to administrative and criminal investigations and provide the same to the prosecution. Law enforcement agencies with information that could impeach any non-law enforcement witness must provide that information to the prosecution as well.

## **VI. PROCEDURE**

### **A) Implementation**

- 1) Each law enforcement agency will designate one or more points of contact (“Agency Liaison”) who will be the point of contact for the Clackamas County District Attorney’s Office regarding issues related to potential *Brady* information maintained within the agency’s files.
- 2) Agency Liaisons will be trained on their department’s obligation to disclose *Brady* information.
- 3) Agency Liaison duties include notifying the Chief Deputy of the Clackamas County District Attorney’s Office in writing of the existence of exculpatory or impeachment material relating to employees who may be called as prosecution witnesses.
- 4) Agency Liaisons will be prepared to testify regarding their agency’s compliance with its *Brady* obligation on a case by case basis.

### **B) Duty to Timely Disclose**

- 1) Agencies must immediately notify Clackamas County District Attorney’s Office any time they become aware of new *Brady* information. The Agency Liaison will convey this information to the Chief Deputy of the Clackamas County District Attorney’s Office in writing. This information includes, but may not be limited to:

- a. Current or Ongoing Investigations: When an agency has determined that information obtained during a pending criminal or internal investigation will likely lead to substantiated findings implicating *Brady* information, the Agency Liaison will promptly notify the Clackamas County District Attorney's Office. *United States v. Olsen*, 704 F.3d 1172, 1190 (9<sup>th</sup> Cir 2013).
- b. Information regarding any final determination by the law enforcement agency of a substantiated or sustained finding related to an employee's/officer's dishonesty, untruthfulness or bias regardless of whether or not discipline was given. Agencies should follow their current policies regarding document retention for substantiated/sustained/founded findings and disciplinary processes.
- c. Criminal Conduct or Convictions: Information regarding felony convictions, criminal convictions of an employee/officer related to dishonesty or untruthfulness, and information when there is probable cause to believe an officer has committed a criminal act.
- d. In-Lieu-of Actions/Agreements: Actions/agreements such as resignation, demotion, retirement or separation from service of an employee/officer in lieu of disciplinary action may be *Brady* information if it is relevant to the case at hand.
- e. Expert Witnesses: Any information related to an agency in-house or contracted expert's unsatisfactory work performance that compromises the expert's conclusions or ability to serve as an expert witness, regardless of whether or not discipline was given, requires immediate notification of the Clackamas County District Attorney's Office.

2) Mere Allegations:

- a. Mere allegations that are not credible, are false, are unsubstantiated or have resulted in exoneration of an employee are not considered potential impeachment information and need not be disclosed.

C) Requests for Confidential Files and Notification to the District Attorney: In the event a law enforcement agency receives a subpoena from defense counsel for



a confidential agency file, the Agency Liaison must immediately notify the Chief Deputy of the Clackamas County District Attorney's Office. In no event should the Agency Liaison produce the requested records directly to the defense attorney without such notification.

- D) **Review by the District Attorney's Office:** The Clackamas County District Attorney's Office maintains a policy prescribing the procedure for review and disclosure of potential Brady/impeachment information regarding law enforcement and government witnesses. The policy covers notice to the officer, the evidence that may be considered, potential outcomes and an appeals process. It should be noted that any subsequent finding in an employment matter (*e.g.*, arbitration finding) may be submitted by the subject officer to the Clackamas County District Attorney's Office for further consideration. The District Attorney's policy is available online at <https://www.clackamas.us/da>.



# Canby Police Department

September 26, 2017

TO: All Department Members

Bret Smith  
Chief of Police  
smithb@canbypolice.com

Lt. Jorge Tro  
troj@canbypolice.com

Sgt. Doug Kitzmiller  
kitzmillerd@canbypolice.com

Sgt. Tim Green  
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Sgt. Tim Warren  
warrent@canbypolice.com

Sgt. Mike Smith  
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Sgt. Scott Farmer  
farmers@canbypolice.com

Melody Thompson  
Administrative Supervisor  
thompsonm@canbypolice.com

## VALUES

*Service  
Integrity  
Respect*

*"Dedicated  
police  
professionals  
committed to the  
community and  
the highest  
standard  
of excellence  
and  
achievement."*

In light of recent events in our department, as your Chief, I feel it is an appropriate time to remind all department personnel of my expectations for each of you as members of this department. These expectations have not changed and involve areas of courage and ethical behavior as identified within our department policies. This letter will serve as written notice, which you may use to review and reflect, asking yourself if you or your peers are meeting these expectations.

As you know, we are constantly observed by our community we serve through a strong magnifying glass. We are continuously watched and evaluated by others to determine if we are succeeding or failing in our mission. Let's revisit our mission: ***"It is the Mission of the Canby Police Department to protect life; enhance community safety and improve quality of life by reducing crime and the fear of crime and to perform in such a manner that promotes the public's trust and confidence, sense of safety and security; while ensuring every member is in compliance with the professional standards established by the Oath of Office, Professional Code of Ethics and Department Policies and Directives"***. Additionally, we all must remember our core value: ***Service, Integrity and Respect***. These three values should be the basis for every decision and action we make as members of the Canby Police Department. In short, they are crucial to guiding us in respect to our performance and behavior. Our mission and core values apply to all of us, both on and off duty. In addition to ourselves, more so than any other profession, we each play a governing role in the conduct and behavior of our co-workers. I am a firm believer and support the concept that we are one another's keepers and we are accountable to each other. The expectation is that we come to work to do our best. We are here to influence our department and, ultimately, our community.

Keeping these expectations in mind, do not engage in or condone inappropriate behavior or tolerate such behavior of any other employee, regardless of his or her rank or position. Do your best to prevent misconduct from occurring and report it immediately if it does occur. Be willing to intercede if you witness, hear about or someone reports to you, behavior which does not meet our standards. By doing this, you may be preventing a career from being destroyed and/or relationships being damaged beyond repair. Failure to intercede weakens our entire organization. Bad decisions can damage an officer's career, harm public trust and expose our agency to lengthy and costly litigation. Be willing to address something small before it has the opportunity to erupt in something bigger, messier and more costly.

All department members are expected to work as a team. Supervisors, leading from the front, are expected to lead by fostering a workplace environment that promotes favorable and productive results. Leading in this way has a substantial influence on the work activities of its members. All department members are leaders. Everyone has the ability to create a positive work environment. Everyone has the responsibility to create a positive ethical culture that fosters moral behavior and discourages inappropriate conduct, on duty as well as off duty.

I expect you to deal with possible officer misconduct, by speaking out or speaking up, when confronted with these situations. Silence is not an option. Complete candor and cooperation are the only avenues available should misconduct occur.

The true champions in the law enforcement profession are those who continually demonstrate courage, honesty and ethical behavior at work, at home and in their community.

BRET J. SMITH  
Chief of Police

CC: City Administrator, Rick Robinson  
Human Resources Department / Amanda Zeiber, Director  
Admin. File

1175 N.W. Third Avenue Canby, OR 97013  
(503) 266-1104 Fax: (503) 266-9316



# Canby Police Department

June 17, 2020

Dear XXXXXX,

Again I welcome you to the Canby Police Department and to the police profession. I join with you and with your loved ones in the pride of your selection and excitement that you justifiably feel in the anticipation of a long and successful career in what absolutely has to be one of the most enjoyable and rewarding of professions. As someone who has survived a long and difficult selection process, you have worked diligently to be where you are today. The purpose of his letter is to ensure that you will not fall short of my expectations by engaging in behavior that will cause you to lose all that you have worked so hard to attain....your job.

During your probationary period, you will have the opportunity to work and associate with a variety of training officers and senior personnel. I have every confidence that you will find most, if not all, of these individuals to be fine police officers and fine human beings, and that you will both learn from them and enjoy their acquaintance. I take very seriously my responsibility to ensure that you receive the very best training and mentorship possible, and will ensure that prompt remedial measures are taken should this not occur. While I would hope that this will not happen, there is always a possibility that you could be confronted with a situation where you are either asked or expected to condone and/or engage in inappropriate behavior. I want you to know exactly what I expect of you if you are ever confronted with this type of challenge.

There are many reasons why you are the person that I chose to hire, as opposed to the other candidates who ultimately did not make the cut. First, you met the basic qualifications in terms of education, health, fitness and psychological suitability – those factors are all givens. What is more important is the confidence that I have in you, based upon your demonstrated performance during the variety of tests and in all that you have done in the past as revealed through your background investigation. Quite simply, I believe you to the best, brightest, and most emotionally solid person for the job. Otherwise, I would not have hired you. I expect a lot of you.

While you are new to the police profession, you are not new to the human race. While I do not expect you to be an instant stellar performer in those skills that require much training and experience such as investigation, report writing, and interview techniques, I do expect that your knowledge in terms of what is right and what is wrong is absolutely exemplary and as good today as it will ever be. I am sure that it comes as no surprise that some of those other candidates who failed to be hired were perceived as not strong in this critical area.

While all of your verbal skills in terms of articulation, public address, and interviewing techniques are most likely not completely refined, a critical factor in the decision to hire you was absolute and unequivocal confidence that you have both the inclination and courage to deal with any difficulty that may arise. This means speaking out or speaking up whether in public, with suspects or with co-workers. Should you ever be confronted with a situation where you were either asked or expected to condone inappropriate behavior, I expect that these verbal skills will be put to instant use.

Bret Smith  
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Kelley Whitaker  
Admin. Supervisor  
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## VALUES

*Integrity  
Respect  
Service*

*“Dedicated  
police  
professionals  
committed to the  
community and  
the highest  
standard  
of excellence  
and  
achievement.”*

What I have been leading up to is my absolute expectation that you will not engage in or condone inappropriate behavior, and that you will not tolerate such behavior on the part of any other employee regardless of his or her rank or position. While your probationary status appropriately places you in a subordinate position for the purpose of learning and development, you are not expected to endure or tolerate misconduct or criminal activity. If you engage in or condone things that you know to be wrong, I want you to know that you will not receive favorable consideration because of your subordinate probationary status, regardless of the fact that you may have been influenced by a superior or a training officer.

Please do not think that I expect you to object to, and report, every situation where you may disagree with the guidance of your supervisors or training officers. To the contrary, as a new employee you are expected to listen, learn and adapt to situations that may well be foreign to you based upon past experiences. Let there be no doubt that from time to time you will be called upon and expected to do things and perform tasks that are very difficult, unpleasant, and dangerous. These things are all part of our department and our profession.

I do expect you to prevent misconduct from occurring and to report it immediately if it does occur. Let me give you examples of the type of behavior that I expect you to prevent or report. If you see another employee steal something, report it to the supervisor immediately. You became a police officer to put thieves in jail, not to condone their crimes. If you see another employee who has become emotionally agitated and potentially on the verge of using unnecessary force, pull them aside if you are able to do so and do not let it happen; report it if it does. If your partner is driving like an absolute fool, even in a pursuit, immediately correct their behavior; it will be little consolation at the hospital or funeral that you intended to discuss the matter later. If your partner is starting to exhibit inappropriate personal interest in another person (street person, an individual involved in criminal behavior, a vulnerable victim or complainant, etc.), stick your nose right into their business and tell them to clean up their act; if the inappropriate association does develop, report it. Be willing to intercede if you witness, hear about or someone reports to you behavior which does not meet our standards. Complete candor and cooperation are the only avenues available should misconduct occur. Silence and anything short of complete candor and cooperation are not options in the event that misconduct occurs.

Failure to intercede weakens our entire organization. Bad decisions can damage an officer's career, harm public trust and expose our agency to lengthy and costly litigation. Be willing to address something small before it has the opportunity to erupt in to something bigger, messier and more costly. Everyone has the ability to create a positive work environment. Everyone has the responsibility to create a positive ethical culture that fosters moral behavior and discourages inappropriate conduct, on duty as well as off duty. We (you) are here to influence our department and ultimately our community for the best. Remember our core values: ***Service, Integrity and Respect***. In addition to our Mission Statement, these three values should be the basis for every decision and action we make as members of the Canby Police Department and they are crucial to guiding us in respect to our performance and behavior.

You will note an overriding theme in my expectations, and that is that we are one another's keepers. More so than any other professionals, we each play a role in governing the conduct and behavior of our colleagues. Unlike a manufacturing company where there are safety devices on machines to keep problems from developing, we often serve as the safety devices for our colleagues. All of us, regardless of our position, have survived in this wonderful profession in part based upon the intervention of loyal coworkers who have intervened as our safety devices a time or two during our careers. You may be called to be the safety net for those who are too close or who are falling off the edge of self-destruction.

An officer who has just had his nose broken by a combative suspect may need a partner to prevent an unnecessary use of force; an officer that has just taken a child molestation suspect into custody in the presence of the child's parents may need a partner who has the special ability to calm a tense situation; an emotionally charged officer who is starting to become somewhat reckless in a high-speed pursuit may need

a partner who has the courage and common sense to terminate that pursuit; the young single officer who has eyes for that 17-year old who looks 21 and the married officer who becomes involved in an extramarital affair with someone they met in the performance of their official police duties may need to be reminded that improper relationships are both stupid and prohibited. While I absolutely expect that you will report misconduct, I also expect that you will try very hard to be that safety device for other personnel and keep that misconduct from occurring.

I know that these are sobering thoughts. My guidance to you is not based on casual considerations, but rather upon years of experience. I have seen far too many unfortunate instances where difficult problems have developed and festered that otherwise could have been avoided had a new employee demonstrated the courage and ethical behavior that I expect of you. I trust that you will always conduct yourself in a manner that will validate the wisdom of my having selected you as opposed to the other unsuccessful candidates who wanted to wear the badge that is now worn on your uniform.

If you have any questions or you have any concerns, related to my expectations of you at any time, please do not hesitate to contact me.

Sincerely,

Bret J. Smith  
Chief  
Canby Police Department

CC: Human Resource Director Amanda Zeiber



*Using data and experience to influence policing policy that will create equitable outcomes for all Oregonians*

## OREGON LAW ENFORCEMENT Annual Profiling Complaint Certification



Agency Name: Canby Police Department

Calendar Year: 2020 Total Complaints: 0 **Complete a PROFILING COMPLAINT SUMMARY form for each complaint.**

☒ I certify my agency's policy prohibiting profiling conforms to requirements of ORS131.920.

01/02/2020

Bret J. Smith

Date  
(MM/DD/YYYY)

Print Agency Head Name

Agency Head Signature

### **Tips for Completing the ANNUAL PROFILING COMPLAINT CERTIFICATION Form**

- Best used with Adobe Reader.
- Review ORS 131.920 for information related to the ANNUAL PROFILING COMPLAINT CERTIFICATION form.
- By statute, the ANNUAL PROFILING COMPLAINT CERTIFICATION form is due January 31 each year.
- By statute, agencies send forms to the Law Enforcement Contacts Policy and Data Review Committee, aka Law Enforcement Contacts Committee (LECC) at [lecc@pdx.edu](mailto:lecc@pdx.edu). Visit Portland State University, [www.pdx.edu](http://www.pdx.edu), for more information on this committee.
- Complete all fields before adding digital signature.



## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 1.00 (Previous number 1.02A – Changed Feb. 27, 2008)

Subject: General Rules and Regulations

Effective: April 13, 2000

Revised: January 4, 2016

Reviewed: April 2001, 2002, 2003, 2004

February 2007; June 2011; June 2014; January 2016

OAA Ref: 1.2.5

Approved: BRET J. SMITH, CHIEF OF POLICE

### POLICY

It is the policy of the Canby Police Department that certain rules and regulations regarding employee behavior are necessary for the efficient operation of the department and for the benefit and safety of all employees. Conduct that interferes with operations, discredits the Department, or is offensive to the public or fellow employees will not be tolerated.

1. **STANDARD OF CONDUCT:** Every member of the Department will constantly strive to attain the highest professional standard of conduct. Employees whether on duty or off duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit upon the Canby Police Department. Members shall obey and execute promptly the orders of their superior officers. They will conduct themselves in the public and other members of the department in a diplomatic and professional manner and in accordance with the laws of the United States, the State of Oregon ordinances of local governments and the Rules and Procedures of the Canby Police Department, to most effectively achieve the mission of the office.
2. **CRITICISM AND OBEDIENCE:** Employees shall not publicly or interdepartmentally criticize a superior officer, or any member of the department; criticize an order issued by a superior officer; or fail, refuse or neglect to obey such legal order. Superior officers shall not misuse their authority by giving any order contrary to the Policies and Procedures of this department, or any law, or by conduct unbecoming their office. Nothing in this section shall be construed to prohibit constructive criticism which may occur as a part of routine management, supervision or training.



3. **TRUTHFULNESS:** Members shall truthfully and fully answer all questions specifically directed and narrowly related to the scope of employment and operations of the Department which may be asked of them.
4. **COURTESY:** Members shall at all times treat citizens and co-workers with courtesy and shall, even in the face of great provocation be diplomatic in the performance of their duties. They shall refrain from using, profane and insolent or offensive language, and in the performance of their duties shall maintain command of temper and endeavor at all times to create goodwill for the entire department.
5. **TRUST:** Members shall not betray the trust of any person who confides pertinent information to them in their official capacities, and shall not reveal such information except to their commanding officer, or as he or she directs.
6. **NEGLECT OF DUTY:** Members having knowledge of, and failing to report to take proper action in the case of any crime, disorder, or other act or condition requiring police attention, shall be deemed to be in neglect of duty. For disciplinary purposes, neglect of duty shall be defined as failure to give due attention to the performance of duty.
7. **GRIEVANCES:** Employees who feel aggrieved shall discuss their difficulties with their immediate supervisor, and not with other members of equal or lower rank, or with persons outside the department. If at any time an employee feels the decision to be unfair, he may as a matter of recourse, request of his immediate ranking officer that he be granted an interview with the next higher officer, or as outlined in the labor contract with the Canby Police Association or AFSCME Union.
8. **RUMORS:** Members shall not make statements or spread rumors in the regard to department personnel, future department policies or activities, or make statements regarding public events, crimes or catastrophe without proper authorization.
9. **ON CALL STATUS:** Certain hours are designated in the assignments for officers to perform their regular duty, yet at all times they are subject to call to duty by an order of their superior officers. Officers are required to provide a telephone at their place of residence. Members who are required to have telephone, pager, and cell phone failing to respond when called shall be subject to such discipline as the Chief of Police shall direct.
10. **ADDRESSES AND TELEPHONE NUMBERS:** Immediately upon reporting for duty with the department, employees shall record their correct address and telephone number with the office of the Chief. Changes in address or telephone number shall be reported in writing at the time they become effective. This information is confidential and not to be released to members of the public

without permission of the employee.

11. **WORK HOURS:** Employees shall work the hours assigned unless excused by their commanding officer.
12. **TRANSFER:** The Chief of Police may assign, detail or transfer any member or employee of the department to or from any unit or assignment whenever he shall deem such action to be in the best interest of the efficiency, discipline or moral of the department.
13. **PUNCTUALITY:** Members of the department shall be punctual in reporting for duty at the time and place designated by their supervisor. Habitual failure to report promptly at the time directed shall be neglect of duty unless otherwise directed by the Chief of Police. Officers should be in uniform, equipped and able to respond to calls for service by their designated in-service time.
14. **INSPECTIONS:** From time to time, supervisors may call for full dress inspections of the department or any part thereof. Officers directed to report for such inspection shall do so in the uniform prescribed, carrying the equipment specified. Unauthorized absence from such inspections may be cause for disciplinary action.
15. **UNIFORM TO BE WORN:** Uniformed employees, shall when not assigned to plain clothes details, appear in regulation uniform during all tours of duty. When attending other police matters such as court appearances, trial boards etc., employees may appear in uniform or business attire.
16. **REMAINING ON POST:** Members assigned to a specific detail shall remain on duty until relieved by the proper authority. Members shall be on duty until properly relieved.
17. **ABSENCE FROM DUTY:** No member shall be absent from duty without the consent of their supervisor. Employees anticipating an absence from duty for illness or injury shall notify their supervisor as early as possible so that a replacement officer can be located. Employees off on extended or special sick leave are required to call in on a daily basis and report their status to their supervisor or the Lieutenant. If any member must leave duty before the end of shift due to illness or other circumstances, the member must inform a supervisor and obtain authorization before leaving.
18. **SICK LEAVE:** Members will be permitted to take sick leave as outlined in the labor agreement. The Department may at any time require a physician's excuse as outlined in the labor agreement. Members who malingering or otherwise deceive or attempt to deceive any official of the department of their health may be subject to disciplinary action.

19. **READ ALL ORDERS:** After an absence from duty, all officers shall upon returning to duty, read all orders issued by the Chief or his commanding officers, as well as all training bulletins, teletypes and regulations issued during his absence. He or she shall carefully read and study the manual, reports, etc., pertaining to his/her district. .
20. **CONFORM TO LAWS:** Members shall be required to conform to and abide by the rules and regulations of the department, ordinances of the City, laws of the United States of America and of the State of Oregon.
21. **PHYSICAL FITNESS FOR DUTY:** Employees shall maintain good physical condition in order to be prepared to meet any strenuous situation demanding their official attention.
22. **PROVIDING NAME AND IDENTIFICATION NUMBER:** Officers and employees of the department shall provide their name and DPSST Number, along with rank if any, in a respectful manner to any person who may request this information.
23. **REWARDS:** No member of this department shall seek or accept any money, gift, gratuity, reward or compensation for any service rendered or expense incurred while in the line of duty without the written consent of the Chief of Police.
24. **DEBTS:** Members are required to pay their financial obligations promptly.
25. **RECOMMENDING ATTORNEYS PROHIBITED:** Members shall not suggest, recommend, advise or otherwise counsel the retention of any attorney to any person as a result of police business. This would not apply where a relative of the member is seeing such service. In no case may such advice be given where a fee, gratuity or reward is solicited, offered or accepted from the attorney. Soliciting for any attorney is gross misconduct.
26. **NOT TO INFORM WRONGDOERS:** A member of the department shall not give information which may enable any person to avoid arrest or punishment, or to conceal or depose of goods, money or other valuable things stolen or otherwise unlawfully obtained.
27. **OFFICIAL FILES NOT TO BE REMOVED:** Members shall not remove, make copies of, or take information from any records, cards, reports, letters, documents, recording tapes, pictures or other official files, from any office maintained by the department for their custody, except by and for due process of law, or as directed by the Chief of Police.
28. **SMOKING:** Members shall not smoke when actually engaged in contact with the

public or on post in full view, nor shall they leave patrol solely for the purpose of smoking, but may smoke so as not to be conspicuous. Smoking in department offices and department vehicles is prohibited.

29. **INTOXICATING LIQUOR:** A member shall not drink intoxicating liquor of any kind while on duty or in uniform, or in the station or other rooms of the department. Officers shall not report for duty while under the influence of alcohol. The presence of any amount of blood-alcohol concentration as determined through breath or chemical test, will constitute a presumption of under the influence. Where in the course of duty a member authorized to do so in an undercover operation consumes sufficient alcohol to affect the members judgment adversely, the member shall seek to end his/her involvement in the operation in a practical manner with due regard for the circumstances. Members shall not consume intoxicating beverages to the extent that it results in behavior which discredits them or the department, or to the extent that such use renders the member unfit to report for their next regular tour of duty.
30. **GAMBLING:** Members shall refrain from engaging in any form of gambling while on duty or in uniform, except for officers actively engaged in gathering evidence for an investigation.
31. **ATTENTION TO DUTY:** All officers and employees will always be alert and attentive while on duty.
32. **UNNECESSARY FORCE PROHIBITED:** An officer shall use only that force which is reasonably necessary to subdue a violator or protect themselves or other persons from being injured. An officer may use force as required as per the Oregon Revised Statutes while taking into consideration the BPSST force continuum.
33. **USE OF POLICE VEHICLES:** Members of the department shall not transport civilians or other unauthorized persons in or on motor vehicles assigned for official use, except as authorized by their superior officers.
34. **SAFETY BELTS:** Members, while occupying a seat equipped with safety belts in a city vehicle are required to wear the belt, fastened whenever the vehicle is in motion. Passengers shall also observe the state law while riding in a city vehicle.
35. **POLITICAL ACTIVITY:** Members shall not be required to solicit or make any contributions for political purposes, shall not solicit funds or aid for any candidate or measure while on duty or while depicting themselves as a representative of the department.
36. **OUTSIDE ORGANIZATIONS:** Officers and other employees of the department

shall not be members of or associate with any organization which has as its purpose the overthrow of the established government by force, nor shall a member knowingly associate with any person or organization advocating or having dealings instrumental in fostering hatred or prejudice against, or oppression of any racial or religious group..

37. **PUBLIC APPEARANCES:** Members shall not address any public gathering or meeting on such subjects as the activities, plans, methods, or policies of the department, or lecture or instruct on police or related subjects except as directed or authorized by the Chief of Police.
38. **PUBLICITY:** Members shall not directly or indirectly seek publicity through the public press or other news media.
39. **ISSUING SPECIAL IDENTIFICATION:** Members, individually, or representing the police organization, shall not issue to persons other than members of the police department, any card, button, or other device, which purports to entitle the holder thereof to any special privilege or consideration.
40. **TESTIFYING FOR DEFENSE ATTORNEYS:** Any member, when called or legally summoned to testify for the defense in any traffic or criminal case, will immediately notify his commanding officer.
41. **AUTHORITY TO OPERATE VEHICLE:** No person shall operate a department vehicle without receiving orders or permission from a superior officer entitled to give such orders or permission.
42. **SAFE OPERATION OF VEHICLES:** The driver of any police vehicle shall operate such vehicle in a responsible and safe manner, exercising due caution and judgment. The member shall operate the vehicle in compliance with the motor vehicle laws and traffic regulations of this state. When operating a police vehicle, officers shall endeavor to set a good example by their own careful driving. Operators shall follow all laws and rules of the road according to ORS.
43. **ACCIDENTS INVOLVING POLICE VEHICLES:** A member or employee of the department who is involved in a motor vehicle accident while operating a department vehicle shall notify dispatch immediately, and shall comply with department procedures for such incidents. In call cases, the involved officer will call a supervisor to respond to the scene.
44. **RESPONSIBILITY FOR VEHICLES:** A member or employee of the department, who is assigned to the duty as an operator of a police vehicle will be responsible for instant service ability of said vehicle. Except while the vehicle is in emergency use, the member shall inspect the vehicle when it is turned over to him, and shall

submit a written report to his supervisor regarding any defects, damage or hazardous conditions. Furthermore, the member or employee shall check the interior of his vehicle for the presence of any unauthorized articles, and cleanliness. Officers upon going off-duty shall remove all personal items from the vehicle and leave the vehicle in a neat and clean condition. Upon the completion of every shift, each officer assigned to the operation of a police vehicle, shall service the vehicle, including gas, and oil if needed.

45. **UNATTENDED POLICE VEHICLES:** The operator of a police vehicle shall upon leaving the vehicle, secure the vehicle and remove the keys.
46. **USE OF HANDCUFFS:** All persons taken into custody by members of this department shall be handcuffed in the proper manner, handcuffed behind their back. Exceptions to this may be made where the use of handcuffs may further any injury to the prisoner, or when the prisoner is obviously of no threat to the officer. Prisoners that are unable to be handcuffed behind their back must be secured with a belly chain restraint for maximum security while transporting. At no time shall a prisoner be handcuffed to a fixed or stationary object. Handcuffs should be doubled locked to prevent the handcuffs from tightening down on the wrist of the prisoner. Prisoners that are handcuffed for an extended period of time should be checked to make sure that no injury is occurring to their wrists. Before using handcuffs, the officer should be certain that he/she has a key to the handcuffs available.
47. **DAILY ACTIVITY LOGS:** Patrol officers when required to complete daily logs, shall keep an accurate record of their daily activity on forms provided by the department. Daily logs are kept by computer aided dispatch and can be turned into the watch commander at the end of the shift if requested.
48. **NOTEBOOKS:** Officers may be permitted at their discretion to keep notes in a personal notebook. If a notebook is utilized by the officer, it shall be kept in a neat and orderly fashion, and maintained by the officer. These logs may be subpoenaed into court, and should therefore be maintained in a professional manner.
49. **TRANSACTIONS WITH INVOLVED PERSONS:** Members shall not engage in any transaction with any complainant, witness, suspect, defendant, prisoner or other person involved in a department case, whereby the successful prosecution of the case or the member's personal integrity may in any way be jeopardized.
50. **THREAT OF VIOLENCE TO A MEMBER:** No member shall threaten strike or attempt to strike any other member, or draw or lift up any weapon or offer any violence to another member in violation of law.

51. **DUTY TO REPORT MISCONDUCT AND EXCESSIVE FORCE:** Every member has a role in governing the conduct and behavior of our co-workers. Members who witness or obtain knowledge of misconduct of another member, whether the misconduct is of a criminal nature or a violation of the Department Rules of Conduct, shall attempt to prevent and **stop** such behavior while in progress.

It is expected that every member will not engage in or condone inappropriate behavior or acts the officer knows or reasonably should know is misconduct and will not tolerate such behavior on the part of any other employee regardless of their rank or position. Everyone will do their best to prevent misconduct from occurring and be willing to intercede if they witness, hear about or when someone makes a report about behavior that does not meet our standards.

Members who witness misconduct of a violent nature or which may cause some serious injury shall intervene to stop such conduct while in progress and report such misconduct immediately to their supervisor.

If this is not possible or successful to stop or intervene because the intervening officer cannot intervene safely, the member shall report such misconduct as prescribed in this policy.

Members are responsible to report to a supervisor as soon as practicable, but no later than 72 hours after witnessing or becoming aware of the misconduct; and supervisors are required to document the incident and report to the misconduct to the Chief of Police.

Misconduct defined for purposes of the requirement to intervene and report include, but are not limited to:

- Unjustified or excessive force that is objectively unreasonable under the circumstances or in violation of the use of force policy for the law enforcement agency employing the offending officer;
- Sexual harassment or sexual misconduct;
- Discrimination against a person based on race, color, religion, sex, sexual orientation, national origin, disability or age;
- A crime; or
- A violation of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel established under ORS 181A.410.

52. **PERSONNEL APPEARANCE:** Members of the Department, while on duty, must be at all times neat and clean in person, clothes clean and pressed, hair neatly cut, and clean shaven. Beards and other facial hair are allowed if kept short and neatly trimmed. For male employees, hair should not extend below the top of the ear, or the top of the collar. Members may wear wedding rings, engagement rings, fraternity or emblem rings. Necklaces will not be visible if

worn with the patrol uniform. Bracelets (except medical alert emblems) will not be worn with the uniform. Uniformed female members may wear earrings which do not extend below the ear lobe. Earrings shall not be worn by any uniformed male Officer while on duty.

53. **CHAIN OF COMMAND:** Members shall conduct internal business utilizing the chain of command as indicated on the organizational chart, unless good cause exist to deviate from the chain of command. The chain of command shall not be disregarded in conducting official business except when authorized by the Chief of Police or Department policy.
54. **PROMPT RESPONSE TO ORDERS:** All personnel are expected to obey lawful orders from ranking personnel as promptly and as completely as possible.
55. **UNLAWFUL ORDERS:** No supervisor shall issue any order which is in violation of law or department policy. A member receiving an unlawful, unjust, or improper order, shall, at first opportunity, report it in writing to the Chief of Police through the chain of command. The report shall contain the facts of the incident and the action taken.
56. **REQUIRED TO FACE DANGER:** Coolness and firmness are required of every member in times of danger. All members must act as a team and protect one another in accomplishing police goals. Shirking from danger or responsibilities will be considered serious neglect of duty.
57. **UNBECOMING CONDUCT:** Members shall conduct themselves, both on and off duty, in such a manner as reflects favorably on the Department. Conduct unbecoming of a member includes that which brings the Department into disrepute or discredits the member or the Department by association with the member, or conduct which impairs the operation or efficiency of the Department or member.
58. **IMMORAL CONDUCT:** Members shall maintain a level of moral conduct which is in keeping with the highest standards of the law enforcement profession. Members shall not participate in any incident involving moral turpitude or which impairs their ability to perform as a law enforcement officer, or which embarrasses the Department or City.
59. **SEXUAL CONDUCT:** No member or employee of the Department will participate in any type of Sexual Conduct or activity while on duty.



60. **DEPARTMENT STATIONERY:** Department stationery and letterhead will be used only for official purposes. Use of the City mail system will be for official Department business only.
61. **CRIMINAL CONDUCT:** Violations of any law will subject members to prosecution and will be cause for internal disciplinary action up to and including termination of employment. Internal discipline will not be dependent upon the outcome of prosecution. A Member who is convicted of a crime must notify the Chief of Police within 72 hours of the conviction.
62. **BOOKING ROOM:** Only adult prisoners will be placed in the Canby Police Department Booking room. Juveniles will not be placed in the booking room at any time. All firearms will be secured in the lock boxes in the booking room or another secured locked area (police vehicle trunk) during processing of prisoners.
63. **DEPARTMENT TRAINING:** All members of the Department will follow instructions issued regarding training and safety by the Department's training instructors. The Training Instructors have the authority to remove anyone from the training that is intentionally not following instructions, or is displaying unsafe or disruptive behavior. This rule applies to any and all training.
64. **VEHICLE STOPS:** Officers stopping vehicles will follow C-Com policy regarding traffic stops, giving all pertinent required information. Officers will not sit in their patrol vehicle while writing citations or obtaining other information unless a cover officer is present. If the officer feels the need to sit in the patrol vehicle because of inclement weather and a cover officer is present, the officer may sit on the passenger side of the patrol vehicle with the car door open to conduct official business.
65. **DUTY WEAPON SECURITY:** All sworn officers who are issued duty weapons by the department are required to secure that weapon in the issued department safe at any time it is stored at the residence of the officer.
66. **BIASED-BASED PROFILING:** *The definition of profiling means:*  
*"Profiling means that a law enforcement agency or a law enforcement officer targets an individual for suspicion of violating a provision of the law based solely on the real or perceived factor of the individual's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspect violation of a provision of law".*

Such actions could lead to allegations of violations of civil and constitutional rights. Department members will address their focus upon a person's behavior and conduct before initiating any enforcement activity or stopping of citizens. Members found violating rules relating to biased-based profiling will be subject to disciplinary action.

*No member of the Department, when carrying out their official duties, will enforce any law, ordinance, or use their official authority solely upon selecting individuals based upon the real or perceived factors identified above. Members will base all investigative field interviews, traffic stops, arrests, searches and property seizures on a standard of reasonable suspicion and/or probable cause as required by the U.S. Constitution and Oregon State Law. Members are required to articulated specific facts that establish probable cause to arrest, search or establish reasonable suspicion for an investigative stop or field interview.*

The Department will have periodic training in respect to issues relating to biased based profiling and all officers will attend such training when offered in order to further understand both profiling issues and legal ramifications. Police administrative staff will annually review any citizen's concerns relating to biased profiling that will be documented in the citizen complaint log and addressed as stipulated in investigating any citizen complaint per department policy.

67. **WARRANT ARRESTS:** When serving arrests warrants, officers will verify there is a valid warrant prior to making contact with the suspect at a known location. Officers will have a backup officer present when executing arrest warrants.
68. **TATTOOS:** Visible body art on the face and neck is prohibited, except for reasonable cosmetic purposes. Members will not expose any offensive forms of body art while on duty or while attending any event representing the police department. See G.O. 1.02, Section VI, letter D.

## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 3.01

Subject: Complaint Review

Effective: July 23, 2002

Revised: January 4, 2016; June 10, 2018

Reviewed: March 2007; June 2011; June 2014; January 2016; June 2018

OAA Ref: 1.7.1, 1.7.2

Approved: BRET J. SMITH, CHIEF OF POLICE

### I. PURPOSE

The purpose of this policy is to inform all employees of the Canby Police Department the procedures for addressing complaints of misconduct.

### II. POLICY

The Canby Police Department will investigate complaints of alleged employee misconduct *with the highest standards of accountability and professionalism* and equitably determine whether the allegations are valid or invalid and to take appropriate action.

It is essential that public confidence be maintained in the ability of the Department to investigate and properly adjudicate complaints against its members. Additionally, the Department has the responsibility to investigate and discipline those whose conduct discredits the Department or impairs its effective operation. The rights of the employee as well as those of the public must be preserved, and any investigation or hearing arising from a complaint must be conducted in a fair manner with the truth as its primary objective. The Department accepts complaints against its members and fully investigates all such complaints to the appropriate disposition. It is not the intent of this policy to contradict existing labor agreements. Any time such contradiction occurs, the labor agreement shall supersede.

### *Declination of a complaint:*

*The chief of police or designee may determine some or all of the allegation of misconduct may be declined for investigation. When deciding to decline an investigation, the chief of police or designee, may consider the complaint, the police reports and related investigation(s), dispatch records and similar documentation or available information related to the incident. Additional information may be requested, to include additional information from witnesses to clarify limited factual issues. The limited additional inquiry of witnesses is intended to assist in decision making process and it is not to be considered to be a substitute for a full investigation if applicable.*

*Examples of declinations may include, but is not limited to the following:*

- a) It is determined the allegation(s) should be referred to another appropriate agency;*
- b) It is determined the employee's conduct, as alleged by the complainant, does not violate department policy;*
- c) It is determined the alleged violation(s) constitutes a minor technical violation that if sustained would not result in discipline and is too minor or too vague to justify an investigation.*
- d) The alleged misconduct involves a non-employee, an employee of another agency, or involves a former employee who has retired, resigned, or who will no longer be employed by the police department by the time the investigation and/or disciplinary process could be completed. (However, regardless of issues of jurisdiction, the chief of police has the authority to direct an investigation based on the nature and seriousness of the allegation(s).*
- e) The employee is unidentifiable and a reasonable effort has been made to identify the member associated with the misconduct;*
- f) The alleged misconduct was previously investigated and the current complaint does not provide substantial new evidence;*
- g) The complaint lacks investigative merit and there is no reasonable possibility that an investigation wither will sustain the allegation or it can be articulated by specific reasons why the complaint is not credible or reliable; or the complainant is not cooperative or provides information that is not timely.*

### **III. PROCEDURES**

#### **A. Basis for Disciplinary Action**

1. Officers shall not be subject to disciplinary action by the Department, unless their actions constitute one of the following:
  - a. A violation of state, local or federal law, including a violation of a person's civil rights;
  - b. Conduct unbecoming an officer;
  - c. Incompetence;
  - d. A violation of written or verbal Department rules, policy, procedure, or orders;
  - e. Malfeasance or Nonfeasance - failure to perform an official duty or legal requirement.

#### **B. Supervisor's Role**

1. The primary responsibility for maintaining and reinforcing member conformance with the standards of conduct of this Department shall be with the officer and the first line supervisors.
2. Supervisors shall be familiar with the members in their unit, and closely observe their general conduct and appearance on a daily basis.
3. Supervisors shall be alert to behavioral problems or changes that may affect a member's normal job performance. Such information should be documented by the supervisor. If the supervisor chooses to document this information, he/she will maintain the documentation in the form of a member evaluation file for inspection by his/her supervisor.
4. If a supervisor perceives a member may be having or causing problems, the supervisor should assess the situation, and determine the most appropriate action.
5. Counseling may be used by the supervisor as follows:
  - a. To determine the extent of any personal or job problems that

may be affecting performance, and to offer assistance and guidance;

- b. To discuss minor and infrequent rule violations, and to discuss the substance and importance of the rules with the member.
- 6. A supervisor may recommend additional training to refresh and reinforce a member's skills.
  - a. The supervisor shall document in the member's evaluation file all instances of counseling or additional training used to modify a member's behavior.

### **C. Citizen Complaints**

Citizen complaints against any member or the Department shall be investigated. The results of the investigations report will be forwarded to the Chief of Police through the chain of command.

- 1. All citizen complaints pertaining to Department policies or procedures or that allege member misconduct should be documented on the Citizen Complaint Form. Citizen Complaint forms are available at our front counter or on the internet at [www.canbypolice.com](http://www.canbypolice.com).
  - a. Complaints may be made in person, over the telephone or in writing.
  - b. Anonymous complaints, or complaints from citizens who wish their names to be held in confidence, shall be accepted for investigation.
  - c. Complaints received by telephone, or e-mail will be filled out by the receiving person if no supervisor is available.
- 2. Complaints via CCOM should be accepted by a supervisor, but any department member may accept a complaint if a supervisor is not readily available. Members taking complaints shall be sensitive to the confidential nature of the complaints, and deliver the complaint to the Lieutenant or the Chief of Police as soon as practicable.

- a. The supervisor shall promptly forward the complaint to Chief of Police for assignment via the chain of command.
  - b. The supervisor may attempt to resolve a complaint by an exploration of Department policies and procedures, where applicable. Attempts to resolve a complaint shall be noted on the complaint form.
3. Upon receipt of a citizen's complaint, the assigned supervisor, or designee, shall contact the complainant to advise them the matter is under investigation, and that the complainant shall receive written verification of receipt of the complaint. The supervisor or designee shall advise the complainant of Department procedures for the processing and investigation of citizen complaints, and provide the complainant with the name of the person to contact if the complainant wishes to check on the status of the complaint. The Chief of Police or designee shall notify the complainant of the final disposition of the complaint.
4. Complaint investigations shall be completed within 10 days after the involved employee(s) is notified of the investigation. If additional time is needed for an extensive investigation, the investigator will request a time extension in writing from the Chief of Police stating the reason for the extension. Regular status reports shall be filed by the investigator to keep the Chief of Police informed of the progress of the investigation. The employee under investigation shall also be notified of the time extension. When an investigation is extended, the supervisor or designee will notify the complainant of the extension, and of the current status of the investigation.
5. All citizen complaints shall be logged by the Chief's Administrative Assistant. The log shall indicate the date the complaint was received, incident type, complainant, member, investigator, date a written receipt of complaint was sent, date an extension was approved if any, date an update extension was approved. The log will contain the final resolution, and date the final results were made available to the complainant. This log shall be kept in a secure manner by the Chief's Administrative Assistant. Finalized complaints, after approval by the Chief of Police, shall be kept in a secure manner by the Chief of Police filed under the complainants' name.

6. The Chief of Police, or Lieutenant, will conduct an annual review of citizen complaints. The annual review will focus on patterns of complaints by category; number and patterns of complaints involving individual officers; training issues; compliance with policy; and issues identified requiring training and policy changes. The Chief will insure that appropriate adjustments are made to policy and training procedures, when needed. The annual review of citizen complaints will be maintained with the citizen complaint log for that year.

#### **D. Supervisors Investigation**

1. Upon becoming aware of or receiving notification of potential misconduct by an officer under their command, a supervisor shall begin an immediate investigation of such allegations.
2. The supervisor's investigation shall be limited to questioning the officer, witnesses and complainants, and securing all relevant evidence.
3. Upon completion of the investigation, the supervisor shall forward to the Lieutenant, through appropriate channels:
  - a. A report of the alleged violation;
  - b. All documents and evidence relating to the investigation;
  - c. Recommendations for further investigation, or other disposition of the case.

#### **E. Internal Affairs Investigations**

1. The Lieutenant is responsible for the Internal Affairs Function, and has the authority to report directly to the Chief of Police. Most complaints against officers are investigated by the officer's supervisor. However, the Detective Sergeant (or designated Sergeant/Supervisor) will be the investigator of complaints against officers that include allegations of official misconduct, use of force complaints, or any other internal investigation at the discretion of the Chief of Police.
2. Complaints against a member that could lead to suspension



without pay, demotion, or dismissal of the member will be reviewed and/or investigated by the internal affairs function.

3. Internal affairs investigations involving allegations of criminal misconduct or perceived criminal misconduct will be reviewed by the Chief of Police and City Attorney. If after the review there is reasonable belief that a crime may have been committed, the matter **will should** be referred to an outside law enforcement agency for the investigation. **(Exceptions to an outside law enforcement agency investigation will be limited and determined at the discretion of the Chief of Police).** The Lieutenant will coordinate the investigation with the outside law enforcement agency and report the results to the Chief of Police and City Attorney. In the event no outside agency agrees to perform such an investigation, the matter will be forwarded to the District Attorney for review and recommendation.

#### **F. Relieving an Employee from Duty**

1. Any supervisor may suspend an employee with pay, pending the completion of a formal investigation, if that supervisor believes the employee:
  - a. Is physically, mentally, or emotionally incapable of performing their duties;
  - b. Has committed a violation of law;
  - c. Has committed a violation of Department directive(s) of such a nature or extent that the continuance of their duties pending the outcome of an investigation would not be in the best interests of the Department.
2. The suspending supervisor shall notify their immediate supervisor of the incident and the action taken.
3. The suspending supervisor shall complete a detailed report of the incident prior to the end of the shift and expeditiously forward it through the chain of command. The report shall be provided to the Chief of Police no later than 9:00 a.m. on the next working day unless the violation, in the judgment of the supervisor, is so egregious as to require immediate notification.

## **G. Officer's Duties and Rights During an Investigation**

1. Scope of questioning during interview concerning alleged criminal misconduct:

Prior to an Internal Investigations interview concerning alleged criminal misconduct, the officer under investigation shall be read the Miranda Warning the provisions of Miranda will be adhered to throughout the interview.

2. Scope of questioning during interview concerning alleged administrative misconduct:

Prior to an Internal Investigations interview concerning alleged administrative violations, the member under investigation shall be advised of the following, commonly known as the Garrity Warning:

- a. The officer can be required to answer all questions specifically, narrowly and directly related to the performance of his/her official duties.
- b. Refusal to comply with an order to answer such questions is a violation of Department regulations which may subject the member to discipline up to, and including dismissal.
- c. Any required self-incriminatory admission made during the interview may only be used in subsequent administrative proceedings, and may not be used against the officer in subsequent criminal proceedings.

3. Counsel at Interview

- a. Members are permitted to have an attorney, association representative, supervisor or other personal representative in the room during any interview conceding allegations of misconduct by the employee.
- b. The member's representative is limited to acting as an observer of the interview, except where the interview focuses on, or leads to, evidence of potential criminal activity by the officer. In that case, an officer's legal representative

may advise and confer with the officer during the interview.

#### 4. Special Examinations

- a. An employee under investigation may request an intoxilyzer, blood, urine, psychological, or medical examination if the employee believes such an examination would be beneficial to his/her defense. The Department may require such examination upon the direction of the Chief of Police if the results of examination are germane to the nature of the investigation. Any examination of the employee will be conducted under the guidelines outlined in the current Canby Police Officer Association collective bargaining agreement, Article 26.
- b. An employee may be asked to submit a financial disclosure statement if that information is germane to the current investigation or if the records are of Department funds. If the employee fails to voluntarily provide the information, the Department may seek the information through legal channels. Failure to provide financial records of Department funds may result in disciplinary action, up to and including termination.
- c. Property belonging to the law enforcement agency is subject to inspection where the employer has a reasonable suspicion that evidence of work-related misconduct will be found therein. Property includes, but is not limited to, vehicles, desks, files and storage lockers.
- d. No employee will be required, as a condition of employment or continuation of employment, to submit to any polygraph examination or psychological stress test examination. This testing is prohibited under ORS 659.225. However, under ORS 659.227, the member can consent to a polygraph examination voluntarily during the course of criminal proceedings or investigations, or during the course of civil judicial proceedings.
- e. If an identification line-up is solely for administrative purposes, and criminal prosecution is not anticipated, an employee can be required to be photographed or participate in a line-up.

5. Rights during an Internal Investigation

- a. Prior to any interview or special examination, the member under investigation shall be informed of the complaint by the Lieutenant or designee that s/he is the subject of an internal affairs investigation. At the time the member is notified, the member will be presented with an Interview Notice. The Interview Notice will indicate whether the officer is a suspect or a witness in the investigation, and instruct the member as to the location, date and time of the interview. The Interview Notice will also provide the member with basic information about the complaint, to include the complainant's name; location of occurrence; date and time of the incident; and the classification of the complaint.
- b. Prior to the Internal Investigation interview the member will be informed of the nature of the allegations and the nature of the investigation. The member will be provided a reasonable time to prepare for the interview. For the purpose of this policy, the definition of, "a reasonable time," shall be twenty-four (24) hours. Exceptions to this twenty-four notification will be imposed if advance notification compromises the investigation, the confidentiality of a person(s) involved in the investigation or if the member chooses to waive their rights and agrees to an interview.
- c. If a member is being investigated for an allegation that is considered potential impeachment evidence, as defined under Brady case law, the member will be notified in the Interview Notice that the Canby Police Department has an affirmative duty to disclose such information to the Clackamas County District Attorney's Office if during the investigation it has been determined the information obtained will likely lead to substantiated findings considered impeachment evidence, as defined under Brady and subsequent case law.

Impeachment Evidence that will implicate Brady must be disclosed to the prosecutor, as identified in the Clackamas County District Attorney's Protocol regarding Brady Evidence. Such evidence may include specific instances of officer misconduct relating to an officer's bias, credibility or character for truthfulness, such as:

1. Untruthfulness in a formal setting: testimony, affidavit, police report, official statement, internal affairs investigation (e.g. - was there a finding of dishonesty in an IA investigation)
2. Tampering with or fabricating evidence.
3. Deliberated failure to report criminal conduct by other officers.
4. Knowingly making a false statement to another officer on which other officer relies in official setting.
5. Criminal conduct that is fraudulent in nature – e.g. perjury, forgery, or theft.
6. Dishonesty during an internal affairs investigation and/or following a *Garrity Warning*.
7. Other deceitful acts that demonstrate a disregard for constitutional rights of others or the laws, policies and standards of proper police practice.

The Interview Notice will include the following statement:

You are being investigated for an allegation that is considered potential impeachment evidence, as defined under Brady case law. Law enforcement agencies must collect and document exculpatory and impeachment information discovered pursuant to administrative and criminal investigations and provide that same to the prosecution. When an agency has determined the information obtained during a pending criminal or internal investigation will likely lead to substantiated findings implicating Brady information, the Clackamas County District Attorney's Office will be promptly notified.

- d. When unsubstantiated allegations are made which have the potential of becoming impeachment evidence (as defined by Brady and subsequent case law), it is essential that a full and thorough process (i.e. an investigation as delineated in the Department's Policy and the Collective Bargaining Agreement between the City of Canby and the Canby Police

Association) is followed to safeguard the contractual and legal rights of the individual(s) involved.

- e. Prior to the Internal Investigations interview, the investigator will present the member a standard form, hereby known as the **“Canby Police Association Police Officer’s Rights During an Internal Investigation.”** The form will be read in its entirety by the member, then signed and dated by the member, prior to the start of the investigative interview.
- e. The investigator will insure that the signed copy of the aforementioned Police Officer’s Rights form is maintained in the investigative file.
- f. All interviews will be conducted while the member is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
- g. The interview will be held at the member’s work site or at a location agreeable to both parties.
- h. During interviews, if more than one investigator is present, the lead investigator is the primary interviewer.
- i. Members under investigation shall not be subjected to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the investigators as an inducement to answer any questions. Interviews shall be done under circumstances devoid of intimidation, abuse, or coercion.
- j. The complete interview may be electronically recorded. Any interruptions will be noted, and any relevant discussions transpiring during breaks will be summarized on the tape or video recorder and verified for accuracy by the member. If the interview is recorded, a copy will be furnished to the member, at department cost. The original electronic recording will be processed as evidence, and kept within the property room or other secure location as directed by the Chief of Police or his/her designee.
- k. Members under investigation or their supervisor may contact the Lieutenant to ascertain the status of the investigation of

a complaint filed against them.

- I. The member under investigation will be given an opportunity to explain his/her actions to the Chief of Police prior to the imposition of any disciplinary action.

#### **H. Witness Interviews**

1. Members who are to be interviewed as a witness in an Internal Investigation will be presented with an Interview Notice. The Interview Notice will provide the same details as the Interview Notice provided to the member under investigation, with the exception that the member will be classified as a witness.
2. Interviews with a member classified as a witness shall be scheduled to provide the least amount of inconvenience to the member. The interview(s) shall be scheduled during the member's normal shift and work days.
3. Members interviewed as a witness will be served with the standard, "Canby Police Association Police Officer's Rights During an Internal Investigation," form. The witness member will read the form in its entirety and sign and date the form.
4. Prior to the Internal Investigation interview, the witness member will be given up to one (1) hour to prepare and consult with a union representative or attorney, if they so choose. Additional preparation time may be granted at the discretion of the case investigator.
5. Exceptions to the advance notification of a witness member may be made if the advance notification compromises the investigation, or the confidentiality of a person(s) involved in the investigation.

#### **I. Command Action**

1. Upon receipt of a supervisor's completed written investigative report conceding a violation of rules, the Lieutenant shall forward a copy to the Chief of Police.
2. The Lieutenant will review the complaint investigation. If additional investigation is required to resolve the complaint the Lieutenant shall assume the role of investigator, relieving the original

investigating supervisor of investigative responsibility for the complaint.

3. The Lieutenant shall forward to the Chief of Police the completed complaint investigation, including recommendations for disposition of the case, along with the supporting evidence for such recommendations.

## **J Chief of Police Action**

1. Upon receipt of a supervisor's recommendations on a disciplinary matter, the Lieutenant shall submit recommendations to the Chief of Police as to whether a violation has been sustained according to the evidence.
2. The Chief of Police shall review the report and supporting documents, and shall give final approval of the disposition of the case as follows:
  - a. Not sustained: Insufficient evidence to either prove or disprove allegations.
  - b. Exonerated: Incident occurred but was lawful or proper.
  - c. Unfounded: Allegation is false or not factual.
  - d. Not involved: Investigation established that the effected employee was not involved in the alleged incident.
  - e. Preventable: The investigation establishes that the employee was substantially at fault in an automobile accident.
  - f. Policy failure: Flaw in policy caused incident.
  - g. Sustained: Evidence sufficient to prove allegations.
3. Upon final approval, the Chief of Police shall return the completed investigative report, including the findings of fact and the disciplinary recommendation to the officer's supervisor for service and execution of the decision.



**K. Discipline without Charges and Specifications**

1. A supervisor may administer an oral reprimand of record for minor violations.
2. A supervisor may administer a written reprimand of record for minor violations that would not merit demotion, suspension or termination.
3. Discipline will be administered as followed in the outlines of the bargaining agreement.

**L. Discipline with Charges and Specifications**

1. When recommended disciplinary action may result in suspension, demotion or dismissal, a formal statement of charges and specifications shall be prepared by the Lieutenant.
2. The charging document shall include:
  - a. The particular rule(s) alleged to have been violated;
  - b. The dates and places where the alleged acts or omissions occurred;
  - c. A statement of the alleged acts or omissions;
  - d. The recommended disciplinary action;
  - e. The member's right to appeal, and appellate procedures;
  - f. Pre-disciplinary hearing date, time and place.
3. The member's supervisor shall serve the charges and specifications upon the member, and upon the president of the Canby Police Officers Association.
  - a. When possible, service shall be made while the member is on duty.
  - b. When on-duty service is not possible, the member may be served at home or other mutually arranged location.

## **M. Pre-disciplinary Hearing**

1. A Pre-disciplinary hearing with the Chief of Police shall be convened. For purposes of this policy a, "Pre-disciplinary Hearing," is a hearing between the member and the Chief of Police, or his/her designated representative, which occurs after the investigation has been completed, but before discipline is administered. The pre-disciplinary hearing is an opportunity to mitigate the written charges against the member and the proposed discipline. The member shall be granted a period of two (2) days to prepare for the pre-disciplinary hearing. Additional time for the member to prepare for the hearing may be granted at the discretion of the Chief of Police.
2. The purpose of the hearing is a forum in which the charged employee may offer to the Chief of Police any items of explanation, mitigation, rebuttal, or refutation regarding the allegations brought against the charged employee before imposition of discipline against the employee.
3. Hearing proceedings shall comply with the charged officer's due process rights as follows:
  - a. The officer may obtain a representative for the hearing which may be any person of the employee's choosing;
  - b. The officer may present evidence and witnesses on his/her behalf;
  - c. The Hearing will be held during business hours, and if possible, during the charged members regular tour of duty; and,
  - d. The Hearing will be taped recorded at the members request;
4. The Chief of Police shall make a final decision as to the imposition of any disciplinary measures after a full review of the Pre-disciplinary Hearing proceedings.
5. Upon the determination of the Chief of Police that disciplinary action, up to and including termination of the employee is merited, the Lieutenant shall prepare and submit a statement to the officer, including the following:

- a. The reason for the disciplinary action;
- b. The effective date of disciplinary action;
- c. The status of fringe and retirement benefits after dismissal, where appropriate;
- d. A statement detailing the contents of the officer's employment record as pertains to the disciplinary action;
- e. The appropriate procedures for appeal of the disciplinary action.

## **N. Records**

1. *An internal investigation is to be considered confidential. Records of internal investigations are also confidential as identified in OAR 166-350-0010(8) Unless otherwise directed by the Chief of Police or court order, individual investigative files may be destroyed after three years from the date of the incident when assigned the following dispositions as identified in OAR 166-200-0100:*

- *Exonerated, Unfounded, Insufficient Evidence or Declined.*
- *All sustained allegations will be permanently retained in files, unless expunged pursuant to all the criteria listed below:*
  - *A minimum of five years have elapsed since the incident date of the last sustained complaint; and*
  - *The discipline imposed was less than demotion; and*
  - *Authorized by the Chief of Police.*

Internal release of records will be on a right-to-know basis. External release of records will be by authorization to release by the employee investigated, or by legal order. The results of the investigation will be maintained by the Lieutenant. All documentation of the investigation will be sealed by the Lieutenant and forwarded to the Chief of Police for maintenance.

2. The Department will notify an employee anytime any new material

or information is placed in the employees personnel file. Any material which reflects discredit on an employee may only be placed in his/her file with the employee's signature on it, indicating receipt of the document only, not agreement with the content of the document. If an employee refuses to sign the document, the Department may nevertheless place the document in the employees file with a written note indicating the date and in the presence of which management representative the employee refused to sign.

3. Written reprimands and other written discipline will be maintained in the employees file as per the bargaining agreement.

**O. Appeals**

The member may appeal any disciplinary decision as outlined in state law, ordinances, and collective bargaining agreement or Departmental procedures. Refer to the current Collective Bargaining Agreement, and to Policy 3.02, Grievance Procedures.

**P. Oral Warnings**

The Canby Police Department uses oral warnings as a tool to promote corrective behavior in incidents involving minor procedural violations; issues of work productivity; and lesser issues of improper workplace behavior. The department recognizes the long term value oral warnings have in increasing the competency and professionalism of its members.

The department frequently uses Written Notices of an Oral Warning. As such, sergeants and other first line supervisors may issue such documentations and warnings, without advance notifications, interviews or notification of member's rights.

**Q. Profiling Complaints**

*It is the policy of the Canby Police Department that law enforcement actions be taken based upon reasonable suspicion of wrongdoing, and not based upon the inappropriate use of a person's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability or national origin. Officer's acting on a suspect description or information related to an identified or suspected violation of law may appropriately use*

*these individualized characteristics in an attempt to identify or apprehend a suspect.*

*Profiling, as described is prohibited. "Profiling" means that a law enforcement agency or a law enforcement officer targets an individual for suspicion of violating a provision of law based solely on the real or perceived factor of the individual's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.*

*The Canby Police Department will investigate all complaints alleging Profiling that are received by the police department or those complaints that are forwarded from the Law Enforcement Contacts Policy and Data Review Committee (LECC). All complaints of this nature will not be declined for investigation.*

*Any complaints or grievances of biased policing can be made:*

- 1. In Person;*
- 2. In writing signed by the complainant, delivered by hand, postal mail, or facsimile mail;*
- 3. Telephone, anonymously or through third party.*
- 4. In the event that a complaint is made telephonically, the person taking the complaint shall fill out as much information on the profiling complaint form as is available.*

*Agencies shall use the LECC Profiling Complaint Report to provide information on each complaint they receive. A sample form for a profiling complaint is provided.*

*All complaints or grievances of biased policing will go directly to the Lieutenant and the Chief of Police for review and assignment to an appropriate investigator.*

*A profiling complaint must be made within 90 days of the alleged profiling incident. Complaints alleging profiling over 90 days old will not be accepted and no investigation will be conducted.*

*Each profiling complaint filed within 90 days of the alleged profiling incident shall be investigated. The complaint shall be assigned to an officer who was not involved in the incident being investigated, and the investigation must be completed within 60 days unless an extension is granted by a command officer.*

*If body camera or dash camera video footage of the alleged profiling incident is available, the investigator will obtain and review the footage as part of the investigation. Any footage will be maintained as required by public records retention requirements.*

*A complaint or grievance alleging profiling may be declined for investigation for the reasons outlined in this policy.*

*In addition to the investigative requirements outlined in this policy, a copy of each profiling complaint that is received and the disposition of all such complaints will be provided to LECC.*

*No report forwarded to LECC may identify a particular law enforcement officer, or a particular individual whose demographic data is collected by a state or local law enforcement agency. ORS 131.906 (6). Reports will be forwarded to the LECC on an annual basis, and must indicate the disposition of the complaint. For purposes of reporting the disposition, the following categories shall be used:*

*Founded – the complaint was investigated and the allegations of profiling were determined to be accurate. Appropriate corrective actions were taken by the agency to address the incident.*

*Unfounded – the complaint was investigated and the allegations could not be proven nor disproven. This category should be used if the complaint lacks sufficient information to adequately investigate the allegations.*

*Exonerated – the complaint was investigated and the officer's actions were determined to be appropriate and lawful.*

*Complaints will be notified of the disposition of the investigation by one of the following methods: mail, e-mail, phone, text or in person.*

*Address for the Law Enforcement Contacts Policy and Data Review Committee: LECC, Attn: CCJ-JUST, PO Box 751, Portland, OR 97204.*

**R. Training**

*Bias-Based training will occur annually.*

**S. The Law Enforcement Contacts Policy and Data Review Committee's (LECC) policy for profiling complaints**

*Path of a Complaint and Intake Form:*

1. *Profiling complaint intake reports to the LECC are not complete until follow up is done (follow up entails contacting the complainant and reviewing the narrative of the incident).*
2. *If follow-up does not occur, the LECC will keep the profiling complaint intake report form as is and forward to the mentioned law enforcement agency and or other appropriate agency within 30 days. (These are defined as agencies that already collect complaints on behalf of law enforcement such as Independent Police Review Boards and Auditors offices).*
  - a. *When a profiling intake complaint report is incomplete it will be categorized as an intake form.*
  - b. *Intake forms will be forwarded to the appropriate Law Enforcement agencies and other agencies, when the individual provides their required information.*

*Exchange with Agencies:*

3. *Completed profiling intake complaint reports, shall be exchanged between the LECC, Oregon law enforcement agencies (as defined as ORS Chapter 681), and Internal Police Review Boards no later than the last business day of the month.*
  - a. *Agencies and Police Review Boards shall use the LECC Profiling Complaint Report to provide information on each complaint they receive. Agencies and Police Review Boards are also asked to submit a summary of their investigation or narrative of the incident. The LECC Profiling Complaint Report contains information on the following:*
    - i. *The name of the persons involved and their contact information;*
    - ii. *Characteristics of the profiling incident (i.e. narrative);*
    - iii. *Nature of the complaint (i.e. what identities were alleged profiled);*
    - iv. *Date, time, location of the alleged profiling;*
    - v. *The involved officer/s Department of Public Safety Standards and Training number;*
    - vi. *The disposition of the complaint and its rationale when available.*

- b. The LECC will track complaints and cross report with each agency.*
- c. Each agency will confirm receipt of profiling complaint intake reports with the LECC.*
- d. When a finding or disposition is formalized, the agency will update the LECC Profiling Complaint intake Report with any additional information about the complaint and disposition.*

*Other information:*

*4. If a complaint involves multiple jurisdictions the LECC will alert all involved Law Enforcement agencies.*

*5. The information of all officers involved and the persons involved are to be kept confidential in regard to ORS Chapter 681 and Chapter 192.502 and exempt from public disclosure.*

*a. Each complaint will be kept in compliance with OAR 166-350-0010 (8).*

*6. If an agency is out of compliance with ORS, OAR, or LECC policy for 30 days, the LECC will alert the agency first. If the agency remains out of compliance an additional 30 days, doesn't not respond to the first notice, or refuses to comply, the LECC staff shall alert the agency and the office of the Attorney General.*

## CANBY POLICE DEPARMENT – PROFILING COMPLAINT FORM

Complainant's Name \_\_\_\_\_ Signature \_\_\_\_\_

Complainant's Address \_\_\_\_\_

Complainant's Phone Number \_\_\_\_\_

Name of Alleged Victim (If not complainant)

Officer's Name \_\_\_\_\_ DPSST # \_\_\_\_\_

**Note – the information above this line MUST be redacted prior to forwarding this Complaint Form to LECC. ORS 131.906(6). For written complaints, the complainant MUST sign the form above.**

Summary of Complaint

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Date of Incident \_\_\_\_\_ Time of Incident \_\_\_\_\_

Location of Incident \_\_\_\_\_

Reason for Stop or Contact (as reported by complainant)

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Law Enforcement Action Taken (as reported by complainant)

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The following information refers to either the complainant, if they were the alleged victim of profiling, or to the alleged victim of profiling if the complainant is filing a complaint on someone else's behalf:

Gender \_\_\_\_\_ Gender Identity \_\_\_\_\_ Age \_\_\_\_\_ Color \_\_\_\_\_

Race \_\_\_\_\_ Ethnicity \_\_\_\_\_

Sexual Orientation \_\_\_\_\_ Primary Language \_\_\_\_\_

National Origin \_\_\_\_\_ Religion \_\_\_\_\_

Political Affiliation \_\_\_\_\_ Homeless (Y or N) \_\_\_\_\_

Disability (Mental, Physical, Intellectual) \_\_\_\_\_

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DISPOSITION (To be added after conclusion of investigation)

FOUNDED \_\_\_\_ UNFOUNDED \_\_\_\_ EXONERATED \_\_\_\_

## CANBY POLICE DEPARTMENT

# GENERAL ORDER

Number: 7.05

Subject: Bias Crimes / Bias Incidents

Effective: March 10, 2004

Revised: January 9, 2020

Reviewed: April 2007; June 2011; June 2014; January 2020

OAA Ref: 2.2.6

Approved: BRET J. SMITH, CHIEF OF POLICE

### I. PURPOSE

This policy is designed to assist employees in identifying crimes motivated by hate and bias toward an individual's race, **color**, religion, sexual orientation, **gender identity, disability and national origin** and to define appropriate steps for assisting victims and apprehending suspects.

### II. POLICY

It is the policy of the Canby Police Department to safeguard the state and federal rights of all individuals irrespective of their race, **color**, religion, sexual orientation **or gender identity, gender identity, disability and national origin**. Any acts or threats of violence, property damage, harassment, intimidation or other crimes designed to infringe upon these rights are viewed very seriously by this agency and will be given high priority. This Department will use every necessary and available resource to identify and arrest the perpetrators.

The Canby Police Department recognizes that fear and distress is typically suffered by victims of these crimes, and that the potential for reprisal and escalation of violence is very real, not only to the victim, but to the community as well. Because of the far-reaching negative consequences of these acts on the community and the Department, particular attention shall be given to addressing the security and related concerns of the immediate victims as well as their families and others affected by the crime.

### III. DEFINITIONS

*Bias Crime:* Any unlawful action designed to frighten, harm, injure, intimidate or harass an individual in whole or in part, because of a bias motivation against the actual or perceived race, **color**, religion, **gender identity**, sexual orientation, **disability or national origin** of the victim.

*Bias Incident:* A person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation and prosecution is impossible or inappropriate.

*Race:* A group of persons who possess common physical characteristics (e.g., color of skin, eyes and/or hair, facial features; etc.) genetically transmitted by descent and heredity that distinguish them as a distinct division of humankind (e.g., Asians, African Americans, Native Americans, Caucasians, etc.).

*National Origin:* A group of persons of the same race or **ethnic group** who share common or similar traits, languages, customs and traditions (e.g., Arabs, Hispanics, etc.).

*Religious Group:* Any persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, Atheists, etc.).

*Disability:* A physical or mental condition that limits a person's movement, senses or activities.

*Sexual Orientation:* A sexual attraction toward, and responsiveness to, members of one's own gender or members of the opposite gender (e.g., gays, lesbians, heterosexuals, bi-sexuals, etc.)

*Gender Identity:* An individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, express or behavior differs from that associated with the gender assigned to the individuals at birth.

### IV. INITIAL RESPONSE PROCEDURES

When an officer at the scene of an incident believes that the bias may have been motivated by race, **color**, religion, **gender identity**, sexual orientation, **disability or national origin**, the officer shall:

- A. Determine whether any perpetrators are present and, if so, take appropriate enforcement measures;
- B. Restore order to the crime scene and take any necessary actions to gain control of the situation;
- C. Identify any injured parties and provide any needed medical assistance;
- D. Identify any victims and witnesses or others who have knowledge of the crime;
- E. Protect the crime scene;
- F. Summon the shift supervisor to the scene;
- G. Law enforcement officer are required to refer victims of Bias Incidents to qualifying local victim services or the statewide Oregon Bias Response Hotline for support.

## **V. SUPERVISOR'S RESPONSIBILITIES**

The shift supervisor shall confer with the initial responding officer, and ensure all necessary preliminary actions have been taken. The supervisor shall request any appropriate additional personnel necessary to:

### **A. Provide Immediate Assistance to the Crime Victim**

- 1. Express empathy for the victim and show a sincere interest in his/her well-being;
- 2. Explain the Department's official position on the importance of the case, the measures that will be taken to apprehend the perpetrators, and the officers' and Department's interest in the victim's well-being;
- 3. Allow the victim a period in which to express his/her immediate concerns and feelings;
- 4. Assist the victim in identifying and contacting individuals or agencies that may provide support and assistance. These may include family members or close acquaintances, clergy or Department chaplain and community service agencies that provide

shelter, food, clothing, child care or other related services; and

5. Provide security and precautionary advice to the victim and arrange for any additional security that may be required for protection of the victim.

#### **B. Preliminary Investigation**

Conduct a standard preliminary investigation to include preliminary interviews of the victim and any witnesses to the incident, photographs, and evidence identification and processing.

#### **C. Documentation**

Ensure that all relevant facts are documented on an incident and/or arrest report and make an initial determination as to whether the incident should be classified as a **Bias** offense.

### **VI. INVESTIGATOR'S RESPONSIBILITIES**

Investigative personnel assigned to alleged hate or bias incidents shall be responsible for:

#### **A. Follow-up Investigation**

When responding to the scene of an alleged **Bias** incident, investigators shall assume control of the follow-up investigation.

1. Assure the scene is properly protected, preserved and processed and all physical evidence of the incident is removed as soon as possible.
2. If evidence of an inflammatory nature cannot be physically removed (e.g., painted words or signs on a wall) the owner of the property shall be contacted to remove such material as soon as possible and the officer shall follow-up to ensure that this is accomplished in a timely manner.
3. Conduct a comprehensive interview with all victims and witnesses at the scene, or as soon as possible thereafter;
4. Canvas the neighborhood for additional personal sources of information;

5. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense, and its potential inflammatory and related impact on the community;
6. Work closely with the prosecutor's office to ensure a legally adequate case is developed for prosecution;
7. Coordinate the investigation with Department, state and regional intelligence operations. These sources shall provide the investigative officer with an analysis of any patterns, organized groups and suspects potentially involved in the offense;
8. Keep the initial responding officer apprised of the case status;
9. Make a final determination as to whether the incident should be classified as an **Bias** crime; and
10. Complete reports necessary to comply with statistical reporting requirements for hate/bias crimes, **including the Bias Crime and Incident Supplemental Form.**
11. **Law enforcement officers shall refer the victim of the bias incident to the qualifying local victim's services. If qualifying local victim's services are unavailable, the law enforcement agency shall refer the victim of the bias incident to the hate crimes hotline. The Department of Justice (DOJ) has established and operates a "hate crimes hotline" dedicated to assisting the victims of bias crimes and bias incidents.**

**B. Ongoing Assistance**

1. Investigative officers shall also take the lead in providing ongoing assistance to the crime victim.
2. Contact the victim periodically to determine whether s/he is receiving adequate and appropriate assistance;
3. Provide ongoing information to the victim about the status of the criminal investigation; and
4. Informing Victim's Assistance of the case.

## VII. COMMUNITY RELATIONS/CRIME PREVENTION

### A. Community Concerns

**Bias** crimes are viewed in the community not only as crimes against the targeted victim, but also as a crime against the victim's race, color, religion, sexual orientation, gender identification, disability and national origin group as a whole. Working constructively with segments of this larger audience after such incidents is essential to help reduce fears, stem possible retaliation, help prevent additional RRES incidents and encourage any other previously victimized individuals to step forward and report those crimes. Towards this end officers who are assigned, shall:

1. Meet with neighborhood groups, residents in target communities, the media and other identified groups to allay fears, relay the City's concern over and response to this and related incidents, reduce the potential for counter-violence and provide safety, security and crime prevention information;
2. Provide direct and referral assistance to the victim and his/her family;
3. Conduct public meetings on **Bias** threats and violence in general, and as it relates to specific incidents;
4. Establish liaison with formal organizations and leaders; and
5. Expand, where appropriate, existing preventive programs such as anti-hate seminars for school children.

## STATISTICAL TRANSPARENCY OF POLICING (STOP)

HB 2355 (2017) required law enforcement to report on all discretionary traffic and pedestrian stops. The purpose is to receive and analyze demographic data to ensure that law enforcement agencies perform their missions without inequitable or unlawful discrimination based on race, color or national origin.

Criminal Justice Commission (CJC) and the Department of Justice (DOJ), was instructed to establish a standardized method for the collection of required data elements from all Oregon Law Enforcement Agencies. CJC was responsible to perform the data analysis with the purpose of identifying patterns and practices and profiling and deliver a report to the Department of Public Safety and Standards (DPSST) to provide advice or technical assistance based on the best practices of policing to Oregon's Law Enforcement Agencies.

Canby Police Department was scheduled to go operational by December 11, 2018 with a data collection analysis beginning July 1, 2020. It is also important to know Canby Police Department's data will not be included in the report to the legislature until one (1) year following their mandatory reporting date, July 2019. On July 13, 2020, Canby Police Department received one year's worth of initial/preliminary data collected from July 1, 2019 through June 30, 2020.

Data included the collection of the following:

- The total number of stops (Traffic & Pedestrian stops)
  - The race and gender of the persons stopped
  - The reason for the stop (Criminal, Moving Violation, Registration/License, Cell Phone/Seat Belt, Other, etc.)
  - The stop disposition (Citation, Juvenile Summons, Arrest, Warning, None, etc.)
- The number of Searches

The initial data sent to the Canby Police Department by Criminal Justice Commission is as follows:

**The number of stops:** 2379

### Race:

Asian - 1%  
Black - 1.9%  
Hispanic - 18.4%  
Middle Eastern - ½ of 1%  
Native American / Alaska Eskimo – 1/3 of 1%  
Pacific Islander – 1/3 of 1%  
White – 77.5%

### Gender:

Male – 65.4%  
Female – 34.4%

### Total Arrests:

Asian – 0  
Black – 2.6%  
Hispanic – 21%  
Middle Eastern – 0  
Native American / Alaska Eskimo – 0  
Pacific Islander – 0  
White – 76%

### Total Searches:

0  
3%  
26%  
0  
0  
0  
71%

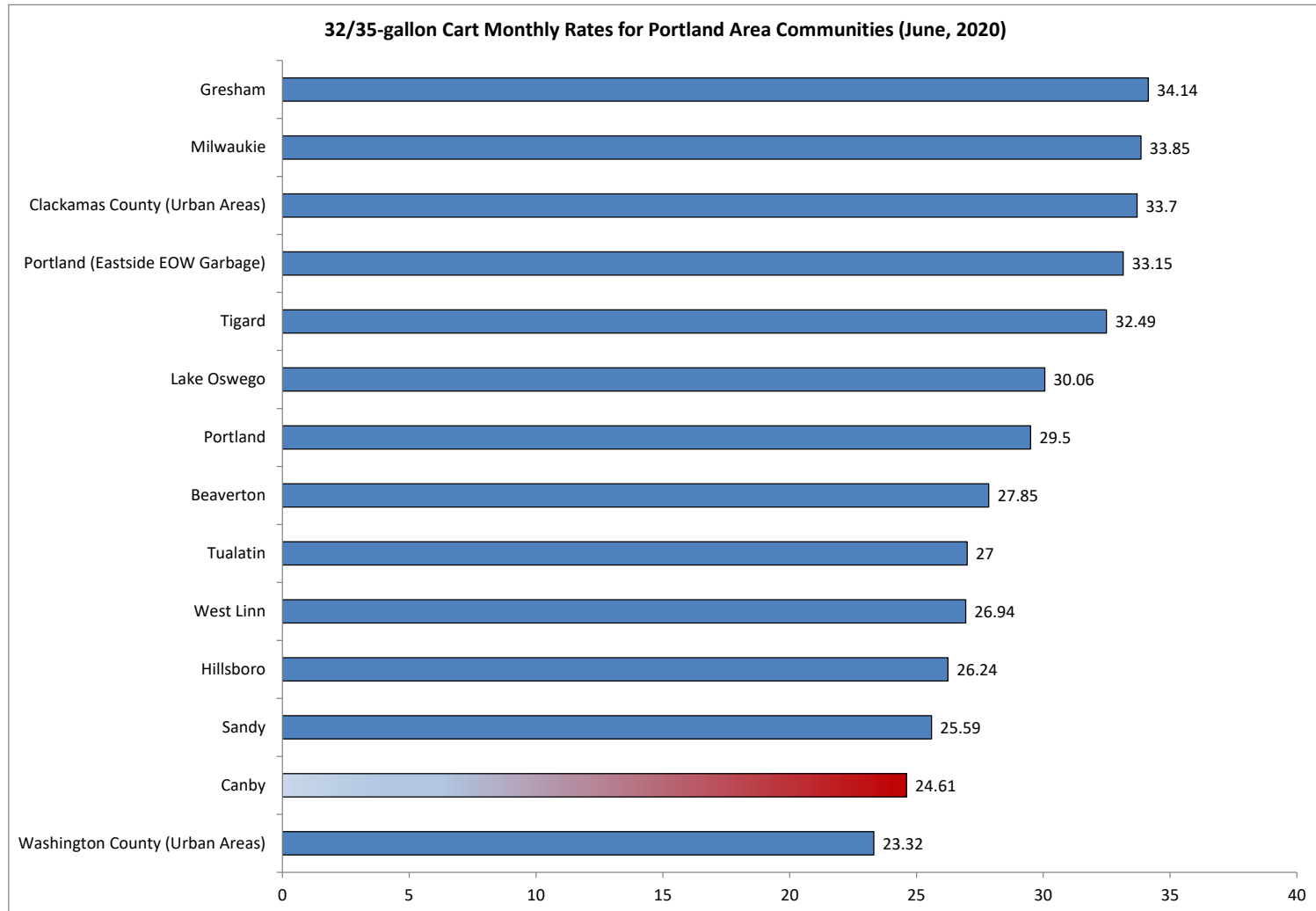


## Canby Disposal Company, Inc. Rate Increase Briefing Meeting

### Agenda

- Review of Fiscal 2019 financial results
  - ✓ Canby Disposal lost 5.70% (\$181,576) in calendar 2019
  - ✓ Recycling markets have not recovered from the loss of China demand
- Analysis of revenue requirements
  - ✓ Modeling indicates the Company needs a 20.1% general rate increase
  - ✓ This implies a \$4.95 per month rate increase for the 35-gallon cart customer
- Proposal to phase in general rate increases on September 1, 2020 and March 1, 2021
  - ✓ Raise rates by 10% on September 1<sup>st</sup> – 35-gallon cart increase of \$2.47 per month
  - ✓ Raise rates by 10% on March 1, 2021 – 35-gallon cart increased again by \$2.47 per month
  - ✓ By March 1, 2021, the 35-gallon cart rate will be \$29.56 per month; the current rate is \$24.61 per month

### Neighboring communities' garbage and recycling rates



**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
June 17, 2020**

**Due to COVID-19 Pandemic, the Mayor and City Councilors attended the meeting virtually. The public was asked to view the meeting live on CTV Channel 5 or on YouTube. Seating was available in the Council Chambers in compliance with the Governor's Executive Order regarding social distancing measures to be taken.**

**PRESIDING:** Mayor Brian Hodson.

**COUNCIL PRESENT:** Trygve Berge, Tim Dale, Greg Parker, Sarah Spoon, and Shawn Varwig.

**COUNCIL ABSENT:** Traci Hensley

**STAFF PRESENT:** Amanda Zeiber, Interim City Administrator; Joseph Lindsay, City Attorney; Julie Blums, Finance Director and Melissa Bisset, City Recorder.

**OTHERS PRESENT:** None.

**CALL TO ORDER:** Mayor Hodson called the Regular Meeting to order at 7:02 p.m.

**COMMUNICATION:** City Recorder Melissa Bisset stated the Mayor & four Council positions would be on the November 3, 2020 ballot. The filing period had opened for the positions. Candidates first turn in a Candidate Filing form to the City Recorder along with the SEL Candidate Signature Sheet. Candidates may not begin collecting signatures until the City Recorder has reviewed and approved in writing, the filing and signature sheets. Interested candidates should email or call the City Recorder to schedule an appointment.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** It was publically noticed that Council would be attending the meeting virtually and written comments and input on agenda items were accepted until 5:00 p.m. on Wednesday, June 17.

Paul Ylvisaker, Canby Resident, expressed concern with Ordinance No. 1489. He asked if it was the Canby School District that made the decision to use fireworks for graduation. Mayor Hodson understood it to be a High School/ School District decision. Mr. Ylvisaker read language from Ordinance No. 1489, #4. "Sounds produced by sound-amplifying equipment at activities, including fireworks and other explosive devices at football games, sponsored by Canby School District..." Mr. Ylvisaker thought that meant a singular thing, fireworks could be used at just the football games. He asked if his interpretation was incorrect and Mayor Hodson responded that it was not. Mr. Ylvisaker asked if a variance had been requested for using the fireworks at the graduation. No noise variance request had been submitted.

He then read from Section 2. "Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to enact this ordinance as soon as possible due to events scheduled in early September, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading." He noted that the Ordinance was approved in August 2018. He felt that there was a problem. He asked for further discussion.

Mayor Hodson stated he had conversation with the City Attorney about the firework piece that coincided with graduation events for the High School. There would be a follow up and conversation with the School District and the School Board.

Mayor Hodson stated he appreciated the challenges considering the current circumstances.

Mr. Ylvisaker stated it wasn't the first time it had happened and it had been an ongoing problem and damage had been done and it needed to stop.

Councilor Spoon stated that she had a discussion with Mr. Ylvisaker on the phone about the situation and she appreciated hearing that the Police Department stopping by to give Mr. Ylvisaker notice of the fireworks. Mr. Ylvisaker noted that he and his family support the Police Department.

Councilor Spoon felt it was kind of the Police to notify Mr. Ylvisaker of the fireworks but felt there was an inconsistency with a rule that was expected to be followed and the School District did not request a variance and the enforcement agency notified a citizen that a rule was not going to be followed. She wanted all citizens to be treated fairly in the process.

Mr. Ylvisaker responded that he appreciated the notice and supported the Police Department.

Councilor Spoon noted that the Canby Police Force was courteous and looks out for their people. She wants the Police to enforce the rules.

**MAYOR'S BUSINESS:** Mayor Hodson announced there would be construction along Highway 99. There would be rut repair and paving during the following two nights. It was a precursor to a larger paving project in 2021-2022. Governor Brown put out new guidance related to reopening. She had tied Clackamas County to Multnomah and Washington County. This meant that Clackamas County would not be able to apply for Phase 2 until the other counties were also ready to go into Phase 2. It would also be mandatory for masks to be worn in public places. He stated there were still a lot of questions about what it means for Canby and enforcement. He did not see Canby Police enforcing the mask requirement but would confirm with the City Attorney. He stated that there are many spikes of coronavirus in the state.

City Attorney Lindsay clarified that the mask requirement was for indoor public spaces.

Mayor Hodson shared there had been a Parks and Recreation virtual meeting on Monday and they discussed the Splash Pad, Wayside Master Plan, and Locust City Park. There would be money for redoing playground equipment at Locust City Park. They discussed work at pond located in Community Park. They were also looking at Maple Street Park upgrades.

Councilor Spoon shared there was a resignation on the Transit Advisory Board. A few applications had been received. She encouraged citizens to apply for the Board.

Councilor Spoon sent her thoughts and prayers to Hope Village as they had 69 people infected with coronavirus and there had been seven deaths. She noted that many were longtime members of the community.

Councilor Spoon had ideas about action items related to current events and asked if she could have coffee with the Mayor to further discuss. Mayor Hodson stated that he would see what he could with scheduling a meeting with Councilor Spoon.

Councilor Parker stated that the Fair Board had received sufficient donations to proceed with a permanent drive-in Movie Theatre. A touchless ticket program had been purchased and they were working with Canby Cinema. It was moving forward and they were hoping to be ready by August.

The Adult Center had started having meetings again. There was still no on-site programming. He noted that the Meals on Wheels was being operated and it was important. He expressed thanks to the drivers and kitchen staff. The Adult Center had a weekly check-in program with those who normally attend their events.

Councilor Parker appreciated that the Wayside Park planning was still moving forward. He reread the 17 year old Master Plan and the Phase One still held up. There were cost projections in the Plan. He felt that they should dedicate a modest amount of money to bring someone in and take a look at the costs and move forward with project. He reminded Council that in the visioning session with the community the number one thing citizens said was that they wanted more trails.

Councilor Parker expressed empathy for the people who at Hope Village and for first responders. He noted that it was hard times.

Council President Dale shared that Canby Utility Board had just approved their next fiscal year budget. The Utility was in good financial shape. They work with the City on their growth projections. They budgeted based on 85 new homes across three subdivisions, one apartment complex and two commercial buildings in the industrial park. He shared there were a couple of server farms served by Canby Utility which had resulted in half a million dollars in annual power revenue. There should be a modest water rate increase in the fall. Canby Utility had done a land sale and shift. The power side had sold their interest to the water side which would secure a

place for a future water treatment plant. They were moving forward with Phase 2 of the on construction of the 4<sup>th</sup> and Pine headquarters and shops. Canby Utility was turning 50 years.

Councilor Varwig stated the Library Board had a virtual meeting the previous night. Canby Fire Board was also meeting virtually.

Councilor Berge expressed thanks to Planning Director Sandy Freund. She had been awarded a \$50,000 grant from the Department of Land Conservation and Development to conduct an Economic Opportunities Analysis. They would be contracting with consultants and there would be a project advisory committee.

Interim City Administrator Zeiber asked that two councilors to participate on the project committee. She would be sending an email to the Council for two volunteers.

### **COUNCILOR COMMENTS & LIAISON REPORTS:**

**CONSENT AGENDA: \*\*Council President Dale moved to adopt the Minutes of the June 3, 2020 City Council Work Session and Regular Meeting and the reappointment of Mark Triebwasser to the Parks and Recreation Advisory Board. Seconded by Councilor Varwig and passed 5-0.**

### **PUBLIC HEARING REGARDING STATE REVENUE SHARING FUNDS.**

Mayor Hodson read the Public Hearing statement.

He stated that all interested persons in attendance would be heard on the matter. In compliance with Executive Order No. 20-16 related to public meetings during Coronavirus Outbreak - opportunity was given to sign up or provide testimony by 5:00 p.m. today. No request for comment or testimony was received by the City Recorder and no one from the public was present in the Council Chambers.

Finance Director Blums stated that the Resolution was to allot State Revenue Sharing Funds. Every municipality was required to affirm that they would like to receive the funds from the State. The Public Hearing was an opportunity for the Public to weigh in if there was something specific they would like the funds to be used on.

Mayor Hodson opened the Public Hearing at 7:40 p.m.

There were no comments.

Mayor Hodson closed the Public Hearing at 7:41 pm

## **PUBLIC HEARING REGARDING 2020-2021 FY BUDGET AS APPROVED BY BUDGET COMMITTEE**

Finance Director Blums stated that Council must approve a Resolution in order to adopt the Budget. The Budget Committee met twice and reviewed the proposed budget that the Staff had prepared. There was one change to where a position would be funded. The Council had the opportunity to review the budget and make any changes.

Mayor Hodson noted that the budget was available publically on the website.

Finance Director Blums stated there were revenue projections that had to be revised once COVID-19 hit. It was a fairly status quo budget. There was a position that would be filled that had been budgeted for over the last couple of years but had not yet been filled. Capital projects would still be done. There would be an impact to revenues due to the impact of COVID. There has been approximately a 25 percent reduction and it may need to be reevaluated depending on how long the pandemic continued.

Mayor Hodson commended Finance Director Blums, the City Staff and Council. He noted that reserves were ran pretty low in 2008 and 2009 and the City worked hard to build the reserves back up. It had put the City in a position to financially weather the COVID storm. He thanked the City Team for keeping things moving forward.

Mayor Hodson opened the public hearing at 7:49 p.m.

There were no comments.

Mayor Hodson closed the public hearing 7:49 p.m.

## **RESOLUTIONS & ORDINANCES**

**Resolution No. 1334:** A Resolution adopting a Supplemental Budget for the 2019-2020 Fiscal Year.

Finance Director Blums explained there was a situation related to the PERS Employer Incentive Fund Program that arose in the last couple of weeks. The money that was allocated for the matching funds through the Employer Incentive Fund Program may not be available on July 1. The State may un-appropriate them for that purpose and use somewhere else. If the City were to make the contribution by June 30 then the City would receive the matching funds. If the City were to wait until July 1, there would be a risk that the City would not receive the matching funds. Ms. Blums was not sure that it was a risk the City would want to take. The City could wait but Ms. Blums was concerned that the opportunity would be defunded and the City would lose the chance of the 25 percent match.

There was additional money to appropriate from the SDC Fund to transfer to the Sewer Fund for the pump station and it was a timing issue. It was thought that the project would carry over into the follow year, but it was going to be completed thin the current year. There was some additional money on the S. Ivy Street pump project and an additional \$5,000 for COVID line items where the City was accumulating all of the expenditures. \$15,000 had already has been spent. Ms. Blums received notification that through the CARES Act, the funds had been approved to be reimbursed.

Mayor Hodson stressed the aspect of the PERS contribution and that it would be a substantial savings.

Councilor Varwig stated that he just wanted to make sure that the \$300,000 would go back into the reserves. It was noted that those funds wouldn't be spent the following year.

Council President Dale stated that he would like the funds to be reflected in the adopted budget.

Mayor Hodson agreed that it should be memorialized.

Ms. Blums explained that there was money sitting in an internal reserve that had been put away for several years and that money would be taken to put into an account directly with PERS where it will over time earn better interest than what the City could earn in the City's bank account and in return, the City would receive a 25 percent match on the funds from the State that would be used to offset future rate increases to PERS rates.

**\*\*Councilor Varwig moved to adopt Resolution 1334, A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE 2019-2020 FISCAL YEAR. Motion was seconded by Councilor Berge and passed 5-0.**

**Resolution No. 1335:** A Resolution declaring the City's election to receive State Revenue for Fiscal Year 2020-2021.

Ms. Blums explained that it was an annual resolution that needed to be approved by the City Council in order to receive State Revenue.

**\*\*Council President Dale moved to adopt Resolution 1335, A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE FOR FISCAL YEAR 2020-2021. Motion was seconded by Councilor Varwig and passed 5-0.**

**Resolution No. 1336:** A Resolution adopting the Budget, making Appropriations, and imposing and categorizing taxes for the 2020-2021 Fiscal Year.

Ms. Blums provided a revised resolution. She explained that it changed the total appropriations for all funds from \$32,212,195 and \$31,724,293. She noted that the portion that imposes and categorizes the tax is a requirement by the State that the permanent rate must be designated for



both the City's and the local option rate. The City's permanent rate is 3.4886 per \$1,000 and the local option levy for the Swim Center is 0.49 per \$1,000 of assessed property value. She noted that there is no debt on it and the City's rates are part of the general government limitation which is a total of \$10 per \$1,000 of real market value.

Mayor Hodson stated City Staff starts working on the budget at the beginning of the calendar year. A proposed budget is typically received by the Budget Committee members at the end of April. One of the graphs he found interesting was on page 52; it was a breakdown where a dollar of property taxes goes – the City received 25 percent. Other revenue was from utility fees, intergovernmental fees and taxes, charges for services, grants and donations, franchise fees, infrastructure fees, transient room taxes, and interest.

**\*\*Councilor Berge moved to adopt Resolution 1336, A RESOLUTION ADOPTING THE BUDGET, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAXES FOR THE 2020-2021 FISCAL YEAR. Motion was seconded by Councilor Spoon and passed 5-0.**

**Resolution No. 1337:** A Resolution authorizing an Interfund Loan from the Cemetery Perpetual Care Fund to the Library Fund in the amount of \$500,000 and authorizing repayment of the Interfund Loan in Fiscal Year 2020-2021.

Ms. Blums explained that the Library runs on a tight budget and there was not enough cash flow between July 1<sup>st</sup> and January to keep the Library open because they did not receive their big source of revenue until January from the County. The loan was done from the Perpetual Care Fund to keep them afloat and then it was paid back once their tax revenue is received from the County.

Councilor Parker shared that it used to be that the Library Fund would carry a balance in reserves to cover the expense. Ms. Blums responded that there was no reserve to use in the Library Fund.

Council President Dale noted that the loan earned interest.

**\*\*Councilor Berge moved to adopt Resolution 1337, A RESOLUTION AUTHORIZING AN INTERFUND LOAN FROM THE CEMETERY PERPETUAL CARE FUND TO THE LIBRARY FUND IN THE AMOUNT OF \$500,000 AND AUTHORIZING REPAYMENT OF THE INTERFUND LOAN IN FISCAL YEAR 2020-2021. Motion was seconded by Councilor Varwig and passed 5-0.**

**Resolution No. 1338:** A Resolution extending Workers Compensation coverage to volunteers of the City of Canby and repealing Resolution 1313.

Interim City Administrator Zeiber stated each year a resolution is done to extend workers compensation coverage to volunteers. It covers Boards and Commission members and other volunteers that work on projects such as events, parks projects and Library volunteers. It was a

standard form that was used every year. She noted that the Independence Day Celebration was still listed but it was a placeholder for an event that we may have, it did not necessarily have to be that specific event. The hours and events were tracked and are reported back to City County Insurance Services (CIS) at the end of the year.

Councilor Parker commented that the Fair Board just adopted their budget and the insurance rates when down by about 40 percent because they projected that there would not be many events. He asked about future assessments. Ms. Zeiber responded that at the beginning of each fiscal year and actual is reported at the end of the year. It was anticipated that there would be reductions in the rate.

Ms. Zeiber clarified that the resolution was required by CIS and must be in place for them to extend coverage Workers Compensation Coverage. It was noted that CIS provides full coverage.

**\*\*Councilor Varwig moved to adopt Resolution 1338, A RESOLUTION EXTENDING WORKERS COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF CANBY AND REPEALING RESOLUTION 1313. Motion was seconded by Councilor Berge and passed 5-0.**

## **ORDINANCES**

**Ordinance No. 1528:** An Ordinance authorizing the Mayor and Interim City Administrator to execute a contract with Master Cleen, Inc. for Janitorial Services for various City Facilities, not to exceed \$60,583.00; and repealing Ordinance 1509. (*Second Reading*)

**\*\*Council President Dale moved to adopt Ordinance 1528, AN ORDINANCE AUTHORIZING THE MAYOR AND INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH MASTER CLEEN, INC. FOR JANITORIAL SERVICES FOR VARIOUS CITY FACILITIES, NOT TO EXCEED \$60,583.00; AND REPEALING ORDINANCE 1509. Motion was seconded by Councilor Varwig and passed 6-0 by a roll call vote.**

**Ordinance No. 1529:** An Ordinance authorizing the Mayor And Interim City Administrator To Execute A Contract With Kintechnology, Inc. To Continue To Provide Computer Technical Services For The City, Not To Exceed \$110,000.00; And Repealing Ordinance 1506 (*Second Reading*)

**\*\*Council President Dale moved to adopt Ordinance 1529, AN ORDINANCE AUTHORIZING THE MAYOR AND INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH KINTECHNOLOGY, INC. TO CONTINUE TO PROVIDE COMPUTER TECHNICAL SERVICES FOR THE CITY, NOT TO EXCEED \$110,000.00; AND REPEALING ORDINANCE 1506. Motion was seconded by Councilor Berge and passed by a roll call vote 5-0 with one abstention (Councilor Varwig).**

## **CANCELLATION OF JULY 1, 2020 CITY COUNCIL MEETING**

There was a consensus by the Council to cancel the July 1, 2020 City Council Meeting.

### **ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Approved Resolution No. 1334.
3. Approved Resolution No. 1335.
4. Approved Resolution No. 1336.
5. Approved Resolution No. 1337.
6. Approved Resolution No. 1338.
7. Approved Ordinance No. 1528.
8. Approved Ordinance No. 1529.
9. Cancelled the July 1, 2020 City Council Meeting.

The meeting adjourned at 8:35 p.m.


Mayor Hodson stated the City Council would convene into Executive Session pursuant to ORS to ORS 192.660 (2)(d), which allows the Agency to meet in Executive Session to discuss those topics. They would not reconvene into open session.

Melissa Bisset, CMC  
City Recorder

Brian Hodson  
Mayor

# Memo

To: Mayor Brian Hodson & Members of City Council  
From: Bret J. Smith, Chief of Police  
CC: Melissa Bisset, General Administration  
Date: June 19, 2020  
Re: Liquor License Application / B's Bake Shoppe



---

I have reviewed the attached liquor license application completed by Bethany Zito, for the business, "B's Bake Shoppe", located at 113 NW 2<sup>nd</sup> Avenue, Canby, Oregon 97013. Bethany and David Zito are the listed owners who are responsible to manage/operate the business.

On June 19, 2020, I spoke with Bethany Zito and we discussed the expectations and responsibilities involving the sale of alcoholic beverages. She told me she and her husband (David) are aware any employee/person selling alcoholic beverages must know the laws regulating the sale of alcoholic beverages. She said they have prior experience serving alcoholic beverages. Furthermore, she said they know there are consequences for failure to comply with rules as set forth by Oregon State Law. She said any staff member serving alcoholic beverages will be trained on the OLCC laws.

It is my recommendation the Canby City Council approve this application to the Oregon Liquor Control Commission (OLCC).





OREGON LIQUOR CONTROL COMMISSION

# LIQUOR LICENSE APPLICATION

pd 6/18/20 #1049  
#100

1. Application. **Do not include** any OLCC fees with your application packet (the license fee will be collected at a later time). Application is being made for:

| License Applied For:   | CITY AND COUNTY USE ONLY  |
|--|---|
| <input type="checkbox"/> Brewery 1st Location                      | Date application received and/or date stamp:<br><b>6/18/2020</b>                                |
| <input type="checkbox"/> Brewery 2nd Location                      | Name of City or County:<br><b>Canby</b>   |
| <input type="checkbox"/> Brewery 3rd Location                      | Recommends this license be:<br><input type="checkbox"/> Granted <input type="checkbox"/> Denied |
| <input type="checkbox"/> Brewery-Public House 1st Location         | By: _____   |
| <input type="checkbox"/> Brewery-Public House 2nd Location         | Date: _____   |
| <input type="checkbox"/> Brewery-Public House 3rd Location         |   |
| <input type="checkbox"/> Distillery                                |   |
| <input type="checkbox"/> Full On-Premises, Commercial              |   |
| <input type="checkbox"/> Full On-Premises, Caterer                 |   |
| <input type="checkbox"/> Full On-Premises, Passenger Carrier       |   |
| <input type="checkbox"/> Full On-Premises, Other Public Location   |   |
| <input type="checkbox"/> Full On-Premises, For Profit Private Club |   |
| <input type="checkbox"/> Full On-Premises, Nonprofit Private Club  |   |
| <input type="checkbox"/> Grower Sales Privilege 1st Location       |   |
| <input type="checkbox"/> Grower Sales Privilege 2nd Location       |   |
| <input type="checkbox"/> Grower Sales Privilege 3rd Location       |   |
| <input checked="" type="checkbox"/> Limited On-Premises            |   |
| <input type="checkbox"/> Off-Premises                              |   |
| <input type="checkbox"/> Off-Premises with Fuel Pumps              |   |
| <input type="checkbox"/> Warehouse                                 |   |
| <input type="checkbox"/> Wholesale Malt Beverage & Wine            |   |
| <input type="checkbox"/> Winery 1st Location                       |   |
| <input type="checkbox"/> Winery 2nd Location                       |   |
| <input type="checkbox"/> Winery 3rd Location                       |   |
| <input type="checkbox"/> Winery 4th Location                       |   |
| <input type="checkbox"/> Winery 5th Location                       |   |

2. Identify the applicant(s) applying for the license(s). ENTITY (example: corporation or LLC) or INDIVIDUAL(S) applying for the license(s):

**Zito Gruppo LLC**  
(Applicant #1)

**Bethany Zito**  
(Applicant #2)

**David Zito**  
(Applicant #3)

(Applicant #4)

3. Trade Name of the Business (Name Customers Will See)

**B's Bake Shoppe**

4. Business Address (Number and Street Address of the Location that will have the liquor license)

**113 NW 2nd Ave**

City

**Canby**

County

**Clackamas**

Zip Code

**97013**



# OREGON LIQUOR CONTROL COMMISSION BUSINESS INFORMATION

Please Print or Type

Applicant Name: Bethany Zito Phone: [REDACTED]  
Trade Name (dba): B's Bake Shoppe  
Business Location Address: 113 NW 2nd Ave  
City: Canby ZIP Code: 97013

## DAYS AND HOURS OF OPERATION

### Business Hours:

Sunday 8am to 6pm  
Monday 7am to 6pm  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday 7am to 6pm  
Friday 7am to 10pm  
Saturday 8am to 10pm

### Outdoor Area Hours:

Sunday 8am to 6pm  
Monday 7am to 6pm  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday 7am to 6pm  
Friday 7am to 10pm  
Saturday 8am to 10pm

The outdoor area is used for:

☒ Food service Hours: 7am to 10pm  
☒ Alcohol service Hours: 7am to 10pm  
☐ Enclosed, how \_\_\_\_\_

The exterior area is adequately viewed and/or supervised by Service Permittees.

(Investigator's Initials)

Seasonal Variations: ☒ Yes ☐ No If yes, explain: hours may be reduced during winter seasons, may open other two days once established, outdoor area limited to weather

## ENTERTAINMENT

Check all that apply:

- |  |   |
|--|---|
| <input type="checkbox"/> Live Music                | <input type="checkbox"/> Karaoke                              |
| <input checked="" type="checkbox"/> Recorded Music | <input type="checkbox"/> Coin-operated Games                  |
| <input type="checkbox"/> DJ Music                  | <input type="checkbox"/> Video Lottery Machines               |
| <input type="checkbox"/> Dancing                   | <input type="checkbox"/> Social Gaming                        |
| <input type="checkbox"/> Nude Entertainers         | <input type="checkbox"/> Pool Tables                          |
|  | <input type="checkbox"/> Other: <u>Acrobatics or Juggling</u> |

## DAYS & HOURS OF LIVE OR DJ MUSIC

Sunday \_\_\_\_\_ to \_\_\_\_\_  
Monday \_\_\_\_\_ to \_\_\_\_\_  
Tuesday \_\_\_\_\_ to \_\_\_\_\_  
Wednesday \_\_\_\_\_ to \_\_\_\_\_  
Thursday \_\_\_\_\_ to \_\_\_\_\_  
Friday \_\_\_\_\_ to \_\_\_\_\_  
Saturday \_\_\_\_\_ to \_\_\_\_\_

## SEATING COUNT

Restaurant: 25 Outdoor: 8  
Lounge: \_\_\_\_\_ Other (explain): \_\_\_\_\_  
Banquet: \_\_\_\_\_ Total Seating: 33

### OLCC USE ONLY

Investigator Verified Seating: \_\_\_\_\_ (Y) \_\_\_\_\_ (N)  
Investigator Initials: \_\_\_\_\_  
Date: \_\_\_\_\_

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

Applicant Signature: [REDACTED] Date: 10/11/2020

1-800-452-OLCC (6522)  
www.oregon.gov/olcc

(rev. 12/07)



16. Do you, or any legal entity that you are a part of, currently hold or have previously held a liquor license or a recreational marijuana license in Oregon or another U.S. state? (Note: alcohol service permits and marijuana worker permits are not liquor licenses).

☒ No ☐ Yes (Please include explanation below) ☐ Unsure (Please include explanation below)

17. Have you, or any legal entity that you are a part of, ever had an application for a license, permit, or certificate denied or cancelled by the OLCC or any other governmental agency in the U.S.?

☒ No ☐ Yes (Please include explanation below) ☐ Unsure (Please include explanation below)

18. Are you applying for a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?

☐ No Please skip questions 19 & 20. Go directly to question 21.

☒ Yes Please answer questions 19, 20, and 21.

19. Do you or will you have any ownership interest in a business that manufactures, wholesales, or distributes alcohol in Oregon or another U.S. state?

☒ No ☐ Yes (Please include explanation below) ☐ Unsure (Please include explanation below)

20. Does or will an alcohol manufacturer, wholesaler, or distributor in Oregon or another U.S. state have any ownership interest in your business?

☒ No ☐ Yes (Please include explanation below) ☐ Unsure (Please include explanation below)

21. Do you currently have, or will you have, any ownership interest in any business in Oregon with a Full On-Premises, Limited On-Premises, Off-Premises, or Brewery-Public House license?


☒ No ☐ Yes (Please include explanation below) ☐ Unsure (Please include explanation below)

You must sign your own form. Another person, like your attorney or a person with power of attorney, may not sign your form. I affirm that my answers are true and complete. I understand the OLCC will use the above information to check my records, including but not limited to, criminal history. I understand that if my answers are not true and complete, the OLCC may deny my license application.

Name: (LAST) Zito

(FIRST) Bethany

(MIDDLE) Lee

Signature: 

Date: 06/01/2020



# City of Canby

PO Box 930  
222 NE 2nd Ave  
Canby, OR 97013

Phone: 503.266.4021  
Fax: 503.266.7961  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

## City Council Staff Report

DATE: July 15, 2020  
TO: Honorable Mayor Hodson and City Council  
THRU: Amanda Zeiber, Interim City Administrator  
FROM: Melissa Bisset, City Recorder  
ITEM: Canby Library Board Appointment

---

### Summary

Roger Reif's second consecutive term from the [Library Board](#) ended on June 30 from the creating a vacancy. The position was advertised and two applications were received.

### Background

The Canby Library Board was established through Ordinance and amended by [Ordinance No. 1498](#) on December 5<sup>th</sup>, 2018. The Canby Library Board has several powers and duties outlined in [the Canby Municipal Code § 2.20.060](#) including developing long-range plans for library service and facilities and recommending policies and procedures. The Commission is made up of seven members who serve four year terms and members are limited to two consecutive terms. Ordinance No. 1498 explains that members are to be appointed by the City Council upon recommendation of the Board Chairperson and City Council liaison to the Library Board.

### Discussion

Roger Reif completed a second term of service on the Library Board on June 30, 2020. Two candidates applied for the vacancy. Interviews were conducted on July 7<sup>th</sup> with the Library Chair Carol Palmer, Vice Chair Suzie Stutes, and Library Director Irene Green.

### Attachments

Application of Jessica Hines.

### Fiscal Impact

None.

### Options

1. Appoint Jessica Hines to the Canby Library Board for a four year term.
2. Take no action.

### Recommendation

The Council Liaison and Board Chair recommend that Jessica Hines be appointed to the Canby Library Board for a four year term.



**Proposed Motion**

This item is under the consent agenda and one motion will be made to approve the consent agenda unless this item is moved off of the consent agenda for discussion.



**CITY OF CANBY  
COMMITTEE, BOARD, &  
COUNCIL APPOINTMENT APPLICATION**

Date: 6/15/2020 Position Applying For: Library Board  
Name: Jessica Hines Occupation: Commercial HVAC  
Home Address: [REDACTED] Canby, OR 97013  
Employer: Johnson Controls Position: Account Executive  
Daytime Phone: [REDACTED] Evening Phone: [REDACTED]  
E-Mail Address: [REDACTED]

What are your community interests (committees, organizations, special activities)? I have lived in Canby for 2 years now and have not been actively involved in the community yet.

I want to join local committees and start being more active.

What are your major interests or concerns in the City's programs? With the library specifically I want to keep our community engaged. I want others to love the library as much as I do and see it as a lifelong resource.

Reason for your interest in this position: I love the library and want to be part of machine that drives it's success within our community.

Experience and educational background: I have a business background as well as being a presenter and leader in the workplace.

List any other City or County positions on which you serve or have served: N/A

Referred by (if applicable): \_\_\_\_\_

*Please return to:*

*City of Canby - Attn: City Recorder  
PO Box 930, 222 NE 2nd Avenue, Canby, OR 97013  
Phone: 503.266.0733 Fax: 503.266.7961 Email: [bissetm@canbyoregon.gov](mailto:bissetm@canbyoregon.gov)*

Note: Information on this form may be available to anyone upon a Public Records Request and may be viewable on the City's web page. 10/2019

Date Received: 6/16/20 MS Date Appointed: \_\_\_\_\_ Term Expires: \_\_\_\_\_  
Date Resigned: \_\_\_\_\_ Destruction Date: \_\_\_\_\_



# City of Canby

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www.canbyoregon.gov

## City Council Staff Report

DATE: July 15, 2020

TO: Honorable Mayor Hodson and City Council

THRU: Amanda Zeiber, Interim City Administrator

FROM: Melissa Bisset, City Recorder

---

### Summary

There are currently four vacancies on the [Transit Advisory Committee](#). The vacancies have been advertised and five applications were received.

### Background

The Transit Advisory Committee was established through Resolution No. 790 in 2002. It assesses transportation needs, acts in an advisory capacity to the Transit Director, promotes and educates the public regarding the acceptance and usage of the transit system and special problems associated with the use of the system by youth, elderly and disabled citizens. The Commission is made up of seven members who serve three year terms.

### Discussion

Council Liaison Sarah Spoon and Transit Director Todd Wood conducted interviews with four of the five applicants. Typically the recommendation for the appointments comes from the Committee Chair and assigned Council Liaison; however, with the passing of the Chair and resignation of other members, the Committee was left without enough members to make a quorum.

### Attachments

Applications of Warren Holzen, Alex Vice, and Paul Waterman.

### Fiscal Impact

None.

### Options

1. Appoint Warren Holzen, Alex Vice, and Paul Waterman to the Transit Advisory Committee.
2. Take no action.

### Recommendation

Council Liaison Sarah Spoon and Transit Director Todd Wood recommend the appointment of Warren Holzen, Alex Vice, and Paul Waterman to the Transit Advisory Committee.

**Proposed Motion**

This item is under the consent agenda and one motion will be made to approve the consent agenda unless this item is moved off of the consent agenda for discussion.



**CITY OF CANBY  
COMMITTEE, BOARD, &  
COUNCIL APPOINTMENT APPLICATION**

Date: 6/11/2020 Position Applying For: Transit Advisory Committee  
Name: Paul Waterman Occupation: IT Managment  
Home Address: [REDACTED]  
Employer: HiTek Electronics Position: Process Management  
Daytime Phone: [REDACTED] Evening Phone: \_\_\_\_\_  
E-Mail Address: paulh2oman@gmail.com

What are your community interests (committees, organizations, special activities)? \_\_\_\_\_  
Community inclusion and utilizing resources to their maximum potential.

What are your major interests or concerns in the City's programs? Understanding how they function.  
Helping provide solutions for the city.

Reason for your interest in this position: I would like to be a part of my community in more  
ways than just a consumer. I am interested in how our public transportation can continue  
providing services to our community.

Experience and educational background: Business Management, Process Development and Management  
Associates Degree Computer Sciences, Business Management Classes

List any other City or County positions on which you serve or have served: None

Referred by (if applicable): Sarah Spoon

*Please return to:*

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Date Received: 6/11/2020 MS Date Appointed: \_\_\_\_\_ Term Expires: \_\_\_\_\_  
Date Resigned: \_\_\_\_\_ Destruction Date: \_\_\_\_\_





**CITY OF CANBY  
COMMITTEE, BOARD, &  
COUNCIL APPOINTMENT APPLICATION**

Date: 06.11.2020 Position Applying For: Transit Advisory Committee

Name: Alex Vice Occupation: Health care Management.

Home Address: [REDACTED] Oregon City, Oregon 97045

Employer: Concepts in Community Living Position: Director at Rackleff place.

Daytime Phone: [REDACTED] Evening Phone: [REDACTED]

E-Mail Address: [REDACTED]

What are your community interests (committees, organizations, special activities)? I am a member of the Chamber here in Canby, I am also in a leadership class through leading age of Oregon. I believe in supporting local businesses here in Canby.

What are your major interests or concerns in the City's programs? Making sure people who need transportation to get food and things that are needed have it.

Reason for your interest in this position: I feel I can add to the already amazing committee in order to help with needed change and support. I care about the transportation issues here in Canby.

---

Experience and educational background: I have my MBA through Ashford University and have been working with the elderly and as risk population since I was 18.

List any other City or County positions on which you serve or have served: \_\_\_\_\_

---

Referred by (if applicable): Sarah Spoon-Waffle.

*Please return to:*

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Phone: 503.266.0733 Fax: 503.266.7961 Email: [bissetm@canbyoregon.gov](mailto:bissetm@canbyoregon.gov)*

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Date Received: 6/11/2020 MB Date Appointed: \_\_\_\_\_ Term Expires: \_\_\_\_\_  
Date Resigned: \_\_\_\_\_ Destruction Date: \_\_\_\_\_



**CITY OF CANBY  
COMMITTEE, BOARD, &  
COUNCIL APPOINTMENT APPLICATION**

Date: 6/12/2020 Position Applying For: Transit Advisory Committee  
Name: Warren Holzem Occupation: Business Owner in Canby  
Home Address: [REDACTED] Oregon City, OR 97045  
Employer: Canby Package Services, LLC Position: Owner  
Daytime Phone: [REDACTED] Evening Phone: [REDACTED]  
E-Mail Address: [REDACTED]

What are your community interests (committees, organizations, special activities)?  
As a growing exurb of Portland, roughly halfway to Salem, but not directly on an Interstate highway is in a unique situation in the regional transportation system, which requires unique solutions.

What are your major interests or concerns in the City's programs? In addition to seeing CAT provide access to our larger neighbors, and their employment opportunities, I believe as Canby grows we need more intra-city transportation options.

Reason for your interest in this position: I have been interested in transportation systems, especially mass transit, since childhood. Transportation patterns are a defining part of a population center, and I would like to be involved as the Canby area continues to grow.

Experience and educational background: In addition to a college minor of Urban Area Development, I have been recognized as an expert in the role that mass transit play in the development of the Milwaukee, WI area, and I am currently working on a book on that subject.

List any other City or County positions on which you serve or have served: \_\_\_\_\_  
I am a member of the Clackamas County Community Road Fund committee.

Referred by (if applicable): Sarah Spoon-Waffle

*Please return to:*

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PO Box 930, 222 NE 2nd Avenue, Canby, OR 97013  
Phone: 503.266.0733 Fax: 503.266.7961 Email: [bissetm@canbyoregon.gov](mailto:bissetm@canbyoregon.gov)*

Note: Information on this form may be available to anyone upon a Public Records Request and may be viewable on the City's web page. 10/2019

Date Received: 6/12/2020 <sup>MS</sup> Date Appointed: \_\_\_\_\_ Term Expires: \_\_\_\_\_  
Date Resigned: \_\_\_\_\_ Destruction Date: \_\_\_\_\_



# City of Canby

PO Box 930  
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Phone: 503.266.4021  
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www.canbyoregon.gov

## City Council Staff Report

DATE: July 15, 2020

TO: Honorable Mayor Hodson and City Council

FROM: Joseph A. Lindsay, Canby City Attorney

ITEM: Resolution No. 1339: Authorizing a rate increase and establishing a new rate schedule for garbage collection by Canby Disposal within the City of Canby.

---

### **Background**

Through Ordinance No. 1328, the City Council adopted an updated, exclusive franchise agreement with Canby Disposal. In that agreement, section 7.3 entitled Canby Disposal to an annual adjustment of all rates in accordance with a given methodology set forth in that section. Further, the section also called for a good faith effort on the part of the City Council to approve adjusted rates by May 15 of each year, so they could become effective by July 1.

Even though Canby Disposal was entitled to this adjustment last year, they opted not to obtain one. The last rate increase was in 2014 and was a two percent increase.

The currently sought adjustment uses a phased general rate increase beginning September 1, 2020 through March 1, 2021. It would raise the rate by ten percent on September 1, 2020 and ten percent on March 31, 2021. Canby Disposal will provide a presentation explaining the reasoning for their requested rate increase during the City Council's regular meeting on July 15<sup>th</sup>.

A ten percent increase on September first for a 35-gallon cart would be \$2.47 per month. There would be another ten percent increase in March increasing the monthly rate from the current rate of \$24.61 per month to \$29.56 per month for a 35-gallon cart.

### **Attachments**

1. Resolution No. 1339 & Exhibit A - Fee Schedule
2. Section 7.3 of Franchise Agreement

### **Recommendation**

The fact that Canby Disposal has not sought a rate proposal since July 1, 2014 demonstrates a willingness on their part to keep rates low. Staff recommends that the Council adopt Resolution No. 1341.



**Proposed Motion**

***"I move to adopt Resolution No. 1339, A RESOLUTION AUTHORIZING A RATE INCREASE AND ESTABLISHING A NEW RATE SCHEDULE FOR GARBAGE COLLECTION BY CANBY DISPOSAL WITHIN THE CITY OF CANBY."***

**RESOLUTION NO. 1339**

**A RESOLUTION AUTHORIZING A RATE INCREASE AND ESTABLISHING A NEW RATE SCHEDULE FOR GARBAGE COLLECTION BY CANBY DISPOSAL WITHIN THE CITY OF CANBY.**

**WHEREAS**, CANBY DISPOSAL COMPANY has applied to the Canby City Council for approval of an over-all rate increase in accordance with Section 7.3 of the Franchise Agreement between City of Canby, Oregon, and Canby Disposal for Solid Waste, Recyclable Materials and Yard Debris Collection Services granted in Canby Ordinance No. 1328, dated June 16, 2010; and;

**WHEREAS**, CANBY DISPOSAL COMPANY has furnished sufficient evidence to the Council concerning the changes in costs and fees sufficient to calculate the aforementioned over-all rate increase using the agreed upon methodology; and

**WHEREAS**, the City Council has considered the evidence and information furnished by the Franchisee, and the Council is satisfied that the request is reasonable and justified.

**NOW, THEREFORE, BE IT RESOLVED BY** the City of Canby City Council that the application by CANBY DISPOSAL COMPANY for an over-all garbage collection rate increase as set forth in the attached EXHIBIT “A” is hereby approved, and said rates shall apply to services performed under the Franchise Agreement between City of Canby, Oregon, and Canby Disposal for Solid Waste, Recyclable Materials, and Yard Debris Collection Services effective September 1, 2020.

This Resolution shall be effective on July 15, 2020.

**ADOPTED** this 15<sup>th</sup> day of July, 2020 by the Canby City Council.

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Brian Hodson  
Mayor

ATTEST:

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Melissa Bisset  
City Recorder

## Exhibit A

Canby Disposal Company, Inc.  
City Rates (Residential includes weekly yard debris collection)  
Phase-in Rate Increases on September 1, 2020 and on March 1, 2021

### Residential Service:

| <u>Service Type</u>                     | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---|---|---|---|
| 20-gallon cart weekly curbside          | \$ 20.67                                      | \$ 22.74  | \$ 24.82  |
| 20-gallon cart weekly w/in 50' of road  | \$ 24.11                                      | \$ 26.54  | \$ 28.96  |
| 32-gallon cart weekly curbside          | \$ 24.61                                      | \$ 27.08  | \$ 29.56  |
| 32-gallon cart weekly w/in 50' of road  | \$ 28.08                                      | \$ 30.90  | \$ 33.73  |
| 32-gallon cart monthly curbside         | \$ 12.29                                      | \$ 13.53  | \$ 14.77  |
| 32-gallon cart monthly w/in 50' of road | \$ 14.02                                      | \$ 15.43  | \$ 16.84  |
| 65-gallon cart weekly curbside          | \$ 39.39                                      | \$ 43.35  | \$ 47.32  |
| 65-gallon cart weekly w/in 50' of road  | \$ 42.84                                      | \$ 47.15  | \$ 51.46  |
| 95-gallon cart weekly curbside          | \$ 43.67                                      | \$ 48.07  | \$ 52.46  |
| 95-gallon cart weekly w/in 50' of road  | \$ 47.13                                      | \$ 51.87  | \$ 56.61  |
| Yard Debris Subscription                | \$5.53  | \$ 6.09   | \$ 6.64   |

### Commercial Service:

| <u>Service Type</u>                    | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|--|---|---|---|
| 32-gallon cart weekly curbside         | \$ 23.08                                      | \$ 25.40  | \$ 27.72  |
| 32-gallon cart weekly w/in 50' of road | \$ 23.08                                      | \$ 25.40  | \$ 27.72  |
| 65-gallon cart weekly curbside         | \$ 34.61                                      | \$ 38.09  | \$ 41.57  |
| 65-gallon cart weekly w/in 50' of road | \$ 34.61                                      | \$ 38.09  | \$ 41.57  |
| 95-gallon cart weekly curbside         | \$ 38.09                                      | \$ 41.92  | \$ 45.74  |
| 95-gallon cart weekly w/in 50' of road | \$ 38.09                                      | \$ 41.92  | \$ 45.74  |

### Extra Hauling

|  |        |         |         |
|--|--------|---------|---------|
| Extra trash (average/year over last two years)       | \$5.77 | \$ 6.35 | \$ 6.93 |
| Extra yard debris (average/year over last two years) | \$1.69 | \$ 1.86 | \$ 2.03 |

### Mobile Home Courts and Apartments

(Four or more units , where owner accepts and pays billing)

| <u>Service Type</u>            | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|--------------------------------|---|---|---|
| 21-gallon cart weekly curbside | 16.68   | \$ 18.36  | \$ 20.03  |
| 32-gallon cart weekly curbside | \$ 18.86                                      | \$ 20.76  | \$ 22.66  |
| 65-gallon cart weekly curbside | \$ 32.46                                      | \$ 35.72  | \$ 38.99  |
| 95-gallon cart weekly curbside | \$ 37.28                                      | \$ 41.03  | \$ 44.78  |

*\*Note: If billed separately, regular residential rates apply.*

Canby Disposal Company, Inc.  
City Rates (Residential includes weekly yard debris collection)  
Phase-in Rate Increases on September 1, 2020 and on March 1, 2021

## Container Service - Loose:

| <u>Service Type</u>                   | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---------------------------------------|---|---|---|
| 1.5-yard picked up 1x/week            | \$ 140.54                                     | \$ 154.67   | \$ 168.80                                       |
| 1.5-yard picked up 2x/week            | \$ 270.70                                     | \$ 297.92   | \$ 325.14                                       |
| 1.5-yard picked up 3x/week            | \$ 400.87                                     | \$ 441.18   | \$ 481.49                                       |
| 1.5-yard picked up 4x/week            | \$ 531.03                                     | \$ 584.43   | \$ 637.83                                       |
| 1.5-yard picked up 5x/week            | \$ 661.18                                     | \$ 727.67   | \$ 794.15                                       |
| 1.5-yard picked up 6x/week            | \$ 761.18                                     | \$ 837.72   | \$ 914.26                                       |
| 2-yard picked up 1x/week              | \$ 187.30                                     | \$ 206.14   | \$ 224.97                                       |
| 2-yard picked up 2x/week              | \$ 363.78                                     | \$ 400.36   | \$ 436.94                                       |
| 2-yard picked up 3x/week              | \$ 540.25                                     | \$ 594.58   | \$ 648.90                                       |
| 2-yard picked up 4x/week              | \$ 716.71                                     | \$ 788.78   | \$ 860.85                                       |
| 2-yard picked up 5x/week              | \$ 893.19                                     | \$ 983.01   | \$ 1,072.82                                     |
| 2-yard picked up 6x/week              | \$ 1,069.67                                   | \$ 1,177.23   | \$ 1,284.79                                     |
| 3-yard picked up 1x/week              | \$ 253.17                                     | \$ 278.63   | \$ 304.09                                       |
| 3-yard picked up 2x/week              | \$ 495.96                                     | \$ 545.83   | \$ 595.70                                       |
| 3-yard picked up 3x/week              | \$ 738.76                                     | \$ 813.05   | \$ 887.33                                       |
| 3-yard picked up 4x/week              | \$ 981.54                                     | \$ 1,080.24   | \$ 1,178.94                                     |
| 3-yard picked up 5x/week              | \$ 1,224.33                                   | \$ 1,347.44   | \$ 1,470.56                                     |
| 3-yard picked up 6x/week              | \$ 1,467.07                                   | \$ 1,614.59   | \$ 1,762.12                                     |
| 4-yard picked up 1x/week              | \$ 322.28                                     | \$ 354.69   | \$ 387.10                                       |
| 4-yard picked up 2x/week              | \$ 634.18                                     | \$ 697.95   | \$ 761.72                                       |
| 4-yard picked up 3x/week              | \$ 949.09                                     | \$ 1,044.53   | \$ 1,139.96                                     |
| 4-yard picked up 4x/week              | \$ 1,258.00                                   | \$ 1,384.50   | \$ 1,511.00                                     |
| 4-yard picked up 5x/week              | \$ 1,569.89                                   | \$ 1,727.75   | \$ 1,885.62                                     |
| 4-yard picked up 6x/week              | \$ 1,881.80                                   | \$ 2,071.03   | \$ 2,260.26                                     |
| Additional 1.5-yard picked up 1x/week | \$ 130.16                                     | \$ 143.25   | \$ 156.34                                       |
| Additional 1.5-yard picked up 2x/week | \$ 260.38                                     | \$ 286.56   | \$ 312.75                                       |
| Additional 1.5-yard picked up 3x/week | \$ 385.57                                     | \$ 424.34   | \$ 463.11                                       |
| Additional 1.5-yard picked up 4x/week | \$ 510.77                                     | \$ 562.13   | \$ 613.49                                       |
| Additional 1.5-yard picked up 5x/week | \$ 635.95                                     | \$ 699.90   | \$ 763.85                                       |
| Additional 1.5-yard picked up 6x/week | \$ 791.18                                     | \$ 870.74   | \$ 950.30                                       |
| Additional 2-yard picked up 1x/week   | \$ 176.47                                     | \$ 194.21   | \$ 211.96                                       |
| Additional 2-yard picked up 2x/week   | \$ 353.65                                     | \$ 389.21   | \$ 424.77                                       |
| Additional 2-yard picked up 3x/week   | \$ 525.23                                     | \$ 578.05   | \$ 630.86                                       |
| Additional 2-yard picked up 4x/week   | \$ 696.79                                     | \$ 766.86   | \$ 836.92                                       |
| Additional 2-yard picked up 5x/week   | \$ 868.35                                     | \$ 955.67   | \$ 1,042.99                                     |
| Additional 2-yard picked up 6x/week   | \$ 1,039.92                                   | \$ 1,144.49   | \$ 1,249.06                                     |
| Additional 3-yard picked up 1x/week   | \$ 242.79                                     | \$ 267.20   | \$ 291.61                                       |
| Additional 3-yard picked up 2x/week   | \$ 492.43                                     | \$ 541.95   | \$ 591.46                                       |
| Additional 3-yard picked up 3x/week   | \$ 733.50                                     | \$ 807.26   | \$ 881.02                                       |
| Additional 3-yard picked up 4x/week   | \$ 974.54                                     | \$ 1,072.54   | \$ 1,170.53                                     |
| Additional 3-yard picked up 5x/week   | \$ 1,215.58                                   | \$ 1,337.81   | \$ 1,460.05                                     |
| Additional 3-yard picked up 6x/week   | \$ 1,404.18                                   | \$ 1,545.38   | \$ 1,686.58                                     |
| Additional 4-yard picked up 1x/week   | \$ 311.90                                     | \$ 343.26   | \$ 374.62                                       |
| Additional 4-yard picked up 2x/week   | \$ 636.23                                     | \$ 700.21   | \$ 764.18                                       |
| Additional 4-yard picked up 3x/week   | \$ 949.14                                     | \$ 1,044.58   | \$ 1,140.02                                     |
| Additional 4-yard picked up 4x/week   | \$ 1,262.04                                   | \$ 1,388.95   | \$ 1,515.85                                     |
| Additional 4-yard picked up 5x/week   | \$ 1,574.93                                   | \$ 1,733.30   | \$ 1,891.67                                     |
| Additional 4-yard picked up 6x/week   | \$ 1,887.84                                   | \$ 2,077.67   | \$ 2,267.51                                     |

*\*Note: Compacted container rates shall be 2.5 times the loose rate*

Source Separated Food Waste:

90% of Commercial Rates

Canby Disposal Company, Inc.  
City Rates (Residential includes weekly yard debris collection)  
Phase-in Rate Increases on September 1, 2020 and on March 1, 2021

## Cleanup Containers:

| <u>Service Type</u>                   | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---------------------------------------|---|---|---|
| 3-yard container (# of hauls in 2019) | \$ 77.15                                      | \$ 84.90  | \$ 92.66  |
| 4-yard container (# of hauls in 2019) | \$ 98.70                                      | \$ 108.62   | \$ 118.55                                       |

*\*Note: Price is per dump*

## Drop Box Services - Loose:

### Permanent Accounts

| <u>Service Type</u>                   | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---------------------------------------|---|---|---|
| 10-yard haul fee (# of hauls in 2019) | \$ 91.63                                      | \$ 100.84   | \$ 110.06                                       |
| 20-yard haul fee (# of hauls in 2019) | \$ 91.63                                      | \$ 100.84   | \$ 110.06                                       |
| 30-yard haul fee (# of hauls in 2019) | \$ 119.44                                     | \$ 131.45   | \$ 143.46                                       |
| 40-yard haul fee (# of hauls in 2019) | \$ 130.82                                     | \$ 143.97   | \$ 157.13                                       |

### Occasional Accounts

| <u>Service Type</u>                   | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---------------------------------------|---|---|---|
| 10-yard haul fee (# of hauls in 2019) | \$ 121.25                                     | \$ 133.45   | \$ 145.64                                       |
| 20-yard haul fee (# of hauls in 2019) | \$ 121.25                                     | \$ 133.45   | \$ 145.64                                       |
| 30-yard haul fee (# of hauls in 2019) | \$ 150.08                                     | \$ 165.17   | \$ 180.26                                       |
| 40-yard haul fee (# of hauls in 2019) | \$ 163.11                                     | \$ 179.51   | \$ 195.91                                       |

*\*Note: Price is for haul fee only; disposal and franchise fees are extra*

## Drop Box Services - Compacted:

| <u>Service Type</u>                                   | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|---|---|---|---|
| Under 20 yards (rate per haul) (# of hauls in 2019)   | \$ 104.60                                     | \$ 115.11   | \$ 125.63                                       |
| 20-29 yards (rate per yard) (# of hauls in 2019)      | \$ 6.42                                       | \$ 7.07   | \$ 7.71   |
| 30-39 yards (rate per yard) (# of hauls in 2019)      | \$ 5.76                                       | \$ 6.33   | \$ 6.91   |
| 40 yards or more (rate per yard) (# of hauls in 2019) | \$ 5.06                                       | \$ 5.57   | \$ 6.08   |

*\*Note: Price is for haul fee only; disposal and franchise fees are extra*

## Demurrage Charge:

| <u>Service Type</u>            | <u>Current Rate</u><br><u>January 1, 2020</u> | <u>Proposed Rate on</u><br><u>September 1, 2020</u> | <u>Proposed Rate on</u><br><u>March 1, 2021</u> |
|--------------------------------|---|---|---|
| Permanent accounts (per month) | \$ 68.00                                      | \$ 74.84  | \$ 81.68  |

1    **7.3    Annual Adjustment of Rates**

2           **7.3.1   Annual Adjustment**

3           Subject to the terms herein, the Company shall be entitled to an annual  
4           adjustment of all rates. Each rate includes an operating component and tipping  
5           fee component, which are annually adjusted. The City Council shall make a  
6           good faith effort to approve adjusted rates by May 15 of each year, and such  
7           rates shall be effective on each July 1. If rate adjustments are not approved by  
8           May 15, then prior rates remain in effect until such adjustment is made.

9           The first adjustment is scheduled to take effect July 1, 2011 subject to City  
10          Council approval. Each rate is annually adjusted as specified in Section 7.3.2  
11          through 7.3.4.

12          **7.3.2   Adjustment of the Operating Component**

13          The operating component of the rates specified in Exhibit 2 shall be adjusted  
14          annually, using the method below, to reflect 80% of the change in the All Urban  
15          Consumers Index Half1 (CPI-U) compiled and published by the U.S. Department  
16          of Labor, Bureau of Labor Statistics or its successor agency, using the following  
17          parameters, or by 5%, whichever is less.

18                 CPI-U Parameters:

- 19                 • Area - Portland - Salem, OR - WA
- 20                 • Item - All Items
- 21                 • Base Period - Current 1982-84=100
- 22                 • Not seasonally adjusted
- 23                 • Periodicity - Semi-annual

24          Step 1: Calculate the Change in Half1 CPI-U as follows:

25                 Change in Half1 CPI-U = ((Most current Half1 CPI-U - previous 12-  
26                 month Half 1 CPI-U)/previous 12-month Half1 CPI-U) x 0.80) or  
27                 0.05, whichever is less

28          Step 2: Calculate the Adjusted Operating Component as follows:

29                 Adjusted Operating Component = Then-current Operating  
30                 Component x (1 + the Change in Half1 CPI-U as calculated in Step 1  
31                 above)

1 The Operating Component shall be rounded to the nearest cent.  
2

3 For example, assuming:  
4

- 5 1. Most-recently published Half1 CPI-U (Half1 2003) = 186.0
- 6 2. Half1 CPI-U published 12 months prior (Half1 2002) = 183.5
- 7 3. Then-current Operating Component = \$5.00

8  
9 Change in Half1 CPI-U =  $((186.0 - 183.5)/183.5) \times 0.80 = 0.0109$ ,  
10 which is less than 0.05; therefore, the Change in Half1 CPI-U is  
11 0.0109  
12

13 Adjusted Operating Component =  $\$5.00 \times (1 + 0.0109) = \$5.05$

14 If the CPI-U is discontinued or revised during the term by the United States  
15 Department of Labor, such other government index or computation with which  
16 it is replaced shall be used in order to obtain substantially the same result as  
17 would be obtained if the CPI-U had not been discontinued or revised.

### 18 7.3.3 Adjustment of the Tipping Fee Component

19 The solid waste disposal and yard debris processing tipping fee component of  
20 each rate will be adjusted to reflect any percentage change in the per-ton tipping  
21 fees charged at the approved transfer station and the approved yard debris  
22 processing site, as appropriate. There shall be no adjustment to the recyclable  
23 materials processing tipping fee component of each rate over the term of the  
24 Agreement. The tipping fee component adjustment shall equal:  
25

Adjusted Tipping Fee Component = Then-current Tipping Fee Component x (Current  
Approved Tipping Fee / Prior Approved Tipping Fee)

26 For example, assuming:

- 27 1. Then-current Tipping Fee Component = \$1.50, which includes a solid  
28 waste disposal component = \$1.00 and Yard debris processing  
29 component = \$0.50
- 30 2. Current approved tipping fee for the approved disposal location =  
31 \$30.00 per ton
- 32 3. Prior approved tipping fee for the approved disposal location = \$28.80  
33 per ton

4. Current approved tipping fee for the approved yard debris processing location = \$5.00 per ton
5. Prior approved tipping fee for the approved yard debris processing location = \$4.75 per ton
6. Adjusted tipping fee component =  $\$1.00 \times (\$30.00 / \$28.80) + \$0.50 \times (\$5.00 / \$4.75) = \$1.04 + \$0.53 = \$1.57$

The adjusted tipping fee component shall be rounded to the nearest cent.

The prior approved tipping fee is the fee last used to set rates. As of the effective date of this agreement, the approved transfer station tipping fee is \$70.50 per ton; and the approved processing site location tipping fee for yard debris is \$9.50 per compacted yard. These fees shall be used as the prior approved tipping fee for the first adjustment of the tipping fee components.

#### 7.3.4 Calculation of Adjusted Rates

Adjusted Rates shall be calculated as follows:

$$\begin{array}{lcl} \text{Adjusted} & = & \text{Adjusted Operating Component} + \text{Adjusted Tipping Fee} \\ \text{Rate} & & \text{Component} \end{array}$$

For example, assuming:

1. The rate being adjusted is a residential solid waste collection rate
2. Adjusted operating component = \$5.05 (as calculated in Section 7.3.2)
3. Adjusted tipping fee component = \$1.57 (as calculated in Section 7.3.3)

$$\text{Adjusted collection rate} = \$5.05 + \$1.57 = \$6.62$$

#### 7.4 Annual Rate Application Process

On or before April 1 of each rate Period, Company shall submit an application requesting the rate adjustment for the following rate period. The application shall present each rate for the then-current rate period and calculation of each adjusted rate for the following rate period. The application shall include all supporting documentation for calculation of the adjusted rates including CPI-U and tipping fee data.

The Company's rate application shall be reviewed by the City. The City Council shall adjust rates to reflect the adjustments made in accordance with Section 7.3.





# City of Canby

PO Box 930  
222 NE 2nd Ave  
Canby, OR 97013

Phone: 503.266.4021  
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[www.canbyoregon.gov](http://www.canbyoregon.gov)

## City Council Staff Report

DATE: July 15, 2020

TO: Honorable Mayor Hodson and City Council

FROM: Amanda Zeiber, Interim City Administrator

ITEM: Resolution No. 1340: Ratifying the contract between the City of Canby and Local 350-6 AFSCME Council 75 AFL-CIO

### **Background**

The Agreement between the City of Canby (City) and AFSCME (Union) expired on June 30, 2020. The City and Union have bargained the terms and conditions of a new contract and have tentatively agreed to a package settlement of outstanding issues relating to collective bargaining between the parties. The contract agreement is retroactive to July 1, 2020 and expires on June 30, 2021. Due to the current pandemic and so many unknowns over the next year, the City and Union agreed to a one year rollover contract rather than the standard full three year agreement. The successor collective bargaining agreement includes a cost of living adjustment, updates for midterm legislative updates, housekeeping items, and updated language for work during an emergency closure.

### **Attachments**

1. Resolution No. 1340
2. Collective Bargaining Agreement

### **Fiscal Impact**

The cost of the contract has increased \$98,537 from the previous year. This includes all funds and departments and takes into account wages, PERS, and taxes that are a direct impact from the cola.

### **Recommendation**

Staff recommends that the Council adopt Resolution No. 1340, ratifying and approving the tentative agreement and adopting the Collective Bargaining Agreement between the City and Union.

### **Proposed Motion**

***"I move to adopt Resolution No. 1340, A RESOLUTION TO RATIFY THE CONTRACT BETWEEN THE CITY OF CANBY (CITY) AND THE LOCAL 350-6 AFSCME COUNCIL 75 AFL-CIO (UNION) FOR THE PERIOD FROM JULY 1, 2020 THROUGH JUNE 30, 2021; AND REPEALING RESOLUTION NO. 1196.***

## **RESOLUTION NO. 1340**

### **A RESOLUTION TO RATIFY THE CONTRACT BETWEEN THE CITY OF CANBY (CITY) AND THE LOCAL 350-6 AFSCME COUNCIL 75 AFL-CIO (UNION) FOR THE PERIOD FROM JULY 1, 2020 THROUGH JUNE 30, 2021; AND REPEALING RESOLUTION NO. 1273**

**WHEREAS**, the City has recognized the Union as the sole collective bargaining agent for the City's regular full-time and part-time employees (20 hours or more per week), excluding supervisory and confidential employees and employees of the police bargaining unit pursuant to Oregon law, and

**WHEREAS**, the collective bargaining agreement between the City and Union expired on June 30, 2020, and

**WHEREAS**, the City and Union have bargained the terms and conditions of a new one year rollover contract agreement that will remain tentative until ratified by each party and will be effective retroactive to July 1, 2020 and to expire on June 30, 2021, now therefore,

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

1. The attached tentative agreement marked as Exhibit "A" between the City and Union for the period of July 1, 2020 through June 30, 2021 is approved for adoption.
2. The Interim City Administrator is directed to take the necessary action to implement the terms of the said contract.
3. The Mayor and Interim City Administrator are authorized to sign the contract on behalf of the City.

This resolution shall take effect, retroactively, to July 1, 2020.

ADOPTED this 15<sup>th</sup> day of July, 2020 by the Canby City Council.

---

Brian Hodson  
Mayor

ATTEST:

---

Melissa Bisset, CMC  
City Recorder

# **COLLECTIVE BARGAINING AGREEMENT**

**Between**

**CITY OF CANBY**

**and**

**LOCAL 350-6 AFSCME COUNCIL 75  
AFL-CIO**

**July 1, 2020 – June 30, 2021**

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## **PREAMBLE**

The City of Canby, Oregon ("City") and the City of Canby Office and Public Works Employees Local 350-6, Council 75, AFSCME, AFL-CIO ("Union") agree to be bound by the following terms and conditions relating to wages, benefits, hours of work, and working conditions for all employees hereinafter classified and identified in this Agreement.

## **ARTICLE 1. – RECOGNITION**

1.1 The City recognizes the Union as the sole collective bargaining agent for all regular full-time and part-time employees working twenty (20) hours or more per week for the City, excluding supervisory and confidential employees, employees in the police bargaining unit, seasonal employees and temporary employees.

1.2 In the event the City should create a new job classification and pay rate for a classification which would properly be in the bargaining unit, the City shall notify the Union within fifteen (15) calendar days of filling the new classification. If the Union, or its designee, submits a written request to the City requesting to bargain over the wages for the new position within (10) calendar days of the City's notice, then the City and the Union will enter into negotiations regarding wages for the new classification. If the City and the Union are not able to reach a mutual agreement on the applicable wage rates, the City shall have the right to implement its final proposed wage rates for the remaining term of the agreement. The City's implementation of its final wage rate proposal shall not be considered the basis of an unfair labor practice or contract violation.

## **ARTICLE 2. - EMPLOYEE RIGHTS/SECURITY**

2.1 Employees covered by this Agreement have the right to form, join, and participate in the activities of the Union, and there shall be no discrimination exercised against any employee covered by this Agreement because of membership or participation in Union activities.

2.2 The City agrees to deduct monthly membership dues from the gross pay of employees covered pursuant to Section 1.1 of this Agreement who choose to become a member of the Union upon submission of a written, signed authorization to deduct dues to the Union. The Union will provide a courtesy copy of all such authorizations to the City. Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues deduction. Uniform amounts to be deducted shall be certified to the City by the Union and shall be remitted to the Union no later than the fifteenth (15<sup>th</sup>) day of the following month. The City shall not be held liable for deduction errors but will make proper adjustments with the Union as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period.

2.3 All employees covered by the terms and conditions of this agreement shall have the voluntary choice of whether to become members of the Union.

2.4 Employees who are current members of the Union at the signing of this agreement or who sign a Union membership card subsequent to the signing of this agreement shall maintain their Union membership; however, there shall be a five (5) day window period each year during which the employee may drop their membership without penalty by contacting the Union. The five-day window period shall commence on August 1 of each year.

2.5 The Union agrees to indemnify and hold the City harmless against any and all claims, suits, orders or judgments brought against the City as a result of the City's compliance with the provisions of this Article and to reimburse any fees, costs or expenses incurred by the City in connection with the same.

2.6 The City shall provide a bulletin board for the Union to post bulletins and other material pertaining to its members.

2.7 Members of the Union who are officially designated as representatives of the Union shall be permitted to attend negotiating meetings.

2.8 The City will furnish to the Union the names and relevant information for current and new bargaining unit members in accordance with applicable law.

### **ARTICLE 3. - CIVIL RIGHTS**

3.1 No employee shall be discriminated against because of membership or nonmembership in the Union or because of lawful Union activities he/she may engage in on behalf of the Union, provided, such activities do not interfere with the employee's performance of work assignments.

3.2 There shall be no discrimination with regard to the hiring or tenure of employees by reason of race, color, national origin, gender, disability, age or any other legally protected class status.

### **ARTICLE 4. - MANAGEMENT RIGHTS**

4.1 The City Administrator, department heads and division supervisors shall exercise responsibility, under the authority of the City Council, for management of the City and direction of its work force. The parties acknowledge that the constitution and the laws of the State of Oregon confer upon the City certain powers, duties and obligations to be exercised in the interest of public health, safety and welfare which cannot be delegated or contracted away. The parties further recognize that the City retains all managerial rights and prerogatives except as expressly modified by a specific term and/or provision of this contract, and that they include, but are not limited to, the following rights and prerogatives:

- a. Establishing and directing activities of the City's departments and the work of its employees;
- b. Evaluating, hiring, promoting, transferring, assigning and retaining employees in positions;

- c. Suspending, demoting, discharging or take other disciplinary action against employees for just cause;
- d. Relieving employees from duties because of lack of work, lack of funds, or other legitimate reason;
- e. Determining standards of service, methods, processes, means and personnel of operations and the introduction of new equipment;
- f. Determining the need for, and assigning employees to, educational and training programs, on-the-job training and other educational activities;
- g. Determining job descriptions, job duties, work schedules, shifts, hours of work and overtime, and assignment of work;
- h. Establishing work rules, performance standards and safety rules;
- i. Taking whatever action may be necessary to carry out the missions of the City in emergency situations;
- j. Maintain the efficiency of governmental, City and proprietary operations; and
- k. Other rights except as expressly limited by a specific term and/or provision of this Agreement.

4.2 The City shall have the right to subcontract, subject to the following:

4.2(a) If the City desires to subcontract work customarily performed by members of the bargaining unit, the City shall give the Union advance written notice of its intent to subcontract. Said notice shall include: (1) a description of the work to be subcontracted; (2) the financial terms and the language of the proposed subcontract; (3) any bid specifications and other information made available by the City to the proposed subcontractor prior to the time said subcontractor submitted his/her proposal to the City; and (4) the anticipated effect (if any) of the subcontract on the future employment, classification, wages, hours and conditions of employment which the City proposes to implement.

4.2(b) Within fourteen (14) calendar days immediately following the date of its receipt of the notice pursuant to Section 4.2(a) of this Agreement, the Union may deliver to the City a written proposal to which the Union would agree in order to reserve the work, as described by the City pursuant to Section 4.2(a) of this Agreement, for performance by bargaining unit members and, additionally, any wages, hours or conditions of employment not covered by this Agreement which the Union proposes be applied to bargaining unit members in the event the proposed subcontract is ultimately implemented.

4.2(c) If the City does not receive a proposal from the Union pursuant to Section 4.2(a) of this Agreement within the fourteen (14) calendar day period, the City may implement the



proposed subcontract and shall simultaneously implement any terms set forth in the City's notice to the Union made pursuant to Sections 4.2(a) and 4.2(b) of this Agreement.

4.2(d) If the Union proposal is equal to or less costly overall than that submitted by the proposed subcontractor, without any additional capital expenses required by the City to acquire equipment and subject to any efficiency standards the City would gain by subcontracting, the City shall implement the Union proposal.

4.2(e) If the Union proposal is more costly than the proposed subcontractor, the City may adopt the proposal as submitted by the proposed subcontractor. In that case, the Union and the City shall bargain in good faith the impact of such action. If the City and the Union are not able to reach a mutual agreement on the impacts of the City's subcontracting decision, the City shall have the right to implement the subcontract and the Union shall not have the right to strike over the City's decision.

## **ARTICLE 5. – WORK RULES**

5.1 The parties recognize that the Employer is directly responsible to the citizens of the City and the public generally for the performance of the functions and services involved in operating the City. These responsibilities cannot be delegated. For this reason, it is jointly recognized that the City must retain broad authority to fulfill and implement its responsibilities and may do so by work rule, oral or written, whether such work rule now exists or may be enacted in the future. It is agreed, however, that no new work rule will be enacted or implemented which is inconsistent with a provision of this Agreement, provided that the requirements of Oregon law will always govern. All work rules which are now in existence shall be reduced to writing and will be furnished to the Union and to affected employees. The City will give the Union and employees notice of intent to change or implement a new work rule. Should the Union desire to bargain over the proposed changes, the Union will provide the City with written notice of such intent no later than ten (10) calendar days from receipt of notice from the City.

## **ARTICLE 6. - SENIORITY**

6.1 New hires shall serve a twelve (12) month probationary period from the date of appointment to a regular position. New hires may be terminated without cause during the probationary period. New hires shall receive a performance review upon completion of six (6) months of employment. A new hire who consistently demonstrates superior performance as documented in the six (6) month performance review may receive a step increase upon approval of the City Administrator. A step increase granted pursuant to this section shall not be considered as evidence of the successful completion of the twelve (12) month probationary period.

6.2 Regular status employees appointed to another position in the City shall serve a promotional probationary period of six (6) months from the date of appointment to the new position. If a promoted/transferred employee does not successfully complete the probation, he/she shall be returned to the previously held position. Regular status employees shall not be terminated during the promotional probationary period without just cause.

6.3 Seniority shall mean the length of continuous service with the City in the bargaining unit. Seniority shall be determined by the date of entry to the bargaining unit.

6.4 Seniority shall be broken and the employment relationship severed by:

- a. Resignation, termination or retirement;
- b. Absence due to lay off for a period of twenty-four (24) months or more due to lack of work;
- c. Failure of an employee on lay off to report within fourteen (14) calendar days after date of mailing of a recall notice by certified mail, return receipt requested by the Employer to the employee's last known address;
- d. Absence from work due to work related injury for a period of in excess of eighteen (18) months unless mutually extended in writing by the employer and the association; and
- e. Absence of two (2) consecutively scheduled work days without notifying the Employer and providing a reason satisfactory to the Employer.

#### **ARTICLE 7. - LAYOFF**

7.1 In the event it becomes necessary to effect a reduction in the work force in any classification or position in any work unit, the City shall notify affected employees and the Union in writing at least fifteen (15) calendar days in advance of the effective date, except in emergency situations.

7.2 Layoff order shall be established within the City by department on the basis of seniority. If it is found that two (2) or more persons within the same classification have equal seniority, seniority for these individuals shall be determined by the date the employees were appointed by the department to that classification. If a tie still exists, the tie shall be broken by drawing lots. Employees shall be laid off in reverse order of seniority, except as modified in Section 7.3 of this Agreement. Laid off employees shall have the right to bump into lower level regular or temporary positions as outlined in Section 7.5 of this Agreement. A lower level position is defined as any position in a classification within the employee's department with a lower maximum pay rate than the classifications of the position being laid off.

7.3 The City may make an exception to the order of layoff when the retention of an employee with unique skills is necessary for the efficient operation of the department. Such action shall be taken only for articulated, job-related reasons and substantiated by written documentation.

7.4 The qualification of an employee to bump shall depend upon that employee demonstrating current possession of the required certifications, knowledge and skill to meet the minimum qualifications of the position prior to bumping. In addition, bumping employees must demonstrate the ability to perform on the job at a satisfactory level of performance within thirty (30) days. Between the twentieth (20th) and the thirtieth

(30th) day of this period, the City will provide the employee either with notification of satisfactory performance or a minimum of ten (10) working days' notice of intention to terminate the employee. Any such terminated employee will retain all layoff rights related to the classification from which he/she was originally laid off.

7.5 Laid off employees shall have the following options:

- a. Accept the layoff.
- b. Request assignment to a vacant lower level bargaining unit or temporary position, provided the employee is qualified for the position as described in Section 7.4 of this Agreement.
- c. Displace the employee with the lowest seniority in the same classification within the same department within the City, provided the employee is qualified for the position as described in Section 7.4 of this Agreement.
- d. Displace the employee with the lowest seniority in a lower level classification within the same department within in the City, provided the displacing employee is more senior and is qualified for the position as described in Section 7.4 of this Agreement.

7.6 Temporary and seasonal employees will not be used to fill laid off bargaining unit positions. Within a classification, all temporary and seasonal employees will be terminated, and probationary employees shall be laid off before any regular bargaining unit employee is laid off.

7.7 An employee who displaces an employee in a lower pay range will be paid at the top step in the lower salary range which most closely approximates his/her current pay rate. However, no bumping employee shall be paid at a rate that exceeds the maximum step of the lower salary range. The employee may request and shall be paid for all accrued compensatory time at the rate being earned prior to layoff.

7.8 An employee who is left with no position to bump into as provided in Article 6 of this Agreement shall be laid off from employment and shall be eligible, for a period of two (2) years without loss of seniority, for recall to a position within the same department in the same classification the employee held before the layoff. An employee on layoff must keep the City informed of his/her current address and telephone number during the period of layoff.

7.9 Recall shall be on a basis of seniority, with senior employees being called before junior employees and before any new hires or transfers, provided the employee is qualified for the position as described Section 4 of this Agreement. The same applies to any vacant temporary positions.

Upon recall to any positions in the city, a recalled employee shall have all sick leave accruals and the employee's vacation accrual rate and seniority in effect on the date of layoff restored.

If recalled to a position in the previous classification, the employee will be placed on the step in the new pay range which most closely approximates his/her pay rate at the time of layoff, subject to any cost of living adjustments or range changes. However, no recalled employee shall be paid at the rate that exceeds the maximum step of the new salary range. Such employee shall be placed on probation for six (6) months and will be eligible for a merit increase, if applicable, on the first of the month following successful completion of the probation period. The employee's merit anniversary date will adjusted to one (1) year following the date of merit increase eligibility.

7.10 Employees on layoff status shall have the same rights as other employees in applying for any opening which may occur in the bargaining unit.

## **ARTICLE 8. - DISCHARGE/SUSPENSION/WARNING NOTICES**

8.1 Disciplinary action may include the following: (a) oral warning; (b) written warning; (c) suspension with or without salary; (d) discharge. The disciplinary action shall normally be progressive, unless the severity of the act warrants more severe discipline. The City shall not impose disciplinary action without just cause.

8.2 An employee may be immediately discharged upon a finding of any of the following: (a) dishonesty related to his/her employment with the City; (b) willful or reckless damage to City property; (c) drinking alcohol or taking illegal drugs on the job or arriving for regularly scheduled work under the influence of alcohol or illegal drugs; or (d) insubordination.

8.3 If it should be found that an employee is guilty of lesser offenses, such as violation of City policies and rules, such employee may be subject to disciplinary action as outlined in Section 8.1 of this Agreement.

8.4 If the City has reason to discipline an employee, every effort will be made to impose such discipline in a manner that will not embarrass the employee before other employees or the public.

8.5 The City acknowledges the right of an employee to have a Union representative present at stages (b), (c), and/or (d) of the disciplinary process.

## **ARTICLE 9. - HOURS OF WORK/OVERTIME**

9.1 All shifts shall have an established starting and quitting time. The City shall notify affected employees of any change in their shift schedule at least seven (7) calendar days prior to the effective date of the change, except in the event the change is necessitated by an emergency outside the control of the City or if the supervisor and the employee involved mutually agree to waive the notification requirement.

9.2 For employees on a five-eight (5-8) schedule, the normal workday shall consist of eight (8) consecutive hours per day (plus a thirty (30) to sixty (60) minute unpaid meal period) and the normal workweek shall consist of five (5) consecutive days worked, including either Monday through Friday or Tuesday through Saturday. For employees on

a four-ten (4-10) schedule, the normal workday shall consist of ten (10) consecutive hours per day (plus a thirty (30) to sixty (60) minute unpaid meal period) and the normal workweek shall consist of four (4) consecutive days worked. Alterations in either work hours or workdays or both may be accomplished through mutual agreement between the supervisor(s) and employee(s) involved. At no time shall supervisors or employees enter into an arrangement for workdays or work hours which violate Federal or State Wage and Hour Laws or this Agreement. Each employee shall be entitled to two (2) fifteen (15) minute paid rest periods and one (1) thirty (30) to sixty (60) minute unpaid meal period per shift in accordance with Oregon law and BOLI regulations.

9.3 All hours worked in excess of eight (8) in a day or in excess of forty (40) hours per week shall be paid for at the overtime rate of one and one-half (1-1/2) times the employee's regular straight time hourly rate of pay. Scheduled overtime work shall be distributed as equitably as possible among the qualified employees. Overtime shall be computed to the nearest fifteen (15) minutes.

9.4 A reasonable clean-up time will be granted just prior to the end of each shift if, in the judgment of the department head or division supervisor, an employee(s) needs such time due to the nature and conditions of his/her work assignment.

9.5 Flexible Schedules. Employees may work a flexible schedule if mutually agreed between the employee and the City in writing, under the following parameters:

- There will be no daily overtime for an employee working a flexible schedule and the adjustment may not result in additional labor costs or overtime;
- Employee requests should be seventy two (72) hours in advance, where feasible;
- Flexing must occur in the same workweek;
- The schedule may not impede customer service or normal work process.

#### **ARTICLE 10. - REPORTING PAY/CALL BACK**

10.1 Employees who are required to report to work shall be entitled to a minimum of two (2) hours of call time pay, unless they are notified at least one (1) hour prior to the beginning of their scheduled shift not to report to work. Once employees have reported to work, if they are then put to work employees shall be entitled to a minimum of four (4) hours of work or pay. All employees must provide a telephone number where they may be reached when necessary. A call to that number whether answered or not meets the City's requirement under this section. The City must attempt to leave a message in the event the City's call is not answered.

10.2 Employees subject to an unscheduled call back to work after the end of their regular shift shall be paid a minimum of two (2) hours at the overtime rate of two times the employee's regular rate of pay. If the employee works longer than two hours, the employee will be paid for actual time worked at the overtime rate of two times the

employee's regular rate of pay. This call back provision shall not be applicable to any employee where such call back is scheduled in advance for the purpose of attendance on behalf of the City for meetings of the City, such as the City Council, Planning Commission, Municipal Court, etc.

#### **ARTICLE 11. - STAND-BY DUTY**

Standby is defined as any time an employee is required to be available outside of the employee's normally scheduled working hours to physically respond to City facilities. Stand-by duty includes, but is not limited to, providing emergency response, by a qualified staff member, for emergency situations related to municipal infrastructure or services. Following notification by pager, cellular phone or other means, employees must begin the work required to respond to the call within forty-five (45) minutes, except employees responding to calls at the Wastewater Treatment Plant who must begin the work required to respond within ninety (90) minutes. The City will provide a pager and/or cellular phone to employees assigned standby duty. The City may assign stand-by duties at its sole discretion, but will attempt to solicit volunteers before enlisting employees for stand-by duty.

The Public Works Director, or his/her designee, will create an annual schedule for stand-by following the below listed criteria:

1. Annually in December, the Director/designee will produce a standby roster for the following calendar year.
2. The schedule will include all qualified staff as determined by the Director.
3. A standby period is defined as a consecutive seven (7) calendar day period scheduled to meet operational needs.
4. The schedule will be designed so all qualified employees complete a seven (7) calendar day standby period before they would be scheduled for a subsequent seven (7) calendar day standby period. (All qualified staff would complete their respective seven day standby period before the first person in the rotation would be on standby again.)
5. After the Director/designee completes the annual schedule, staff may change their respective standby period provided another qualified employee agrees to assume the standby duty. Staff assigned standby duty may switch standby at any time during the calendar year with another qualified staff member provided the switch is mutually agreed upon.
6. If a standby duty switch is made, the individual initiating the switch must immediately notify the Director/designee of the change.
7. Every effort will be made to assure that no single employee will be scheduled to work the same holiday standby period two years in succession.

8. If, while on standby, an employee is unable to respond within the designated response period, it is the employee's sole responsibility to contact another qualified employee to respond on-site within the designated time. If the nature of the call requires urgent attention (such as a report of a sewer back-up), the employee on standby shall immediately contact their supervisor and respond as soon as possible.
9. Employees required to be on standby duty shall receive eight (8) hours of pay at the employee's regular rate of pay or equivalent time off in compensatory time. Employees required to be on standby for a period which includes any of the holidays defined in Article 14, shall receive an additional eight (8) hours of compensatory time or salary per holiday.
10. Two employees may share one defined standby period with prior approval from the Public Works Director. Compensation for the standby duty will be split for each employee based on actual standby coverage.

## **ARTICLE 12. - COMP TIME**

12.1 Employees shall be entitled to receive additional time off from work, known as comp time, in the event they wish such time off in lieu of payment for overtime work performed. An employee may select comp time instead of reimbursement at time and one-half (1-1/2) of his/her regular rate of pay should he/she perform an overtime assignment, provided that he/she makes such selection at the time overtime hours are recorded on the time sheets. Employees will be allowed to accrue up to sixty (60) hours of comp time. Comp time may be used at a time mutually agreeable to the employee and the department head or designated City representative. Comp time accrual may be accumulated beyond these limits during the year upon the written request of the employee and by written approval by the employee's supervisor. Employees have the option to cash out up to thirty (30) hours of compensatory time once per fiscal year.

12.2 Comp time shall be reimbursed on the same basis as overtime would have otherwise been paid. As such, an employee working two (2) hours of overtime, if he/she elects comp time in lieu of the reimbursed overtime, shall receive three (3) hours of time off from work, with no reduction in wages during such time off.

12.3 Non-exempt employees shall receive a cash payment for all unused compensation time off upon separation from employment. Such excess of unused compensation time off shall be paid at the employee's regular rate of pay.

## **ARTICLE 13. - WASTEWATER TREATMENT PLANT**

Wastewater treatment plant personnel required to make plant checks on weekends shall receive a minimum of three (3) hours per weekend day at the rate of time and one half (1-1/2) times their regular rate of pay.

Wastewater treatment plant personnel required to make plant checks on holidays shall receive a minimum of three (3) hours per holiday day at the rate of two (2) times their regular rate of pay.

#### **ARTICLE 14. - HOLIDAYS**

14.1 The following days shall be recognized as paid holidays:

|                           |                            |
|---------------------------|----------------------------|
| New Year's Day            | Veterans Day               |
| Presidents Day            | Thanksgiving Day           |
| Memorial Day              | Day after Thanksgiving Day |
| July Fourth               | Day before Christmas       |
| Labor Day                 | Christmas Day              |
| Personal Floating Holiday |                            |

14.2 Regular full time employees who do not work on a holiday shall receive eight (8) hours of holiday pay at their regular rate of pay. To qualify for holiday pay, an employee shall have been available for work on his/her scheduled workday preceding the holiday and his/her scheduled workday following the holiday. An employee off work due to a bona fide injury or illness shall be considered as "available" for work for the purposes of determining holiday benefits under this Article. A doctor's certificate may be requested from any such employee as noted under Article 16-Sick Leave.

14.3 Employees required to work on a holiday shall be compensated at the rate of time and one-half (1-1/2) their regular rate of pay, in addition to their holiday pay. Holidays falling on Saturday shall be observed on the preceding Friday, and holidays falling on Sunday shall be observed on the following Monday. Whenever one of the recognized holidays falls during an employee's paid leave, the holiday will not be counted against the employee's paid leave bank.

14.4 Employees who are short the number of hours they normally work in a week because of the holiday, may make up that time or use accrued vacation or comp time within the same pay period as long as it does not cause overtime.

14.5 Holiday pay for regular part-time employees shall be calculated based upon the budgeted full time equivalence (FTE) of the position.

14.6 Each employee will accrue and be entitled to use eight (8) hours of personal holiday time per fiscal year. The eight (8) hours of personal holiday time will accrue on July 1 of each calendar year and must be used before June 30 of the subsequent calendar year. Unused hours are forfeited. Upon hire, new employees will accrue a prorated amount of personal holiday time available for immediate use.

#### **ARTICLE 15. - VACATIONS**

15.1 All regular employees who have been in the employ of the City for at least six (6) months shall be entitled to vacation benefits. Vacation accrual rates are determined by a



regular employees' length of continuous service with the City. Full time employees shall accrue vacation as follows:

| <u>Service Completed</u> | <u>Vacation Earned</u> |
|--------------------------|------------------------|
| 1 - 4 years              | 80 hours annually      |
| 5-9 years                | 120 hours annually     |
| 10-13 years              | 140 hours annually     |
| 14 years and over        | 190 hours annually     |

Employees shall begin to accrue the above annual vacation rate upon the effective date of this agreement. The accrual rate per pay period shall be the annual accrual rate divided by the total number of pay periods.

Vacation accruals for regular part-time employees shall be calculated based upon the budgeted full time equivalence (FTE) of the position.

15.2 After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or his/her heirs, whichever the case may be.

15.3 All time off for vacations shall be by prior mutual agreement between the department head and the employee. In the event of a conflict between employees regarding time of their vacations, then the principle of seniority shall prevail. Employees shall be permitted to choose either split or full vacation periods.

15.4 The maximum vacation accrual limit shall be two hundred seventy (270) hours. Vacation accrual may be accumulated beyond these limits during the year upon the written request of the employee and written approval by the City Administrator or his/her designee. Vacation accrual exceeding the two hundred seventy (270) hour limit will not be compensated.

15.5 Employees may not use accrued vacation hours for sick leave purposes unless the employee obtains prior written approval from the City Administrator or his/her designee, the absence is for a qualifying OFLA/FMLA absence and the employee has exhausted all accrued sick leave.

## **ARTICLE 16. - SICK LEAVE**

16.1 The City provides eligible employees with sick leave in accordance with the Oregon Paid Sick Time Law, BOLI administrative regulations, and City policy. Full-time employees accrue ninety six (96) hours of sick leave per year.

16.2 Upon retirement under the City's retirement plan, an employee shall be compensated for fifty percent (50%) of his/her accumulated but unused sick leave. The number of hours of sick leave for which compensation is provided under this Section of the Agreement shall not exceed five hundred (500).

16.3 Upon employee separation of employment from the City of Canby, the City or its designee will report to PERS any remaining sick leave hours, minus the sick leave hours cashed out pursuant to Article 16.2. PERS will determine eligibility (OPSRP members are not eligible) in the Unused Sick Leave Program and will calculate accordingly towards the employee's retirement benefits.

#### **ARTICLE 17. – ORDER OF LEAVE**

17.1 Unless otherwise required by law, and subject to Article 21, the order of leave an employee must use for qualifying OFLA/FMLA absences is (1) accrued sick leave until exhausted; (2) accrued vacation leave, compensatory time and/or personal holiday time until exhausted; and (3) unpaid leave.

#### **ARTICLE 18. - WORKERS COMPENSATION**

18.1 An employee off on an industrial accident/illness may use accrued sick leave, compensatory time and vacation time, in that order, to supplement workers compensation benefits to an amount not to exceed the employee's net straight time wages.

18.2 The City will maintain Health and Welfare contributions as defined in Article 25 of this Agreement for an employee as if the employee was working if the employee is off due to an industrial accident/illness. The said contributions shall be maintained for a minimum of sixty (60) calendar days (up to a maximum of six (6) months) in the event the employee has not expended accumulated sick leave, comp time or vacation time.

#### **ARTICLE 19. - FUNERAL LEAVE**

19.1 In the event of a death in the employee's immediate family, said employee shall be entitled leave of absence with pay up to three (3) working days as may be necessary.

19.2 Additional leave with pay may be granted by the City Administrator.

19.3 The employee's immediate family shall include the employee's spouse, ex-spouse, child(ren), step-children, parent(s), brothers), step-brothers, sister(s), step-sisters, grandparent(s), father-in-law, mother-in-law, brother-in-law, sister-in-law, aunts, uncles and grandchildren.

19.4 Leave taken under this Article 19 runs concurrently with OFLA leave.

#### **ARTICLE 20. - JURY DUTY**

20.1 An employee shall be granted leave with full pay any time he/she is required to report for jury duty service, provided that the employee endorses all checks received from the court over to the City for those services.

20.2 If an employee serving on jury duty is excused, dismissed, or not selected, he/she shall report for his/her regular work assignment.

## **ARTICLE 21. - FAMILY MEDICAL LEAVE**

The City will allow employees to take parental or family and medical leave in accordance with State and Federal law and City policy. An employee on family medical leave must use all accrued paid leave in excess of sixty (60) hours prior to taking unpaid leave. An employee on family medical leave who has used all accrued paid leave in excess of sixty (60) hours has the option of using accrued paid leave or taking unpaid leave.

## **ARTICLE 22. - LEAVES OF ABSENCE**

22.1 A regular employee may be granted a leave of absence without pay for a period of up to twelve (12) months if, in the judgment of the City Administrator, such leave would not seriously handicap the employee's department. Requests for such leave must be submitted to the City Administrator in written form as soon as possible prior to the time the requested leave would begin, and must include a complete justification for the leave, except in the case of an off-the-job accident, in which event the leave may start immediately.

22.2 While on such leave, the employee shall not be entitled to accrual of any benefits such as vacation, sick leave, retirement contributions, etc., but he/she shall not lose seniority accrued previous to the beginning of the leave. An employee may purchase health insurance coverage at the employee's own expense for the maximum period of time allowed by the insurance carrier.

## **ARTICLE 23. - WAGES**

23.1 Each employee will be paid in accordance with the wage scale attached as Attachment A.

23.2 Effective beginning the first full pay period following July 1, 2020, increase the wage scale across the board by applying a 2.5% increase to the first step and maintaining 5% between steps 1-5 and 3% between steps 6-7.

23.3 Increases in wages by incremented steps in Attachment A shall be based on the performance of the employee in meeting the standards established for the employee's job classification. The standards shall be objective and quantifiable, and they shall measure the performance of the essential job functions. The written standards shall be reviewed with each employee during the evaluation procedure set forth at Article 31 of this Agreement.

23.4 Bilingual Premium. Any employee whose job requires fluency in Spanish, and who can demonstrate written and oral proficiency, shall receive, in addition to his/her regular pay, a five percent (5%) premium. The City is to determine a reasonable level of proficiency and the manner of testing that proficiency.

23.5 Out-of-Class Work. Any employee assigned to perform duties unique to a higher classification will be paid an out-of-class differential in the amount of 5% over the employee's current base salary only under the following circumstances: (1) an employee's job duties change and the employee is in the process of being reclassified to a higher job

classification; or (2) an employee is assigned to temporarily perform the duties of a vacant higher-level position. The City retains the right to determine when it is practical and efficient to assign employees to perform out-of-class work. Nothing in this Article shall be interpreted as a guarantee that an employee will be assigned out-of-class work.

#### **ARTICLE 24. - PER DIEM AND MILEAGE REIMBURSEMENT**

Employees shall be paid a per diem allowance for approved travel, meals and incidental expenses as follows:

1. For travel within the continental United States the CONUS per diem rate, rules and policies listed at [www.gsa.gov](http://www.gsa.gov) and in effect at the time of the travel;
2. For travel outside of the continental United States the OCONUS per diem rate, rules and policies listed at [www.dtic.mil/perdiem/pdrates.html](http://www.dtic.mil/perdiem/pdrates.html) and in effect at the time of the travel.

Meals provided as part of a program shall be deducted from the above per diem reimbursement in an amount equal to that set forth in the Meals and Incidental Expense Breakdown listed at [www.osa.com](http://www.osa.com) and in effect at the time of the travel. Employees shall be reimbursed actual expenses for hotel accommodations for approved travel.

An employee required by the department head to use a personally owned vehicle for City business shall be compensated at the maximum rate established by the Internal Revenue Service as a non-taxable event and in effect at the time the cost is incurred. Mileage reimbursement is paid monthly.

#### **ARTICLE 25. - HEALTH AND WELFARE**

25.1 The City will offer group medical/drug, vision, and dental/ortho insurance coverage for full time employees and their dependents.

The City will pay 90% of the premium costs of the CIS group plan in place for each tier of coverage. Any premium costs not covered by the City shall be paid by the enrolled employee through automatic payroll deduction.

25.2 Benefits for part-time employees will be calculated based upon the budgeted full-time equivalence (FTE) of the position using the chart below.

| <u>Equivalent FTE</u>             | <u>Prorated Benefits</u>                         |
|-----------------------------------|--|
| 1.0 to .90 FTE (36-40 hours/week) | 100% of the benefit as described in Section 25.1 |
| .89 to .66 FTE (26-35 hours/week) | 75% of the benefit as described in Section 25.1  |
| .65 to .50 FTE (20-25 hours/week) | 50% of the benefit as described in Section 25.1  |

25.3 The City shall provide life insurance in the amount of one and one half (1.5) times the employee's annual salary for every regular full and part-time employee.

25.4 The City shall provide long term disability insurance for every regular full and part-time employee.

25.5 In the event that the City's premium rates increase by more than six percent (6%) from the previous year, any increase over six percent 6% will be shared fifty percent (50%) by the employee and fifty percent (50%) by the City.

25.6 In the event that the City's premium rates increase by more than ten percent (10%) in any given year, the City may reopen Article 25 and Article 23.

#### **ARTICLE 26. - RETIREMENT PLAN**

The City agrees to continue its participation in the Oregon State Public Employees Retirement System, and the Oregon Public Service Retirement Plan, and, further, the City agrees to pay the six percent (6%) employee contribution.

#### **ARTICLE 27. - SAFETY COMMITTEE**

The City shall have a Safety Committee, and it shall conduct its business in accordance with State Law.

#### **ARTICLE 28. - GRIEVANCE PROCEDURE**

28.1 A grievance, for the purpose of this Agreement, is defined as a dispute regarding the meaning or interpretation of a particular class of this Agreement, or regarding an alleged violation of this Agreement. In order to provide for a peaceful procedure for resolution of disputes, the parties agree to the following grievance procedure:

Step 1. The employee shall discuss the grievance on an informal basis with his/her supervisor (unless that supervisor is in the bargaining unit and then the grievance shall go to the supervisor's immediate supervisor) within seven (7) calendar days from the date the employee knew or should have known of the alleged violation.

Step 2. If the grievance remains unresolved after Step 1, the employee or a Union representative shall, within ten (10) calendar days of presenting the grievance to the supervisor, submit the grievance in writing to the City Administrator. The written grievance shall be signed by the employee and shall include: (1) Nature of the dispute. (2) Specific issue in dispute, including the provisions of the Agreement alleged to have been violated or misinterpreted. (3) Specific remedy sought.

Step 3. The City Administrator shall respond in writing within seven (7) calendar days from the receipt of the written grievance.

Step 4. If the grievance remains unresolved after Step 4, the Union representative may, within twenty (20) calendar days of receiving the written answer in Step 4, submit a written request to the City Administrator stating their desire to invoke the arbitration procedures set forth in Section 28.3.

28.2 The rules governing the grievance procedure shall be as follows:

- (a) Any time limits specified in the grievance procedure may be waived by mutual written consent of the parties. Failure to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of the grievance.
- (b) Failure by the City to submit a reply within the time limits specified in the Agreement will automatically move the matter to the next step in the procedure.
- (c) An employee may have a Union Representative assist him/her in presenting the grievance at any step of the grievance procedure/arbitration if they so desire.

### 28.3 Arbitration Procedure:

- (a) After arbitration has been requested, the parties shall forthwith attempt to agree upon a single arbitrator. In the event the parties are unable to agree, a list of seven (7) Oregon arbitrators who are certified by the American Arbitration Association shall be requested from the State Mediation and Conciliation Service. Each party shall have the unilateral right to reject one list in its entirety and request a new list within seven (7) calendar days from the date of the list. Each party shall alternately strike one name from the final list. The final name remaining shall be the sole arbitrator for the dispute.
- (b) The arbitrator shall exercise all powers relating to admissibility of evidence, conduct of the hearing and arbitration procedures.
- (c) The cost of the arbitrator shall be borne by the losing party as determined by the arbitrator. Each party shall bear the cost of presenting its own case.
- (d) The arbitrator's decision shall be final and binding upon the parties.
- (e) The arbitrator shall not have the power to alter, modify, add to, or detract from the terms of this Agreement.

## **ARTICLE 29. - STRIKE/LOCKOUT**

The Union agrees that during the term of this Agreement the employees it represents will not engage in any strike, work stoppage, slowdown or interruption of City services, and the City agrees not to engage in any lockout.

## **ARTICLE 30. - UNIFORMS/PROTECTIVE CLOTHING**

30.1 The City agrees to provide each mechanic in the unit two (2) pairs of coveralls per week. The cost of maintaining the coveralls, including tailoring, cleaning and laundering, shall be borne by the City.

30.2 The City shall make available raingear and protective rubber, leather, cotton, and/or insulated gloves for employees for the safe and sanitary performance of their duties.

30.3 The City agrees to provide public works and other field employees with an annual clothing and boot allowance of four hundred dollars (\$400.00) per employee for the purchase, replacement and/or repair of the uniforms and/or boots. The taxable allowance will be paid through payroll each September.

### **ARTICLE 31. - EMPLOYEE EVALUATIONS**

31.1 As part of the City's personnel system each employee shall be evaluated at least once a year. An evaluation of an employee's performance for a step increase within the salary range shall occur at the employee's anniversary date, which shall be defined as the date of hire into a regular, full-time or regular part-time position within the bargaining unit. Employees at the top step of the range shall receive an annual evaluation as provided within this Article. In the event a current, existing employee moves into a position in the bargaining unit, the employee's anniversary date shall remain unchanged.

If a performance evaluation is not completed within thirty (30) calendar days after the employee's anniversary date, the employee shall receive a step increase effective as of the anniversary date. If performance does not meet standards, the manager will establish a ninety (90) calendar day performance improvement plan, which shall not extend more than one hundred twenty (120) calendar days beyond the employee's anniversary date. The employee improvement plan shall be for the purpose of bringing the employee's performance into compliance with performance expectations. At the end of the ninety (90) calendar day period, or earlier by mutual agreement, the employee's performance will again be reviewed. If performance meets standards, the step increase will be granted effective the date of the review. If the manager fails to establish and/or monitor a ninety (90) calendar day performance improvement plan for the employee within the ninety (90) calendar day period, the employee shall receive a step increase effective the date of the most recent review.

31.2 Both parties agree that an employee has the right to agree or disagree with an evaluation and that the employee has the right to provide a written response to an evaluation. Such response, along with the original evaluation, shall become a part of the employee's personnel file.

### **ARTICLE 32. - PERSONNEL RECORDS**

32.1 The City, subject to prior notification, shall provide an employee the opportunity to review the employee's personnel file. The official personnel file shall be maintained by the Department of Human Resources.

32.2 The employee may respond in writing to any item placed in their personnel file. Such written response will become a part of the file.

32.3 Written documentation of a verbal warning and any response written by the employee shall, upon request of the employee, be removed after three (3) years, provided that the written documentation and/or written responses are not relevant to current job performance.

32.4 Employees shall have the opportunity to review and sign any personnel document which reflects any adverse personnel action, prior to such document being entered into the employee's personnel file. An employee's refusal to sign the document shall have no effect or bearing on the execution of the adverse action. Should an employee refuse to sign said document, the responsible City representative shall so state on the document, initial and date. If an employee disagrees with any statement of fact contained in said document, he/she may so indicate by attaching a written statement of reasonable length to said document at the time of review.

### **ARTICLE 33. - LABOR MANAGEMENT COMMITTEE**

A Labor Management Committee consisting of up to three City-employed Management representatives and up to three City-employed AFSCME members will meet at a minimum of once per quarter to discuss issues, subjects of concern, or other topics brought forward by either party. The meetings may be cancelled by mutual agreement. If after meeting there remain unresolved issues, the Union may request an AFSCME Representative be present at the next meeting.

### **ARTICLE 34. - UNION RIGHTS**

34.1 The Union may select up to three (3) Stewards from the employees covered by this Agreement. When necessary, the Steward shall be allowed to assist during work time in matters involving administration of this Agreement. It is understood, however, that an effort will be made to limit such activities to a necessary minimum.

34.2 The Steward shall notify his/her supervisor prior to leaving his/her work area for the above-stated purposes.

34.3 It is understood that the City will not incur any liability for overtime pay as the result of the Steward's duties as listed in Section 34.1 of this Agreement.

34.4 New Employee Orientation - A designated union representative will be allowed up to thirty (30) minutes on paid time during the new employee orientation to make a presentation to represented employees.

### **ARTICLE 35. - RESIDENCY**

All employees of the City's Public Works Department will reside within thirty (30) air miles of the City limits as a condition of employment.

### **ARTICLE 36. - INCLEMENT WEATHER AND CITY CLOSURE**

The City's Inclement Weather Policy shall apply to all bargaining unit members.

However, if due to inclement weather or another emergency, the City is closed and employees are either sent home or informed not to report to work, the employees shall be paid their regular salary for that time. If employees are selected to report to work or must stay at work when the City is closed, those employees will receive their regular rate of pay and will also receive comp time for the hours worked up to a maximum of 80 hours of



comp time per emergency. If the City remains open during inclement weather and employees are unable to get to work, such employees may use vacation or comp time to cover that time.

### **ARTICLE 37. - DRUG AND ALCOHOL POLICY**

The City and the employees agree to abide by the Drug and Alcohol Policy formulated by the parties. Said policy will not be unilaterally changed.

### **ARTICLE 38. - SAVINGS CLAUSE**

Should any provision of this Agreement be found to be in conflict with any Federal law, State statute, final decision of any Court of competent jurisdiction, or Federal or State Administrative Agency, said provision shall be modified to comply with said law or decision. All other provisions of this Agreement shall remain in full force and effect.

### **ARTICLE 39. - EXISTING CONDITIONS**

39.1 The City agrees not to make unilateral changes in mandatory subjects of bargaining as determined by the Employment Relations Board without first notifying the Union. Should the Union desire to bargain over the proposed changes, the Union will provide the City with written notice of such intent no later than ten (10) calendar days from receipt of notice from the City.

39.2 This provision shall not be interpreted in such manner as to prevent the City from creating new job classifications and initial wage rates for those classifications when necessary, nor shall it preclude the Union from requesting to negotiate over those wage rates pursuant to Article 1.2.

### **ARTICLE 40. – REOPENER**

40.1 In the event of any change to federal, state or local law, including the passage of new legislation that adds new benefits, increases existing benefits, increases employees' wage rates, or increases any other economic benefit to employees during the term of this Agreement, the Employer shall have the right upon no less than fifteen (15) calendar days' written notice to reopen the economic terms of this agreement (Article 23 and Attachment A: Wages, Article 25: Health and Welfare, Article 15: Vacation, Article 16: Sick Leave). The City will have the right to reopen under this Article 40 if the City's economic costs for the AFSCME bargaining unit increase by two percent (2%) or more, calculated from the time of ratification, due to the change in law or new legislation. The purpose of such reopener is to permit the parties to renegotiate the economic provisions of this Agreement so that the Employer's labor costs do not exceed the Employer's costs in existence at the time the parties' agreement was ratified. During this period of renegotiation, the no strike provisions of Article 29 shall remain in full force and effect. If the parties have not reached agreement on changing the economic terms of the Agreement within forty-five (45) calendar days of the start of negotiations which addresses the additional cost of complying with any federal, state or local law, the Employer shall have the right to implement its last, best and final offer.

## **ARTICLE 41. - TERMINATION OF AGREEMENT**

41.1 This Agreement and the attachments hereto constitute the sole written agreement between the parties. This Agreement shall become effective July 1, 2020 and shall remain in full force and effect through and including June 30, 2021. The parties agree that should negotiations for a subsequent agreement extend beyond June 30, 2021, in addition to the provisions of this Agreement which automatically remain in force, Article 2-Employee Rights/Security and Article 28-Grievance Procedure shall remain in full force and effect up to the date on which the City would otherwise have the right to implement a full and final offer or the signing of a subsequent Agreement, whichever comes first.

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41.2 This Agreement shall be automatically renewed on July 1, 2021 and each year thereafter unless either party notifies the other in writing not later than March 1, 2021 that it desires to modify this Agreement. In the event notice to modify is given, negotiations shall begin no later than April 1, 2021.

This AGREEMENT is hereby executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**FOR THE CITY**

BY: \_\_\_\_\_  
Amanda Zeiber  
Interim City Administrator  
City of Canby

BY: \_\_\_\_\_  
Brian Hodson  
Mayor, City of Canby  
Team President

**FOR THE UNION**

BY: \_\_\_\_\_  
Ross Kiely  
Council Representative  
Oregon AFSCME Council 75

BY: \_\_\_\_\_  
Laney Fouse  
President, AFSCME Council 75, Local 350-6

BY: \_\_\_\_\_  
Jon Patrick  
AFSCME Bargaining Team Member  
Vice President, AFSCME Council 75, Local  
350-6

BY: \_\_\_\_\_  
Daryll Hughes Patrick  
AFSCME Bargaining Team Member

## ATTACHMENT A – WAGE SCALE

|                                     | 5% between steps |        |        |        |        | 3% between steps |        |
|-------------------------------------|------------------|--------|--------|--------|--------|------------------|--------|
| Position                            | Step 1           | Step 2 | Step 3 | Step 4 | Step 5 | Step 6           | Step 7 |
| Head Lifeguard                      | 2462             | 2585   | 2714   | 2850   | 2993   | 3082             | 3175   |
| Office Specialist I                 | 3274             | 3438   | 3610   | 3790   | 3980   | 4099             | 4222   |
| Library Coordinator                 |                  |        |        |        |        |                  |        |
| Tech Ref Librarian/Yth Svcs         |                  |        |        |        |        |                  |        |
| Municipal Court Clerk I             |                  |        |        |        |        |                  |        |
| Office Specialist II                | 3453             | 3626   | 3807   | 3997   | 4197   | 4323             | 4453   |
| Mechanic Tech I                     |                  |        |        |        |        |                  |        |
| Parks Maint Worker                  |                  |        |        |        |        |                  |        |
| Swim Instructor/Program Coordinator |                  |        |        |        |        |                  |        |
| Maintenance Worker I                | 3565             | 3743   | 3930   | 4127   | 4333   | 4463             | 4597   |
| Maintenance Worker II               | 3839             | 4031   | 4232   | 4444   | 4666   | 4806             | 4951   |
| Municipal Court Clerk II            | 3933             | 4130   | 4336   | 4553   | 4781   | 4924             | 5072   |
| Code Compliance/Evidence Tech       |                  |        |        |        |        |                  |        |
| Planning Tech                       | 4130             | 4337   | 4553   | 4781   | 5020   | 5171             | 5326   |
| Maintenance Worker III              | 4167             | 4375   | 4594   | 4824   | 5065   | 5217             | 5373   |
| Facilities Maintenance Technician   |                  |        |        |        |        |                  |        |
| Operator I                          |                  |        |        |        |        |                  |        |
| Pre-Treatment Tech                  | 4297             | 4512   | 4737   | 4974   | 5223   | 5380             | 5541   |
| Office Specialist III               | 4378             | 4597   | 4827   | 5068   | 5321   | 5481             | 5646   |
| User Service Tech.                  | 4431             | 4653   | 4885   | 5129   | 5386   | 5547             | 5714   |
| Econ Development & Tourism Coord    |                  |        |        |        |        |                  |        |
| Librarian                           |                  |        |        |        |        |                  |        |
| Mechanic                            |                  |        |        |        |        |                  |        |
| Purchasing & Accounting Specialist  | 4528             | 4754   | 4992   | 5242   | 5504   | 5669             | 5839   |
| Swim Center Operator                | 4677             | 4911   | 5156   | 5414   | 5685   | 5855             | 6031   |
| Operator II                         | 4722             | 4958   | 5206   | 5466   | 5740   | 5912             | 6089   |
| Lead Mechanic                       |                  |        |        |        |        |                  |        |
| Parks Lead                          |                  |        |        |        |        |                  |        |
| Public Works Lead                   | 4953             | 5201   | 5461   | 5734   | 6020   | 6201             | 6387   |
| Office Specialist IV                | 5127             | 5383   | 5653   | 5935   | 6232   | 6419             | 6611   |
| Operator III                        |                  |        |        |        |        |                  |        |
| Pre-Treatment Coord.                | 5166             | 5424   | 5696   | 5980   | 6279   | 6468             | 6662   |
| Associate Planner                   |                  |        |        |        |        |                  |        |
| Project Planner                     | 5215             | 5476   | 5750   | 6037   | 6339   | 6529             | 6725   |
| Operator Lead                       | 5320             | 5586   | 5865   | 6159   | 6466   | 6660             | 6860   |
| Senior Planner                      | 5699             | 5984   | 6283   | 6597   | 6927   | 7135             | 7349   |



# City of Canby

PO Box 930  
222 NE 2nd Ave  
Canby, OR 97013

Phone: 503.266.4021  
Fax: 503.266.7961  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

## City of Canby Staff Report

DATE: June 23, 2020  
TO: Hon Mayor Hodson & City Council  
THRU: Ms. Amanda Zeiber, Interim City Administrator  
FROM: Jerry Nelzen, Operations Supervisor

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### Summary

North Locust Street has intermittent old curbs and sidewalks and the surface is failing and continues to deteriorate. The street is a residential street and also serves as an access to the Clackamas County Event Center. The existing sanitary sewer also needs upgrading prior to the reconstruction of the street. New curbs on both sides, streetlights, paving and sidewalks on the west side only will be constructed due to the limited right of way width. This staff report is to request the City Council's approval to enter into an engineering contract with the City Engineer of Record, Curran-McLeod, Inc. for design and construction engineering of sanitary sewer improvements to S Ivy Street, in the amount of \$90,000. The total cost of the project is estimated at \$840,000.

### Background

North Locust Street between NE 4<sup>th</sup> Avenue and NE 10<sup>th</sup> Avenue is an older street with limited right of way (40 feet wide) and fully developed on both sides. The location of some of the structures don't meet the current setbacks. To preserve parking on one side, sidewalks can only be constructed on one side of the street. There is no likely potential for any developments or any lot partitioning along this stretch of the roadway.

### Discussion

The City Engineers are very familiar with the street and the sewer system and the problems on North Locust Street and have completed several projects in the past within the City, including the collection system master planning. The engineering costs are very reasonable at approximately 15%.

During the meeting on-site with ODOT to discuss the project, we met many of the residents and they were eager to see the improvements taking place. This roadway has low intensity traffic most of the time except during the Clackamas County Fair. We are requesting this ordinance be approved with an emergency clause to permit the work to proceed immediately. The City can be ready to solicit bids this Fall.

**Fiscal Impact**

This project has been included in the budget for construction in 2020-2021 and is funded through the Street Reimbursement SDC, Sewer Reimbursement SDC and ODOT Fund Exchange revenues.

**Recommendation**

That the City of Canby approve Ordinance 1530 authorizing the City Administrator to execute a contract with Curran-McLeod, Inc. in the amount of \$90,000 for design and construction engineering services and declaring an emergency to allow soliciting bids as early as possible.

**Proposed Motion**

I move to approve Ordinance 1530 authorizing the City Administrator to execute a contract with Curran-McLeod, Inc. in the amount of \$90,000 for design and construction phase engineering services for reconstruction of the North Locust Street sanitary sewer and declaring an emergency.

**Attachments**

1. Ordinance 1530
2. Engineering Proposal Exhibit "A"
3. Contract for Construction

## ORDINANCE NO. 1530

**AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH CURRAN-MCLEOD, INC. CONSULTING ENGINEERS FOR ENGINEERING SERVICES TO COMPLETE IMPROVEMENTS TO N LOCUST STREET RECONSTRUCTION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, CURRAN-McLEOD, INC. City's Engineer of Record has provided preliminary planning, preliminary engineering and cost estimates for engineering and construction for the needed improvements to the North Locust Street Reconstruction; and

**WHEREAS**, CURRAN-McLEOD, INC. and the CITY OF CANBY have been working with ODOT to secure \$352,194.57 in Fund Exchange monies to pay for part of the construction cost on this project; and

**WHEREAS**, the City of Canby has budgeted expenditures for this work in FY 2020-2021; Now therefore,

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

Section 1. The Interim City Administrator is hereby authorized and directed to make, execute, and declare in the name of the CITY OF CANBY and on its behalf, an appropriate contract with CURRAN-MCLEOD, INC for engineering services in an amount not to exceed \$53,700 for design phase services and \$36,300 for construction phase services in Fiscal Year 2020-2021, for a total contract amount of \$90,000.

Section 2. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to complete this project as soon as possible, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, July 15, 2020; ordered posted as required by the Canby City Charter and scheduled for second reading on Wednesday, August 5, 2020 after the hour of 7:30 pm at the Council Chambers at the Canby City Hall, 222 NE 2<sup>nd</sup> Avenue, Canby, Oregon.

---

Melissa Bisset, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 5th day of August 2020 by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Brian Hodson, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Bisset, CMC  
City Recorder



CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210  
PORTLAND, OREGON 97223

June 23, 2020

Mr. Jerry Nelzen  
City of Canby  
182 N Holly Street  
Canby, OR 97013

Exhibit "A"

**RE: CITY OF CANBY  
N LOCUST STREET RECONSTRUCTION  
ENGINEERING PROPOSAL**

Dear Jerry:

We appreciate the opportunity to assist the City of Canby in providing design engineering and construction management cost estimate for N. Locust Street reconstruction. The project is located between NE 4<sup>th</sup> Avenue and NE 10<sup>th</sup> Avenue. The existing street width is mostly 39 feet with old curbs along most of this stretch and with intermittent sidewalks.

North Locust Street is classified as a local street in the City Transportation System Plan. We have reviewed the anticipated scope of work based on the design and construction of approximately 1,375 lineal foot, 33-foot paved street width in 40-foot existing right-of-way. The improvements will include new curbs, 5-foot wide sidewalks on the west side only, ADA ramps at the intersections, driveways, street lights, excavation, paving, 8" sanitary sewer on NE 9<sup>th</sup> Avenue, reconstruct services and reconnect to new main, installing cleanouts at the existing individual sanitary sewer laterals and storm drain will be part of these improvements. Only minimal water and private utility line modifications will be needed because this area has already fully served. If water and franchise utility upgrades are desired, they can be accommodated as a component of the work before the placement of the final asphalt paving.

This street width will be narrowed to 33 feet to allow the improvements to fit within the limited right-of-way. Although narrow, on-street parallel parking will be permitted on both sides of the roadway.

The following is an estimate of cost for the project. No costs are included in the estimates for easements preparation and no easements should be required. Design surveys have already been completed prior to this proposal.

| <b>A. Site Preparation</b> |   |     |          |             |             |
|----------------------------|---|-----|----------|-------------|-------------|
| A.1                        | Mobilization (5% of the total cost)         | All | Lump Sum | \$28,200.00 | \$28,200.00 |
| A.2                        | Temporary Protection & Direction of Traffic | All | LS       | 4,000.00    | 4,000.00    |
| A.3                        | Erosion Control                             | All | LS       | 2,000.00    | 2,000.00    |

|  |   |       |      |           |                     |
|--|---|-------|------|-----------|---------------------|
| A.4                                    | Clearing & Grubbing, Tree and Landscape Protection and Site Restoration       | All   | LS   | 8,000.00  | 8,000.00            |
| A.5                                    | Common Excavation(15" depth)  | 2,600 | CY   | 20.00     | 52,000.00           |
| A.6                                    | Subgrade/ Trench Stabilization  | 50    | CY   | 35.00     | 1,750.00            |
| A.7                                    | Sawcut Asphalt/ Concrete Pavement   | 300   | LF   | 2.00      | 600.00              |
|  |   |       |      | Subtotal  | \$96,550.00         |
| <b>B. Paving and Surfacing</b>         |   |       |      |           |                     |
| B.1                                    | 1"-0" Crushed Rock (12" deep)   | 5,100 | SY   | 12.00     | 61,200.00           |
| B.2                                    | Type "C" Concrete Curb  | 2,800 | LF   | 16.00     | 44,800.00           |
| B.3                                    | 6" Concrete Driveway w/2" Leveling Rock                                       | 350   | SY   | 75.00     | 26,250.00           |
| B.4                                    | 4" Concrete sidewalk w/ 2" Leveling Rock                                      | 800   | SY   | 60.00     | 48,000.00           |
| B.5                                    | ADA Cast-in-Place Truncated Dome Mats   | 6     | Each | 400.00    | 2,400.00            |
| B.6                                    | ½" Dense Mix Asphalt Pavement (4" deep)                                       | 1,200 | Tons | 90.00     | 108,000.00          |
| B.7                                    | Pavement Striping   | All   | LS   | 2,000.00  | 2,000.00            |
|  |   |       |      | Subtotal  | \$292,650.00        |
| <b>C. Storm Drainage</b>               |   |       |      |           |                     |
| C.1                                    | 12" Diameter HDPE w/Trench Excavation and Rock Backfill                       | 150   | LF   | 600.00    | 90,000.00           |
| C.2                                    | Type G-2 Catch Basins   | 6     | Each | 2,000.00  | 12,000.00           |
| C.3                                    | 48" Diameter Sedimentation Manhole  | 3     | Each | 5,000.00  | 15,000.00           |
| C.4                                    | 48" Diameter Drywells   | 3     | Each | 30,000.00 | 90,000.00           |
|  |   |       |      | Subtotal  | \$207,000.00        |
| <b>D. Sanitary Sewer</b>               |   |       |      |           |                     |
| D.1                                    | 6" Cleanouts, All Depths  | 30    | Each | 1,500.00  | 45,000.00           |
|  |   |       |      | Subtotal  | \$45,000.00         |
| <b>E. Utilities</b>                    |   |       |      |           |                     |
| E.1                                    | Utility Trenching including Shading and Rock or Sand Backfill (Single Trench) | 900   | LF   | 10.00     | 9,000.00            |
| E.2                                    | Excavate, Prep Rock Pad and Rock Backfill Vaults/ Transformers                | 5     | Each | 1,000.00  | 5,000.00            |
| E.3                                    | Excavate and Rock Backfill for Street Light Poles                             | 6     | Each | 800.00    | 4,800.00            |
|  |   |       |      | Subtotal  | \$18,800.00         |
|  |   |       |      |           |                     |
| Construction Cost                      |   |       |      |           | \$660,000.00        |
| Canby Utility Cost                     |   |       |      |           | \$25,000.00         |
| Engineering & Construction Phases Cost |   |       |      |           | \$90,000.00         |
| Contingency (10%)                      |   |       |      |           | \$65,000.00         |
| <b>TOTAL CONSTRUCTION COST</b>         |   |       |      |           | <b>\$840,000.00</b> |

Estimated costs of engineering work is listed below:

**Design Phase Engineering Cost Estimate:**

|  |                 |
|--|-----------------|
| Field Research & Preliminary Layout          | \$5,000         |
| ODOT Prospectus Preparation & Submittal      | 2,200           |
| Roadway Horizontal & Vertical Design         | 10,500          |
| Utility Design, Storm, Sanitary & Electrical | 12,700          |
| Base Maps & Plan Sheet Graphics, 9 sheets    | 15,800          |
| Contract Documents & Specifications          | 4,500           |
| Preconstruction Monumentation Survey Filing  | <u>3,000</u>    |
| Total Design Phase Engineering               | <u>\$53,700</u> |

**Construction Phase Engineering Cost Estimate:**

|   |                  |
|---|------------------|
| Bid Procedure                                 | \$4,500          |
| Construction Staking                          | 11,500           |
| Contract Administration, As-builts            | 6,700            |
| Project Closeout                              | 3,700            |
| Post-Construction Monumentation Survey Filing | 3,100            |
| Field Inspection, est 60 hrs                  | <u>6,800</u>     |
| Total Construction Phase Engineering          | <u>\$ 36,300</u> |

We have attached for your review an estimate of construction costs and engineering costs and a copy of the Engineering Services Contract. The design engineering phase cost will be billed based on a lump sum and billed as percent complete while the construction engineering phase will be billed hourly, as needed, based on the standard hourly rates schedule not to exceed the estimated budget.

Excluded from our estimates are the costs of publishing in the Daily Journal of Commerce and BOLI fee. Those expenses will be billed directly to the City and are estimated at approximately \$2,500.

The design on this project will proceed during the fall months of 2020 and be ready to bid in the winter or spring of 2021.

If you have any concerns or questions, please let me know.

Sincerely,

**CURRAN-McLEOD, INC.**



Hassan A. Ibrahim, PE

cc: Engineering Services Contract  
Standard Hourly Rates (Exhibit "B")



**CITY OF CANBY  
NORTH LOCUST STREET RECONSTRUCTION  
AGREEMENT FOR ENGINEERING SERVICES**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF CANBY**, Oregon, hereafter referred to as the OWNER, and **CURRAN-McLEOD, INC. Consulting Engineers**, Portland, Oregon, hereafter referred to as the ENGINEER.

The OWNER intends to construct the North Locust Street Reconstruction for which the ENGINEER agrees to perform the various professional engineering services for the design and construction of said improvements.

**WITNESSETH**

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

**SECTION A - ENGINEERING SERVICES**

The ENGINEER shall furnish engineering services to accomplish the work identified above and as more specifically identified in the correspondence dated June 23, 2020, attached as Exhibit A:

1. The ENGINEER will attend conferences with the OWNER, representatives of the State, or other interested parties as may be required for completion of the work previously described.
2. After the OWNER directs the ENGINEER to proceed, the ENGINEER will perform the necessary alignment determination, accomplish the detailed design of the projects, prepare construction Drawings, Specifications and Contract Documents, and prepare a final cost estimate based on the final design. It is also understood that if additional subsurface explorations (such as borings, soil tests, rock soundings and the like) are required, the ENGINEER will furnish coordination of said explorations without additional charge, but the costs incident to such explorations shall be paid for by the OWNER as set out in Section D hereof.

Statements of probable construction costs and detailed cost estimates prepared by the ENGINEER represent his best judgment as a design professional familiar with the Construction Industry. It is recognized, however, that neither the ENGINEER nor the OWNER has any control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding or market conditions. Accordingly the ENGINEER cannot and does not guarantee that bids will not vary from any statement of probable construction cost or other cost estimate prepared by the ENGINEER.

3. The Contract Documents furnished by the ENGINEER under Section A-2 shall include the State of Oregon Prevailing Wage Rates or the Federal Davis Bacon Prevailing Wage Rates as applicable, and OWNER, funding agency, and state requirements as appropriate.
4. Prior to the advertisement for bids, the ENGINEER will provide for each Construction Contract, not to exceed 10 copies of detailed Drawings, Specifications, and Contract Documents for use by the OWNER, and for appropriate Federal, State, and local agencies from whom approval of the project must be obtained. The cost of such drawings, Specifications, and Contract Documents shall be included in the basic compensation paid to the ENGINEER. The OWNER pays the cost of permits and review fees as provided in Section F-2 of this Agreement.
5. The drawings prepared by the ENGINEER under the provisions of Section A-2 above shall be in sufficient detail to permit the actual location of the proposed improvements on the ground. The ENGINEER shall prepare and furnish to the OWNER without any additional compensation, three copies of a map(s) showing the general location of needed construction easements and permanent easements and the land to be acquired. Property surveys, property plats, property descriptions, abstracting and negotiations for land rights shall be provided by the OWNER, unless the OWNER requests, and the ENGINEER agrees to provide those services. In the event the ENGINEER is requested to provide such services, the ENGINEER shall be additionally compensated as set out in Section D hereof, unless this task is identified and included in the proposed scope of work herein.
6. The ENGINEER will furnish additional copies of the Drawings, Specifications and Contract Documents as required by prospective bidders, materials suppliers, and other interested parties, but may charge them for the reasonable cost of such copies. Upon award of each contract, the ENGINEER will furnish to the OWNER three sets of the Drawings, Specifications and Contract Documents for execution. The cost of these sets shall be included in the basic compensation paid to the ENGINEER. Drawings and Specifications as instruments of service are and shall remain the property of the ENGINEER whether the project for which they are made is executed or not. They are not to be used by the OWNER on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the ENGINEER.
7. The ENGINEER will require prospective contractors to file an approved Pre-qualification Form with the Oregon Department of Transportation and will require a Bid Bond not to exceed 10% in the Bidding Documents to secure the Bid.
8. The ENGINEER will attend the bid opening and tabulate the bid proposals, make an analysis of the bids, make recommendations for awarding contracts for construction.
9. The ENGINEER will assist in the Preconstruction Conference, and will review and approve, for conformance with the design concept, any necessary shop and working drawings furnished by Contractors.

10. The ENGINEER will interpret the drawings and specifications to protect the OWNER against defects and deficiencies in construction on the part of the Contractor. The ENGINEER will not, however, guarantee the performance of any Contractor. Planning and design of the project and construction engineering services shall be accomplished with due diligence and in conformance with accepted industry standards of the practice of professional engineering.
11. The ENGINEER will provide general engineering review of the work of the contractors as construction progresses to assure conformance with the design concept.
12. The ENGINEER will establish baselines and grades for locating the work together with a suitable number of bench marks adjacent to the work as shown in the Contract Documents.
13. The ENGINEER, as representative of the OWNER during the construction phase, shall advise and consult with the OWNER and all of the OWNER'S instructions to the Contractor shall be issued through the ENGINEER. The ENGINEER shall have the authority to act on behalf of the OWNER to the extent provided in this Agreement.
14. Unless otherwise requested by the OWNER in writing, the ENGINEER will not provide Resident Construction Inspection. The ENGINEER'S undertaking construction inspection hereunder shall not relieve the Contractor of Contractor's obligation to perform the work in conformity with the Drawings and Specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.
15. The ENGINEER will review the Contractor's applications for progress and final payment and, when approved, submit same to the OWNER for payment.
16. The ENGINEER will prepare and review necessary contract Change Orders on a timely basis for consideration of approval by the OWNER.
17. The ENGINEER and a representative of the OWNER will make an inspection of the project or project element to determine the status of completion. The ENGINEER may issue a Certificate of Substantial Completion consistent with the General Conditions of the Construction Contract Documents.
18. The ENGINEER will provide the OWNER with one set of record drawings on electronic media and three sets of prints at no additional cost to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction, as specifically required in the Construction Contract, and reviewed by the ENGINEER, and from the ENGINEER'S construction data.

19. If State statutes require notices and advertisements of final payment, the ENGINEER shall assist in their preparation.
20. The ENGINEER will be available for site visits to furnish engineering services and consultations necessary to correct unforeseen project operation difficulties for a period of one year after the date of the Certificate of Substantial Completion of the facility. The ENGINEER will assist the OWNER in performing a review of the project during the 11th month after the date of initiation of the 12 month warranty period.

## **SECTION B - COMPENSATION FOR ENGINEERING SERVICES**

1. The OWNER shall compensate the ENGINEER for services in accordance with the following schedule:

### **Design Phase Engineering:**

- Fifty-Three Thousand Seven Hundred and No/100 Dollars (\$53,700)

### **Construction Phase Engineering:**

- Thirty-Six Thousand Three Hundred and No/100 Dollars (\$36,300)

2. The compensation for the above Engineering Services shall be as follows:
  - a. Preliminary and Design Phase Services shall include items A-1 through A-5.
  - b. Billings shall be submitted monthly by the ENGINEER for Preliminary and Design Phase Services during the previous month. Payments shall be made for these billings within 30 days. Billings shall be based on percent of completion for Preliminary and Design Phase Services.
  - c. Construction Engineering Services and Construction Inspection shall include items A-6 through A-20 and shall be billed by the ENGINEER on an hourly basis. The total shall not exceed the budget figures under Article B.1 above without the express written authorization of the OWNER.
  - d. Where hourly rates are used, they shall be in accordance with the Standard Hourly Rate Schedule, attached herewith and referenced Exhibit B.
  - e. In the event of multiple construction contracts, the ENGINEER may negotiate revised figures under Article B.1.



## **SECTION C - RESIDENT CONSTRUCTION INSPECTION**

If the OWNER requests the ENGINEER to provide Resident Construction Inspection, the ENGINEER will, prior to the Preconstruction Conference, submit a resume of the Resident Inspector's qualifications, anticipated duties and responsibilities for approval by the OWNER. The OWNER agrees to pay the ENGINEER for such services in accordance with the "Inspector" rate schedule set out in Exhibit B. The ENGINEER will render to OWNER for such services performed hereunder during such period, the same to be due and payable by the OWNER to the ENGINEER on or before the 10th day of the following period. A separate agreement shall be negotiated for Resident Construction Inspections Services setting out estimated hours required and maximum estimated fees and charges.

## **SECTION D - ADDITIONAL ENGINEERING SERVICES**

In addition to the foregoing being performed, the following services may be provided UPON WRITTEN AUTHORIZATION OF THE OWNER.

1. Financial feasibility or other special studies.
2. Record boundary surveys or other similar surveys, excepting surveys required to locate the construction project, or as identified in the scope of work.
3. Laboratory tests, borings, specialized geological, soil, hydraulic, or other studies recommended by the ENGINEER.
4. Record property surveys, detailed descriptions of sites, maps, drawings, or estimates related thereto; assistance in negotiating for land and easement rights.
5. Necessary data and filing maps for storm water discharge permits, water rights, adjudication, and litigation.
6. Redesigns not initiated by the ENGINEER after final Plans and Specifications have been approved by the OWNER, except redesigns to reduce the project cost to within the funds available.
7. Appearances before courts or boards on matters of litigation or hearings related to the project and providing services as an expert witness in connection with any public hearing, arbitration proceeding, or the proceedings of a court of record.
8. Preparation of Environmental Assessments or Environmental Impact Statement (E.I.S.).
9. Performance of detailed staking necessary for construction of the project in excess of the control staking set forth in Section A-12.
10. Preparing documents for alternate bids requested by the OWNER.



11. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth as previously mentioned in this Agreement as may be required in connection with the replacement of such work.
12. Providing professional services made necessary by the default of the Contractor in the Construction Contract.
13. Providing construction engineering and inspection services after the construction contract time has been exceeded.

Unless identified as included in the proposed scope of work herein, payment for the services specified in this Section D shall be as agreed in writing prior to commencement of the work. The ENGINEER will render to OWNER for such services an itemized bill, once each month, for compensation for services performed hereunder during such period, the same to be due and payable by OWNER to the ENGINEER within 30 days.

#### **SECTION E - OWNER'S RESPONSIBILITIES**

1. The OWNER shall provide full information regarding his requirements for the project.
2. The OWNER shall designate, when necessary, a representative authorized to act in his behalf with respect to the project. The OWNER or his representative shall examine documents submitted by the ENGINEER and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the ENGINEER'S work.
3. The OWNER shall furnish all pertinent existing mechanical, chemical or other laboratory tests, inspections and reports as required by law or the Contract Documents, and which may impact the design.
4. The OWNER shall furnish such legal, accounting and insurance counseling services as may be necessary for the project, and such auditing services as he may require to ascertain how or for what purposes the CONTRACTOR has used the moneys paid to him under the Construction Contract.
5. If the OWNER observes or otherwise becomes aware of any fault or defect in the project or non-conformance with the Contract Documents, he shall give prompt oral notice with written confirmation thereof to the ENGINEER.
6. The OWNER shall furnish information required of him as expeditiously as necessary for the orderly progress of the work.

## SECTION F - SPECIAL PROVISIONS

The following is agreed to by both parties:

1. That the OWNER reserves the right to request replacement of any Resident Inspector(s) furnished by the ENGINEER or to furnish the Resident Inspector(s) from the OWNER'S own forces, subject to the approval of the ENGINEER regarding the qualifications of the Resident Inspector(s). If the OWNER furnishes the Resident Inspector(s), the OWNER agrees that the Resident Inspector(s) will be under the direction and supervision of the ENGINEER.
2. That the OWNER shall pay for advertisement for bids, building or other permits, licenses, technical review fees, etc., as may be required by local, State or Federal authorities, and shall secure the necessary land easements and rights-of-way.
3. The ENGINEER will endeavor to assure compliance of his work with applicable State and Federal requirements.
4. That insofar as the work under this Agreement may require, the OWNER shall furnish the ENGINEER all existing maps, field survey data, grades and lines of streets, pavements, and boundaries, rights-of-way, and other surveys presently available, which will be returned upon project completion. ENGINEER will provide the OWNER a copy of survey notes establishing bench marks and location of improvements.
5. That if the engineering work covered in this Agreement has not been completed on or after the expiration of a twenty-four month period from the date of execution of this Agreement, the OWNER or ENGINEER may, at the option of either, on written notice, request a renegotiation of Sections B, C, and D (providing for the compensation to be paid the ENGINEER for services rendered) to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.
6. That this Agreement is to be binding on the heirs, successors and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other. At least fifteen (15) days shall be allowed for such consent.
7. Attorney's fees: In the event a suit, arbitration or other legal action is required by either the OWNER or the ENGINEER to enforce any provision of this Agreement, the prevailing parties shall be entitled to all reasonable costs and reasonable attorney's fees upon litigation or upon appeal.
8. Termination
  - a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten

- (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- b. The Agreement may be terminated in whole or in part in writing by the OWNER for its convenience, provided that the ENGINEER is given (1) not less than ten (10) calendar days' written notice, (delivered by certified mail, return receipt requested) of intent to terminate, and (2) opportunity for consultation with the terminating party prior to termination.
  - c. If termination for default is effected by the OWNER an equitable adjustment in the price provided for in the Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the ENGINEER at the time of termination may be adjusted to cover any additional costs to the OWNER because of the ENGINEER'S default. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the OWNER, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the termination, in addition to termination settlement costs reasonably incurred by the ENGINEER relating to commitments which had become firm prior to the termination.
  - d. Upon receipt of a termination action under paragraphs a. or b. above, the ENGINEER shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the OWNER reproducible data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the ENGINEER in performing this Agreement whether completed or in process.
  - e. Upon termination under paragraphs a. or b. above, the OWNER may take over the work and may award another party a contract to complete the work under this Agreement.
  - f. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the OWNER. In such event, adjustment of the Agreement price shall be made as provided in paragraph c. of this clause.
9. The ENGINEER agrees to hold harmless and indemnify the OWNER against all claims, damages, losses and costs, including costs of defense, arising out of the negligent performances of engineering services under this Agreement. OWNER may make claim under applicable law against ENGINEER or ENGINEER'S insurance carriers for any loss, damage or cost arising out of ENGINEER'S negligent performance of services under this Agreement.

10. The ENGINEER agrees to acquire and maintain for the duration of this Agreement, Professional Liability Insurance in the nominal amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.
11. The ENGINEER further agrees to obtain and maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER from claims under the Worker's Compensation Act and such comprehensive general liability insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees or agents.
12. The ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The ENGINEER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
13. ENGINEER covenants that he presently has no interest and shall not acquire interest, direct or indirect, which would conflict in any manner or degree with the performance of his services under this Agreement. Any interest on the part of the ENGINEER or his employees must be disclosed to the OWNER.
14. INDEPENDENT CONTRACTOR. It is agreed that ENGINEER is providing the services hereunder as an independent contractor and not as an employee of OWNER.

OWNER shall have no right to control the manner of the performance of the services, but may place restrictions on ENGINEER relating to use of OWNERS premises. As an independent contractor, ENGINEER shall not be eligible to receive benefits otherwise provided to employees of the OWNER.

15. The records and documents with respect to all matters covered by the Agreement shall be subject at all times to inspection, review or audit by the OWNER, County, Federal or State officials so authorized by law during the performance of this contract. Required records shall be retained for a period of three (3) years after termination of this Agreement
16. No member or delegate to the Congress of the United States and no Resident Commissioner or City Official shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.
17. This CONTRACT shall be construed according to the laws of the State of Oregon. Any litigation between the OWNER and the ENGINEER or out of work performed under this CONTRACT shall occur in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.



18. This Agreement, including Exhibits A and B, represents the entire integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

OWNER: CITY OF CANBY ENGINEER: CURRAN-McLEOD, INC.

SIGNATURE: \_\_\_\_\_ SIGNATURE: 

NAME: \_\_\_\_\_ NAME: HASSAD IBRAHIM

TITLE: \_\_\_\_\_ TITLE: PRINCIPAL ENGINEER

DATE: \_\_\_\_\_ DATE: 6-23-2020

# **STANDARD HOURLY RATES**

Effective January 1, 2019

|                             |           |
|-----------------------------|-----------|
| Senior Principal Engineer   | \$ 138.00 |
| Principal Engineer          | 128.00    |
| Project Engineer/Manager    | 125.00    |
| Design Engineer/Manager     | 90.00     |
| Design Technician/Inspector | 80.00     |
| Graphics Technician         | 75.00     |
| Word Processing             | 65.00     |
| Sub-Consultants             | At Cost   |

# **REIMBURSABLE EXPENSES**

CURRAN-McLEOD, INC. does not routinely invoice any reimbursable expenses. Auto expense, meals, travel, lodging, communication, publishing, and miscellaneous operating costs are all included in our established hourly rates and project budgets.



# City of Canby

PO Box 930  
222 NE 2nd Ave  
Canby, OR 97013

Phone: 503.266.4021  
Fax: 503.266.7961  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

## City Council Staff Report

DATE: July 15, 2020  
TO: Honorable Mayor Hodson and City Council  
FROM: Joseph A. Lindsay, Canby City Attorney  
ITEM: Ordinance Number 1531: Granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby; and establishing an effective date.

---

### **Background**

In 1979, the City originally granted Canby Telephone Association a nonexclusive franchise for providing telecommunication services in the City of Canby. The Franchise Agreement has been amended and extended through several ordinances over the years. The City's most recent Franchise Agreement with Canby Telephone Association (DirectLink) was granted through June 7, 2020. The City and DirectLink would like to extend the term of the Franchise Agreement for a ten year term retroactive to June 7, 2020.

As the tide of upcoming 5G small cell deployments hit Canby, FCC regulations are changing the amounts we can charge for telecommunications. The Internet Freedom Act requires a "level playing field" in how we regulate and charge telecommunications companies. In this spirit, we are offering a 5 percent franchise fee because the FCC has opined in their rulings that 5 percent is probably the most they would make a 5G telecom company endure before they saw it as cost prohibitive.

### **Attachments**

1. Ordinance No. 1531
2. Franchise Agreement

### **Recommendation**

Approve the Ordinance extending the Franchise Agreement with Direct Link for a ten year term.

### **Proposed Motion**

"I move to approve Ordinance No. 1531, An Ordinance granting a nonexclusive franchise to Canby Telephone Association (DirectLink) to provide telecommunication services within the City of Canby, and establishing an effective date to come up for a second reading on August 5, 2020."

## **ORDINANCE NO. 1531**

### **AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECT LINK) TO PROVIDE TELECOMMUNICATION SERVICES WITHIN THE CITY OF CANBY, AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", currently provides telecommunications services, more specifically, telephone services within the City of Canby (City); and

**WHEREAS**, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040, No. 1053, No. 1342, and No. 1425 expired on June 7, 2020; and

**WHEREAS**, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise with Grantee to provide telecommunication services to the citizens of Canby; and

**WHEREAS**, the City has evaluated the technical, legal and financial capability of the Grantee to continue to provide such service to its citizens, and believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way; and

**WHEREAS**, the City and Grantee have negotiated an updated nonexclusive Franchise Agreement to provide telecommunication service to customers within the City of Canby, Oregon; and

**WHEREAS**, the City Council finds based on its assessment of community needs that the proposed nonexclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated nonexclusive franchise agreement as requested, consistent with the terms and conditions of Exhibit "A".

### **NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a nonexclusive franchise on the otherwise same terms and conditions in the attached Exhibit "A", except as amended herein for a ten (10) year term from the effective date of June 7, 2020 and at a franchise fee rate of five (5) percent, to provide telecommunication services, specifically, telephone services, to its customers in the City of Canby.



Section 2. This ordinance shall retroactively take effect on June 7, 2020 as directed by the Canby City Council.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 15, 2020, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 5, 2020, commencing at the hour of 7:00 PM in the Council Meeting Chambers located at 222 NW 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Canby, Oregon.

---

Melissa Bisset  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 5<sup>th</sup> day of August, 2020 by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

---

Brian Hodson  
Mayor

ATTEST:

---

Melissa Bisset, CMC  
City Recorder

## EXHIBIT A

### FRANCHISE AGREEMENT BETWEEN THE

CITY OF CANBY, OREGON

AND

CANBY TELEPHONE ASSOCIATION,

AN OREGON COOPERATIVE CORPORATION

This Nonexclusive Franchise Agreement (Agreement) is by and between the City of Canby, Oregon (City) and Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", for the provision of telecommunication services to customers within the City of Canby, Oregon.

### RECITALS

**WHEREAS**, Grantee, currently provides telecommunications services, including specifically, telephone services, within the City; and

**WHEREAS**, the franchise granted to Grantee by previous Ordinances No. 668, No. 845, No. 1040, No. 1053, No. 1342, and No. 1425 expired on June 7, 2020; and

**WHEREAS**, pursuant to Canby Municipal Code (CMC) Chapter 12.35, which governs the issuance of such franchises and provides general terms and conditions applicable thereto, the City desires to enter into a non-exclusive franchise agreement with Grantee to provide telecommunication services to the citizens of Canby; and

**WHEREAS**, the City believes it is in the best interests of the City to promote the offering of competitive telecommunications services, subject to the City's lawful authority to regulate the use of its rights-of-way; and

**WHEREAS**, the City and Grantee desire to leave no doubts as to their respective roles and by entering into this Agreement, in consideration of the premises above stated and the terms, conditions and agreements contained herein, **the Parties do hereby agree as follows:**

Section 1: Grant of Franchise. The City hereby grants to Grantee, a nonexclusive franchise to use the public rights-of-way within the City to provide telecommunications services to customers within the City. Grantee agrees to

comply with all applicable federal, state and local laws, ordinances, rules and regulations, including Canby Municipal Code (CMC) Chapter 12.36, as amended from time to time.

Section 2: Term. The term of this franchise shall be ten (10) years, commencing with the effective date set forth in Section 8. Notwithstanding the foregoing, the Grantee may terminate this franchise after providing six months' written notice to the City upon Grantee's conversion to providing telecommunication services using voice over internet protocol, provided that the Grantee has other lawful authority to maintain the facilities permitted by this franchise in the City's rights-of-way and termination is consistent with the Canby Municipal Code.

Section 3: Franchise Area. The Grantee is authorized by this franchise to use public rights-of-way throughout the City as the City limits may exist now or in the future.

Section 4: Franchise Fee.

- A. As consideration for the use of the City's rights-of-way, Grantee shall remit to the City seven percent (5%) of its "gross revenues" earned from the provision of telecommunications services (as defined in CMC 12.36.030) within the City. "Gross revenues" shall mean "any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitation imposed by federal or state law".
- B. Franchise fee payments shall be made quarterly on or before 45 days after the end of the preceding quarter, continuing through the term of this franchise. Payments not received by the 45<sup>th</sup> day of each quarter shall be assessed interest at the rate of one and one half percent per month until paid.
- C. The City shall have the right to conduct or cause to be conducted an audit of gross revenues as defined in Section 4A above for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of the franchise. Any difference of payment due either the City or Grantee following audit shall be payable within thirty (30) days after written notice to the affected party.

Section 5: Franchise Acceptance, Proof of Insurance . Within thirty (30) days of the passage of this Ordinance by the City Council, the Grantee shall file with the City Administrator (1) a written statement accepting the terms and conditions of this franchise grant substantially in the form set forth in Exhibit A, and (2) proof of the insurance required by CMC 12.36.0B0H. Timely filing of such acceptance and proof

of insurance shall be a condition of this franchise becoming effective.

Section 6: Franchise Nonexclusive. The franchise hereby granted is not exclusive, and shall not be construed as any limitation on the right of the City to grant rights, privileges and authority to other persons or corporations or to itself to make any lawful use of the City's rights-of-way.

Section 7: Changes in Law. This franchise authorizes only the provision of "telecommunications services" as that term is defined in CMC 12.36.030. The provision of other services by Grantee requires separate authority from the City. In the event of changes in applicable laws during the term of this franchise, such that additional services are deemed to be "telecommunications services" and/or additional revenues are eligible for calculation of franchise fees, this Agreement will operate to authorize Grantee's use of the City's rights-of-way for provision of the additional services, provided a corresponding change in the calculation of the franchise fee payable to the City is made.

Section 8: Effective date. This Agreement will become effective as of June 7, 2020.

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first written above.

CITY OF CANBY, OREGON,

A Municipal Corporation

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

Name: Brian Hodson

Title: Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph Lindsay  
City Attorney

City Administrator  
City of Canby  
PO Box 930  
Canby, OR 97013

This is to advise the City of Canby, Oregon that Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1531 passed by the City Council on August 5, 2020 (the "Franchise") granting a Franchise for ten (10) years to Canby Telephone Association (DirectLink). The Grantee agrees to abide by each and every term of the Franchise.

**CANBY TELEPHONE ASSOCIATION (DirectLink)**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# City of Canby

PO Box 930  
222 NE 2nd Ave  
Canby, OR 97013

Phone: 503.266.4021  
Fax: 503.266.7961  
[www.canbyoregon.gov](http://www.canbyoregon.gov)

## City Council Staff Report

DATE: July 15, 2020  
TO: Honorable Mayor Hodson and City Council  
FROM: Joseph A. Lindsay, Canby City Attorney  
ITEM: Ordinance Number 1532: Granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date.

---

### **Background**

In 2005, the City granted Canby Telephone Association a nonexclusive franchise to provide cable television service in the City of Canby. The 2005 Franchise Agreement was for a twelve year period and was extended by resolution for three years in 2017. The City's most recent Franchise Agreement was granted through March 4, 2020. The City and DirectLink would like to extend the term of the Franchise Agreement for a ten year term retroactive to March 4, 2020.

As the tide of upcoming 5G small cell deployments hit Canby, FCC regulations are changing the amounts we can charge for telecommunications. The Internet Freedom Act requires a "level playing field" in how we regulate and charge telecommunications companies. In this spirit, we are offering a 5 percent franchise fee because the FCC has opined in their rulings that 5 percent is probably the most they would make a 5G telecom company endure before they saw it as cost prohibitive.

### **Attachments**

1. Ordinance No. 1532
2. Franchise Agreement

### **Recommendation**

Approve the Ordinance extending the Franchise Agreement with Direct Link for a ten year term.

### **Proposed Motion**

"I move to approve Ordinance No. 1532, An Ordinance granting a Nonexclusive Franchise to Canby Telephone Association (DirectLink) to provide cable television service within the City of Canby; and establishing an effective date to come up for a second reading on August 5, 2020."

## **ORDINANCE NO. 1532**

### **AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION (DIRECTLINK) TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF CANBY, AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Canby Telephone Association, an Oregon Cooperative Corporation, hereinafter referred to as "Grantee", currently provides cable television service within the City of Canby (City); and

**WHEREAS**, the franchise granted to Grantee by Ordinance No. 1169, extended through March 4, 2020 and amended by Resolutions No. 1270 and No. 1349; and

**WHEREAS**, the City has evaluated the technical, legal and financial capability of the Grantee to continue to provide such service to its citizens, and believes it is in the best interests of the City to promote the offering of competitive cable television service, subject to the City's lawful authority to regulate the use of its rights-of-way; and

**WHEREAS**, the City and Grantee have negotiated an updated nonexclusive Franchise Agreement to provide cable television service to customers within the City of Canby, Oregon; and

**WHEREAS**, the City Council finds based on its assessment of community needs that the proposed nonexclusive Franchise Agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the updated nonexclusive franchise agreement as requested, consistent with the terms and conditions of Exhibit "A".

### **NOW, THEREFORE, THE CITY OF CANBY ORDAINS AS FOLLOWS:**

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a nonexclusive franchise on the otherwise same terms and conditions in the attached Exhibit "A", except as amended herein for a ten (10) year term from the effective date of March 4, 2020 and establishing a new Franchise Fee rate of five (5) percent to operate and maintain a cable television system in the City of Canby.

Section 2. This ordinance shall retroactively take effect on March 4, 2020 as directed by the Canby City Council.

Section 3. The grant of franchise contained herein is conditioned upon the filing of an acceptance in substantially the form contained in Exhibit "B".

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, July 15, 2020, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, August 5, 2020, commencing at the hour of 7:00 PM in the Council Meeting Chambers located at 222 NW 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Canby, Oregon.

---

Melissa Bisset  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 5<sup>th</sup> day of August, 2020 by the following vote:

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

---

Brian Hodson  
Mayor

ATTEST:

---

Melissa Bisset, CMC  
City Recorder



**EXHIBIT A**

**2005 Franchise Agreement, 2011 Amendment and 2017 Extension**

## **ORDINANCE NO. 1169**

### **AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CANBY TELEPHONE ASSOCIATION TO PROVIDE CABLE TELEVISION SERVICE WITHIN THE CITY OF CANBY**

**WHEREAS**, the City received a request from Canby Telephone Association of Canby, Oregon for a non-exclusive franchise to provide cable television service to customers within the City of Canby, Oregon; and

**WHEREAS**, the City has evaluated the technical, legal and financial capability of the proposed grantee to operate the cable television system; and

**WHEREAS**, the City Council finds based on its assessment of community needs that the proposed non-exclusive franchise agreement, attached hereto as Exhibit "A", and by this reference incorporated herein, meets those community needs and that it should therefore grant the franchise as requested, consistent with the terms and conditions of Exhibit "A"; now therefore

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

Section 1. The City hereby grants to Canby Telephone Association of Canby, Oregon, a non-exclusive franchise on the terms and conditions in the attached Exhibit "A", for a period of twelve (12) years from the effective date of this ordinance, to operate and maintain a cable television system in the City of Canby.

Section 2. The grant of franchise contained herein is conditioned upon the filing of an acceptance in substantially the form contained in Exhibit "B" to the attached franchise as provided in Section 3.7 of the franchise, and upon the filing of all required financial and insurance documentation as required by Section 8 of the franchise.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, January 19, 2005 and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular meeting thereof on Wednesday, February 2, 2005, commencing at the hour of 7:30 P.M. in the Council Meeting Chambers at Canby City Hall in Canby, Oregon.

Kimberly Scheafer  
Kimberly Scheafer  
City Recorder - Pro Tem

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on February 2, 2005, by the following vote:

YEAS 6

NAYS 0

Melody Thompson  
Melody Thompson, Mayor

ATTEST: Kimberly Scheafer  
Kimberly Scheafer, City Recorder - Pro Tem

**CABLE TELEVISION  
FRANCHISE AGREEMENT**  
between  
**CANBY, OREGON**  
and  
**CANBY TELEPHONE ASSOCIATION**  
  
**FEBRUARY, 2005**

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## 1. PURPOSE AND INTENT.

- 1.1 The City of Canby, Oregon (hereafter Grantor) is authorized to and by this Franchise Agreement does grant to Canby Telephone Association (hereafter Grantee) a non-exclusive 12-year Franchise, revocable as provided herein, to offer cable services over the Grantee's Telecommunications System in the City.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.
- 1.3 An additional purpose of the Franchise Agreement is to explicitly recognize and acknowledge that Grantor has granted to Grantee a prior franchise under Ordinance Number 1053 to provide Telecommunications Services. The Franchise under Ordinance Number 1053 authorizes Grantee to use Grantor's streets and public ways. Under this Franchise, Grantor recognizes that Grantee will offer Cable Services to its customers over Grantee's existing Telecommunications System. It is the intent of the parties that if this Franchise Agreement should terminate at any point, Grantee will continue to operate the Telecommunications System provided a Telecommunications Franchise Agreement is still in effect between Grantor and Grantee.

## 2. DEFINITIONS.

For the purposes of this Franchise Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this Franchise which are not defined hereunder but are defined in the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (Cable Act) shall have the meaning specified in the Cable Act definition.

- a. "Access" or "Community Access" or "Public, Educational and Government (PEG) Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.
- b. "Access Channel" or "Public, Educational or Government Access (PEG) Channel" means any channel or portion of a channel utilized for non-commercial programming, where any member of the general public or any organization may be a programmer, without charge by the Grantee, on a non-discriminatory basis.

"Educational Access Channel" means any channel or portion of a channel available for educational programming by individuals or institutions.

"Government Access Channel" means any channel or portion of a channel available for programming by government agencies.

"Public Access Channel" means any channel or portion of a channel where any member of the general public may be a programmer on a non-discriminatory basis.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities and equipment.

- c. "Addressability" means the capability of the cable communications system to provide programming to specific subscribers on a per program, program package, and premium channel basis without the need for a major system upgrade to activate the capability. An upgrade that requires only the installation of a piece or pieces of equipment between the point at which a subscriber's drop line connects to the system and the point at which the drop connects to the subscriber's television receiver shall not be considered a major system upgrade.
- d. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- e. "Availability of Service" means the ability of a subscriber to obtain a service within 60 days by requesting the service and paying applicable installation and/or usage charges.
- f. "Basic Cable Service" means that tier of cable service which is required as a condition of access to all other video services and which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels. Basic Cable Service includes video service over Grantee's Telecommunications System.
- g. "Broadcast Signal" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system off-the-air, whether by microwave link, by satellite receiver, or by other means.



- h. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
- i. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.
- j. "Cable Service" means a) the one-way transmission to subscribers of video programming or other programming service; and b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service covered by the Cable Act.
- k. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act. In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Telecommunications System constructed and operated by the Grantee in Canby under the Franchise granted to Grantee under Ordinance Number 1053.
- l. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering video signal whether in an analog or digital or digital format. This definition does not restrict the use of any channel to the transmission of analog video signals.
- m. "City" means the City of Canby, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
- n. "City Council" means the Council of the City of Canby.
- o. "Commercial Subscriber" means a subscriber receiving cable services in a business or other commercial enterprise, where the services are to be used primarily in conjunction with the enterprise and the rates for services are individually negotiated with the subscriber.
- p. "Converter" means an electronic device for changing the frequency of a television signal. A set-top Converter changes the frequency of the mid-band, superband, or hyperband signals to a suitable channel which the television receiver is able to tune.
- q. "FCC" means the Federal Communications Commission.

- r. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. Unless otherwise specified, "Franchise" shall designate this agreement, including all referenced material, adopted in the appropriate manner by the Grantor.
- s. "Franchise Area" means all territory within of the City of Canby, at present or in the future.
- t. "Grantee" or "Franchisee" means Canby Telephone Association, an Oregon Cooperative Corporation, and the lawful successors, transferees, or assignees thereof.
- u. "Grantor" means Canby, a municipal corporation in the State of Oregon.
- v. "Gross Receipts" means gross revenues less any bad debts related to the operation of the System authorized by this Franchise.
- w. "Gross Revenues" means all amounts received by the Grantee, or any entity that constitutes a "Cable Operator" under the Cable Act definition, in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. "Gross Revenues" shall be limited to all amounts derived from Grantee's provision of video services over the Telecommunications System. All existing services provided by Grantee over the Telecommunications System shall be excluded from the definition of Gross Revenues, as well as any future non-cable services provided over the Telecommunications System to the extent such services are not cable services. Gross Revenues shall include all Cable Services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home shopping networks), installations, leasing, renting or selling of system capacity, and all other revenues derived from the operation of Grantee's Cable System to provide cable services, regardless of whether initially recorded to another entity and however characterized. Gross Revenues shall not include revenue derived from the Grantee's operation as a telecommunications provider or any other non-cable service related activities.  
  
"Gross Revenues" shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of Grantee's Cable System to provide cable services within the Franchise Area, including amounts for Cable services, premium services, advertising, commissions on sales of goods or services by third parties utilizing the Cable System (e.g., home

shopping networks), installations, leasing, renting, or selling of system capacity and all other revenues derived from the operation of Grantee's Cable System. Gross Revenues shall not include revenues derived from Grantee's operation as a telecommunications provider or any other information services activities, nor transport through the Cable System to another service provider subject to separate franchising authority.

Any sales, excise or other taxes or fees levied directly upon subscribers by a local, state or federal government and collected by the Grantee for direct pass-through to such government shall not be included in "Gross Revenues".

Subject to the limits and restrictions of federal and state law copyright fees paid by the Grantee shall be excluded from Gross Revenues.

"Gross Revenues," however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute "Gross Revenues" of both the Grantee and the Affiliate, shall be counted only once for purposes of determining "Gross Revenues."

Revenues derived from an institutional network shall not be considered "Gross Revenues" for purposes of this Franchise, but shall be the subject of future and separate negotiations in the event an institutional network is built and/or operated by Grantee, subject to state and federal law.

The definition of "Gross Revenues" includes those revenues collected as franchise fees and paid to a local government.

- x. "Institutional Service" means video, audio, data and other services provided to institutional subscribers on an individual application, private channel basis. These services may include, but are not limited to, two-way video, audio or digital signals among institutions, or between institutions and residential subscribers.
- y. "Institutional Network" means that part of a cable communications network designed principally for the provision of non-entertainment, interactive services to schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.
- z. "Institutional Subscriber" means a place of business, public agency, school or non-profit corporation receiving institutional services on the institutional subscriber network.

- aa. "Interactive Services" means services provided to subscribers where the subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under the subscriber's control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose. Any provision of interactive services by adding capabilities to the Telecommunications System shall not have the effect of permitting Grantor to purchase Grantee's Telecommunications System as otherwise permitted to do under Section 547 of the Cable Act (47 USC § 627).
- bb. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- cc. "Local Origination Channel" means any channel or portion of a channel where the Grantee is the only designated programmer, or has delegated programming to a third party, and which is used to provide television programs to subscribers.
- dd. "Monitoring" means observing a one way communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- ee. "Non-Broadcast Signal" means a signal that is transmitted by the cable communications system and that is not involved in an over-the-air broadcast transmission path.
- ff. "Open Channel" means any channel that can be received by all subscribers having cable-ready television sets, without the necessity of special descrambling equipment.
- gg. "Pay Channel" or "Premium Channel" means a channel on which television signals are delivered to subscribers for a special fee or charge over and above the regular charges for standard subscriber service, on a per program, per channel, or other subscription basis.
- hh. "Person" means any corporation, partnership, proprietorship, individual, organization, or other entity doing business in the State of Oregon, or any natural person.
- ii. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to subscribers, by means of the cable communications system.
- jj. "Programming" means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and

includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.

- kk. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, magnetic and laser disk files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.
- ll. "Resident" means any natural person residing within the Franchise Area.
- mm. "Residential Service" means services delivered on the residential subscriber network.
- nn. "Residential Subscriber" means a subscriber who receives services on the residential subscriber network.
- oo. "Residential Network" means a cable communications network designed principally for the delivery of entertainment, community access, or interactive services to individual dwelling units.
- pp. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Oregon and, where required, from other authorized accrediting agencies, and which serve a minimum of twenty (20) students.
- qq. "Section" means any section, subsection, or provision of this Franchise Agreement.
- rr. "Streets and Public Ways" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- ss. "Subscriber" means any person who elects to subscribe to, for any purpose, a service provided by the Grantee by means of, or in connection with, the cable communications system whether or not a fee is paid for such service.

- tt. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- uu. "Telecommunications System" means the infrastructure categorized in the Code of Federal Regulations, Part 32, including all wires, cables, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, terminals, switches, hubs, routers, distribution equipment, power supplies, and any other property and equipment as are necessary for the Grantee to construct, operate, and maintain in order to provide Telecommunications Services under Ordinance Number 1053.
- vv. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year".

### **3. GRANT OF FRANCHISE.**

#### **3.1 Grant.**

Grantor hereby grants to the Grantee a non-exclusive, revocable Franchise for a 12-year period from and after the effective date hereof, revocable as provided herein, to construct, operate and maintain a cable communications system within the Franchise Area. This Franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Telecommunications System as required by the provisions of this Franchise Agreement.

This Franchise is subject to the laws of the United States and the State of Oregon, and to the general ordinances of the Grantor affecting matters of general City concern and not merely existing contractual rights of Grantee, whether now existing or hereinafter enacted. In particular this Franchise supersedes any of Grantor's Ordinances in any matter in which the Franchise and the Ordinance are in conflict. The Grantor shall make a good faith effort to notify the Grantee of any City proceedings which would substantially affect the Grantee's operations, and shall upon request supply the Grantee with copies of any City laws or regulations affecting Grantee's operations.

Grantee promises and guarantees as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

### **3.2 Use of Streets and Public Ways.**

For the purpose of constructing, operating and maintaining a cable communications system in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the cable communications system. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility providers and companies, pay applicable fees, and receive approval as necessary before proceeding. Nothing in this section shall relieve the Grantor of the obligations of Section 4.5 regarding the trimming of trees and other vegetation.

Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

### **3.3 Duration and Effective Date of Franchise/Franchise Review.**

Except as otherwise provided herein for revocation, the term of this Franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be 12 years from the effective date of this agreement, at which time the Franchise shall expire and be of no force and effect. The effective date of the Franchise shall be March 4, 2005, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.7 herein, in which event this Franchise shall be null and void.

During the six-month period beginning seven (7) years after the effective date of this Franchise, the Grantor and Grantee shall undertake a review of Grantee's system and performance to date, in order to determine whether the Franchise should continue in effect for the full twelve (12) year term or should terminate early at the end of nine (9) years from the effective date. The Grantor may terminate the Franchise early if the Grantee has been guilty of a pattern of material violations of the Franchise; refuses by the end of the six-month period to make provision for the effective resolution of any evident patterns of customer service problems unanticipated in provisions of the Franchise; or, if requested by ordinance of the Grantor's City Council, declines to agree within 180 days thereafter to complete, by the end of the

ninth (9<sup>th</sup>) year of the Franchise, an upgrade or rebuild of the system such that the system as upgraded or rebuilt will be reflective of:

- (a) The non-experimental state of the art of cable communications systems, in technical capacity and proven performance; and
- (b) general parity of overall cable service with the most advanced non-experimental cable service provided in the Portland metropolitan area.

Any proposal by the Grantor to terminate the Franchise early shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the Franchise early as provided herein, the Franchise shall continue for its full twelve (12) year term.

### **3.4 Franchise Not Exclusive.**

The Franchise granted herein is not exclusive. This Franchise shall not be construed as any limitation upon the right of the Grantor, through its proper officers, to grant to other persons or corporations, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways or public places by franchise, permit or otherwise, subject to the provisions of Section 13.11 herein.

### **3.5 Franchise Non-Transferable.**

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer, and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry, and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed



transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within thirty (30) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

The requirements of this section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a cable communications system of the Grantee or any Affiliate of the Grantee. However, the cable communications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is cable system operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an Affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

### **3.6 Change in Control.**

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee or of Grantee's interest in the cable franchised system. There shall be no change of control of the cable franchised system without prior approval of the Grantor. Such change in control

shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the Franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change, and shall request approval of the change by the Grantor. The Grantor shall have one hundred and twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance with FCC regulations, as well as all information required in writing by the Grantor prior to or subsequent to the request for approval. If the Grantor fails to render a final decision on the request within said one hundred and twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry. Consent to the change of control shall not be unreasonably withheld.

**3.7 Franchise Acceptance.**

- a. The Grantee, within sixty (60) days after the tender by the Grantor to Grantee of the Franchise Agreement adopted by the Grantor shall file in the office of the City Manager a written acceptance executed by Grantee, in the form attached hereto as Exhibit B.

In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

**4. CONSTRUCTION AND SERVICE REQUIREMENTS.**

**4.1 General.**

The Grantee shall maintain on its cable system a minimum practical capacity of one hundred (100) activated Channels, defined under the Cable Act of 1992 as those channels engineered at the headend of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided. In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes.

When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts. While Grantee will have the rights and obligations under Section 4 of this Franchise, it is not anticipated that any construction will be required under this Franchise for the Grantee to meet its obligations to provide services under this Franchise.

#### **4.2 Right of Inspection of Construction.**

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with construction or installation standards of this Franchise Agreement and other pertinent provisions of law.

#### **4.3 Provision of Residential Service.**

- a. In General. It is the City's general policy that all potential Residential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this section, Grantee shall provide Cable Service within 60 days of a request by any Person within its Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by the Grantee, receipt of a written request by the Grantee or receipt by the Grantee of a verified oral request.

Except as otherwise provided in Section 10.1(e), Grantee shall provide such service:

- i. At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an outside wall for Residential Subscribers and a 125 foot drop for Commercial Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by the Grantee and provided in writing to the City;
- ii. At non-discriminatory monthly rates for Residential Subscribers; and

- iii. Notwithstanding Section 4.3(a), Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers, as well as different, nondiscriminatory monthly rates for classes of Commercial Subscribers. For the purposes of Section 4.3.a, "Commercial Subscribers" means any Subscribers other than Residential Subscribers.
- b. Newly Annexed Areas. As areas are annexed to the City, Grantee shall provide Service Availability to all residences within the annexed area on the same terms as provided for in Section 4.3.a unless otherwise authorized by the City.
- c. Transferred Franchising Jurisdiction. In the event that cable franchising jurisdiction is transferred to the City from another jurisdiction, then the terms of this Franchise shall apply within the area in which the transfer of cable franchising jurisdiction applies, so long as the application of this Franchise in that area is acknowledged in the governmental actions which implement the transfer of franchising authority.
- d. New Subdivisions. In new subdivisions, service will be made available no more than 60 days from first occupancy or from the date of completion of final construction grading, whichever comes first.

#### **4.4 Erection of Poles.**

If additional poles in an existing aerial utility system route are required, Grantee shall negotiate with the utility company or provider for the installation of the needed poles.

Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor. The Grantee shall negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules and regulations of the Grantor.

#### **4.5 Trimming of Trees or other Vegetation.**

In the conduct of its business, it may be necessary for Grantee to trim trees or other vegetation in order to provide space for its facilities. Tree or vegetation trimming shall be done only in accordance with the ordinances and other rules and regulations of Grantor and if the tree or vegetation is located on private property, with the permission of the owner of the property on which the tree or vegetation stands. Nothing contained in this Franchise Agreement shall be deemed to empower or

authorize Grantee to cut, trim or otherwise disturb any trees or other vegetation, whether ornamental or otherwise.

#### **4.6 Repair and Restoration of Streets and Public Ways.**

Whenever the Grantee shall disturb the surface or otherwise damage any street, alley, public highway, or other public way for any purpose mentioned herein, it shall repair and restore the same to the condition in which it was prior to the opening or other damage thereof. When any opening is made by the Grantee in any hard surface pavement, in any street, alley, public highway or other way, the Grantee shall promptly refill the opening and restore the pavement to its original condition. The Grantor may refill and/or repave in case of neglect of the Grantee. The cost thereof, including the cost of inspection, supervision and administration shall be paid by the Grantee. All excavations made by the Grantee in the streets, alleys, public highways or other ways shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with the rules, regulations and ordinances of Grantor as now or hereafter in effect.

#### **4.7 Construction Codes.**

The Grantee shall strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the removal of Grantee's lines, cables and appurtenances from the property in question.

#### **4.8 Reservations of Street Rights.**

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, or laying down, repairing or removing water mains or maintaining, repairing, constructing or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on reasonable notice from the Grantor all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct

such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

**4.9 Street Vacation and Abandonment.**

In the event any street, alley, public highway or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this Franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect or refusal of the Grantee, to repair, restore, or reconstruct such street, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

**4.10 Movement of Facilities.**

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee.

Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee.

**4.11 Easements.**

When Grantee secures easements in its own name, as in the case of construction in multiple dwelling units, it shall use a standard easement form that has been provided to the Grantor upon request or, if not a standard form, shall provide a copy of the easement document to the Grantor, upon request.

**4.12 Undergrounding.**

- a. Cable must be installed underground where:
  - i. all existing utilities are placed underground,

- ii. statute, ordinance, policy or other regulation of Grantor requires utilities to be placed underground,
  - iii. overhead utility lines are moved underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise),
  - iv. Grantee is unable to get pole clearance,
  - v. underground easements are obtained from developers of new residential areas, or
  - vi. utilities are overhead but residents prefer underground (service to be provided at cost to resident).
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals to subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

#### **4.13 As-Builts.**

Grantee shall maintain strand map drawings or the functional equivalent of the Telecommunications System, and make them available to the Grantor for inspection upon request. Said drawings or their functional equivalent shall be updated as changes occur in the Telecommunications System. The Grantee shall provide the Grantor, on request, a copy of as-builts or CAD maps showing the location and nature of Grantee's facilities in the streets and public ways.

#### **4.14 Emergency.**

In the event of an emergency, or when the cable system creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable system without prior notice.

## **5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS.**

### **5.1 System Configuration.**

#### **a. Initial Configuration.**

The communications system shall consist, at a minimum, of a residential network with addressability in its initial configuration.

#### **b. System upgrade.**

Grantee has determined that an appropriate design plan for System upgrade in the Franchise Area will include the following requirements, which Grantee will provide and construct:

- i.** The upgraded Cable System will be equivalent to or comparable to the most advanced non-experimental state of the art cable systems provided in the Portland metropolitan area.
- ii.** The upgraded Cable System shall be two-way capable and able to support two-way high speed Internet Access via the Cable System.
- c.** As designed, upgraded and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet, or exceed FCC technical quality standards regardless of the particular manner in which the signal is transmitted.

### **5.2 Channel Capacity.**

The residential cable system shall be installed with a minimum channel capacity of one hundred (100) Channels outbound.

### **5.3 Satellite Earth Stations.**

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites that carry cable television services accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.



#### **5.4 Interconnection.**

- a. Grantee shall continue without limitation all Interconnections in effect on the effective date of this Franchise, including the interconnections listed in Exhibit C.
- b. Initially, Grantee shall Interconnect the Cable System with all other major, contiguous cable systems in Clackamas County, specifically including but not limited to Oregon City and Clackamas County and specifically Clackamas Community College, but only to the extent that this is technically feasible or practical given the differences between a Telecommunications System and a traditional Cable System. The system shall provide the capability to transmit Upstream Channels and Downstream Channels, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Local Origination Programming produced by Grantee and other major, contiguous cable systems in Clackamas County; selected Access Programming carried on those cable systems; and the exchange of selected Institutional Network video and data communications applications by local and state public and nonprofit organizations, including forward and reverse applications between and among the Grantee and contiguous cable systems as shall in the future have significant institutional network capacity or services determined by the Grantor through an ascertainment of community needs and interests to warrant interconnection.
- c. Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor for carriage of signals for Institutional Network and PEG access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection requires cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing equipment needed, and performing construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore Grantor shall make every reasonable effort to

assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's interconnection obligations hereunder shall be subject to such cooperation being obtained.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected Channels.

- d. Grantee's interconnect obligation is conditioned upon the consent of the cable operators in the affected neighboring jurisdictions.

#### **5.5 Emergency Alert Capability.**

- a. In accordance with the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those authorities are identified and defined within FCC Reg Section 11.51 and other applicable state and local laws.
- b. The Grantor shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall indemnify and hold harmless the Grantee, its employees, officers and assigns from any claims arising from use of the cable system or the EAS equipment by the Grantor, its employees, authorized representatives, or designees, including, but not limited to, reasonable attorneys' fees. Additionally, the Grantor shall indemnify, save and hold harmless the Grantee against damage, loss or inappropriate use of the equipment and shall agree to use due care and to take reasonable precautions against such damage, loss or inappropriate use of the EAS equipment or other cable system equipment which may be used during a declared emergency.

#### **5.6 Standby Power.**

Grantee shall provide standby power generating capacity at the cable communications system control center. Grantee shall maintain standby power system supplies, rated at least at four (4) hours duration at each node or remote location. In addition, Grantee shall have in place and have filed with the Grantor throughout the Franchise term a

plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two hours.

Standby power to those portions of the Cable System serving city-owned facilities will be provided within one hour of notice from the City to Grantee of the need for such standby power.

**5.7 Parental Control Lock.**

Grantee shall provide subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device that permits inhibiting the viewing of any Channel. Any charge for such device shall be consistent with applicable rate regulations.

**5.8 Technical Standards.**

The Grantee shall install all aerial and underground cables and wires in a manner consistent with City requirements and in compliance with all applicable laws, ordinances, and safety requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electric Code, National Electric Safety Code, National Cable Television Association Standards of Good Engineering Practices. The Cable System shall meet or exceed all applicable technical and performance standards of the Federal Communications Commission or its successor agency, and any and all other applicable technical and performance standards.

**5.9 Performance Testing.**

Grantee shall perform all system tests required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise.

Written records of all system test results performed by or for the Grantee shall be maintained, and shall be available for Grantor inspection upon request.

**6. SERVICES AND PROGRAMMING**

**6.1 Programming Categories.**

The Grantee shall provide video programming services in at least the following broad categories:

- a. News & Information

- b. Sports
- c. General Entertainment
- d. Arts, Culture, Performing Arts
- e. Children / Family
- f. Science
- g. Travel Information
- h. Weather Information
- i. Governmental and Educational Programming
- j. Movies
- k. Religious Programming
- l. Foreign language / Ethnic Programming

The Grantor acknowledges that identification of these broad categories of programming in no way infers regulatory authority by the Grantor over specific programming services or networks which may be carried on the Cable Communications System.

#### **6.2 Changes in Video Programming Services.**

Subject to the provisions of the Cable Act, no category of services as referred to in section 6.1 may be deleted, or so limited as effectively to be deleted by the Grantee without Grantor approval, which approval shall not be unreasonably withheld. In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories described in Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

#### **6.3 Interactive Residential Services.**

The Grantee shall make Interactive Services available to residential subscribers not later than on or about the date on which any other cable system in the Portland

metropolitan area provides interactive services on a non-experimental basis subject to the limitations of paragraph 2(cc) above.

**6.4 Leased Channel Service.**

The Grantee shall offer leased Channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

**6.5 Community Access and Local Programming.**

**a. Designated PEG Access Providers.**

- i. The City may designate Public, Educational and Government "PEG" Access Providers, including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the City, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities. The Grantor or its designee may formulate rules for the operation of the Public Access Channel, consistent with this Franchise; such rules shall not be designed to control the content of public access programming.
- ii. Grantee shall cooperate with Designated PEG Access providers in the use of the Cable System and Access Facilities for the provision of PEG Access. Grantee shall enter into such operating agreements with designated PEG Access providers as may be necessary to facilitate and coordinate the provision of PEG Access, provided that all such operating agreements shall not be inconsistent with the terms of this Franchise.
- iii. Except as provided in this Franchise, the City shall allocate Access Resources to Designated Access Providers only. Grantee shall cooperate with the City in such allocations, in such manner as the City shall direct.
- iv. For the purpose of Section 6.5:
  1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by PEG Access; and

2. "Access Resources" means all operating support and other financial means by which PEG Access is exercised, including, but not limited to, Access Capital Cost support under Section 6.5.

v. The requirements of this Section 6.5 shall be subject to the Franchise Review provided for in Section 13.12.

**b. Channel Capacity.**

i. Downstream Channels. Grantee shall provide 3 Downstream Standard Video Channels for distribution of PEG Access programming to all Residential Subscribers.

ii. Closed Channels. Following the system upgrade in this agreement, Grantee shall provide operating Closed Channels sufficient to enable character-generated, prerecorded and live cablecasts from the Hardwired Programming Origination Points as described in Exhibit A and Access centers, and to and from all Interconnection points on the Cable System, and to enable the distribution of PEG Access to Residential Subscribers on Access Channels and to all Interconnection points on the Cable System. For the purposes of this Section, "Closed Channel" means an upstream Channel which is not available for Residential Subscribers.

**c. Support for Access Costs.**

i. Grantee Financial Support

Beginning with the effective date of this Agreement, and continuing throughout its term, Grantee shall provide four and one half percent (4½%) of its Gross Revenues earned providing cable services within the City as support for PEG access. This contribution shall be payable to Grantor or its designated access provider after notice to Grantee's Subscribers of the contribution. The content of such notice shall be provided to the Grantor for review.

Grantee shall make such payments monthly. Each payment shall be due and payable no later than thirty (30) days after the end of each month. The Grantor recognizes that these commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Agreement, and

that the Grantee has the right to include these costs on the bills of cable customers.

ii. **Studio Facility**

Grantee shall help financially support the studio facility by paying \$1,600 per month to Grantor towards the costs of providing a studio facility. In addition, Grantee recognizes that this support is in addition to support provided by the incumbent cable operator in the Franchise Area. In the event of the incumbent's abandonment of the system or failure by the incumbent or a successor to provide Cable Service, Grantee agrees to assume the obligations currently being funded by the incumbent cable operator within thirty (30) days of written notice from Grantor.

iii. **PEG Access Support Not Franchise Fees**

Grantee agrees that although the sum of Franchise fees and the payments set forth in this section may total more than five percent (5%) of Grantee's Gross Revenue in any 12-month period, the additional commitments are not to be offset or otherwise credited in any way against any Franchise fee payments due under this Franchise.

d. **Hardwired Origination Points.**

Grantor shall install and maintain a hardwired programming origination point for each facility listed in Exhibit A, to the extent such origination points do not already exist.

e. **Cable Service to Public Facilities.**

The Grantee, upon request, shall provide without charge, a Standard Installation and one (1) outlet of Basic Cable, expanded Basic service, and Internet access services to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are within the Service Area and passed by its Cable System; provided, however, those buildings or portions of buildings housing or occupied by prison/jail populations shall be excluded. Initially, such installations shall be provided to the facilities shown on Exhibit D within sixty (60) days of Grantee's commercial launch of Cable Services. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlet shall not be located in

areas accessible to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation.

**f. Access Interconnections.**

- i. The Grantee shall install and maintain all access interconnections of PEG access channels in accord with the requirements of Section 5.4.
- ii. In addition, Grantee shall, in a timely manner considering the technical and operational issues involved, cooperate with the Grantor, other cable franchisees, and Designated Access Providers to establish an interconnection point at Clackamas Community College, to allow for the receipt and delivery of programming from participating access centers to the extent technically feasible or practical given the technical differences between a Telecommunications System and a traditional Cable System. Grantor shall coordinate with the Designated Access Provider for distribution on the existing access channel.

**g. Change in Technology.**

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, to ensure that the capabilities of Access Providers or Access Programmers are not diminished or adversely affected by such change.

**h. Technical Quality.**

- i. Grantee shall maintain all Upstream and Downstream Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability required by this Franchise and all



other applicable laws, rules and regulations for Residential Subscriber Channels.

- ii. Grantee shall have no responsibility for the technical production quality of the Access Programming distributed on the Access Channels.
- iii. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

## **7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS**

### **7.1 Intent.**

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. Grantor may delegate all or a part of its administrative and regulatory authority under this Franchise to an entity designated by the Grantor.

### **7.2 Areas of Regulation and Administration.**

The Grantor (or its designee) has authority for regulation in the following areas:

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility.
- b. Coordination of the operation of public, government, and educational access channels.
- c. Interfacing the Grantee's technical, programming and operational assistance and support to public agency users, such as City departments, schools and health care institutions;
- d. Formulating and recommending long-range cable communications policy for the Franchise Area;
- e. Disbursing and utilizing Franchise revenues paid to the Grantor.
- f. Regulating rates, to the extent permitted by law.
- g. Customer service, to the extent permitted by law.

- h. Planning and facilitating development of public uses of the cable system on the residential and institutional networks, both within the City and through interconnection with adjacent systems;

### **7.3 Rate regulation.**

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges to the full extent authorized by applicable federal, state and local law, as these may change during the period of the Franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges to all subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this Franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns.
- c. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time. It is not intended that this Section expand or diminish the rights of the Grantor in relation to regulation of rates and charges under those provisions of the Act, and any provision of this Section or of any other provision of this Franchise that purports to expand or diminish such rights shall be deemed superseded by those provisions of the Act.

### **7.4 Remedies for Franchise Violations.**

- a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day or per incident, not to exceed a total of \$50,000, in the event Grantee violates any other material provision of this Franchise Agreement, subject to Section 7.4(c), below.
- b. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
  - ii. Cure the violation, or;
  - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.
- c. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (f) of this section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.
- d. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor shall set a hearing to determine what penalties, if any, shall be applied.

- e. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (b)(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.
- f. In the case of any hearing pursuant to this section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee may be provided and opportunity to be heard and to present evidence in its defense. The Grantor may also hear any other Person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.
- g. The penalties set forth in this section of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
  - i. Whether the violation was unintentional;
  - ii. The nature of any harm which resulted;
  - iii. Whether there is a history of overall compliance, and/or;
  - iv. Whether the violation was voluntarily disclosed, admitted or cured.
- h. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
  - i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
  - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
  - iii. Revoke this Agreement, and/or
  - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor, and shall be reviewable only consistent with the dispute resolution provisions of this Agreement.

- j. Notwithstanding other language to the contrary in this agreement:
  - i. In cases where either intermittent or repeated violations of any single franchise standard occur, Grantor may in its discretion give one initial thirty (30) day notice and opportunity to cure and no subsequent notices of each individual violation; and
  - ii. Grantor may in its sole discretion establish lesser or no cure periods for violations of Section 12 (Reports and Records) or Section 5 (System Upgrade).

#### **7.5 Remedies Not Exclusive.**

The Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

#### **7.6 Consumer Protection Standards.**

The following customer service and consumer protection standards shall apply. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

##### **a. Customer Service and Telephone Responsiveness.**

- i. The Grantee shall maintain an office within the City of Canby. The office must be adequately staffed and able to respond to subscribers and the public not less than 50 hours per week, consistent with federal law.
- ii. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- iii. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational 24 hours a day, including weekends and holidays.

iv. The Grantee shall maintain:

1. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers. Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.
2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

b. **Service and Repair Calls.**

- i. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be acknowledged by the Grantee within 24 hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within 24 hours under normal circumstances. All other repairs should be completed within 72 hours under normal circumstances.
- ii. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request the Grantee shall offer either a specific appointment time or else a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, or, during daylight savings time, after 5:00 p.m. (repair only).

The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

- iii. As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
- iv. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this section, shall mean those that are located up to 125 feet from the existing distribution system.

**c. Disconnection.**

- i. The Grantee may disconnect a subscriber if:
  - 1. At least 30 days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and
  - 2. The Grantee has provided at least five (5) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.
- ii. Regardless of subsection 1. hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.
- iii. The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, at least 95% of the time measured on a quarterly basis, within thirty working days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any

undisputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

**d. Credits Upon Outage.**

Except for planned outages where subscribers are provided reasonable notification in advance, power outages, acts of God and vehicular damage to facilities, upon a subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the subscriber's account for any period of four hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

**e. Downgrade Charges.**

Grantee may impose Downgrade Charges only if:

- i. The Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and
- ii. The Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

**f. Billing Information Required.**

The Grantee bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefor. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

**g. Information to Subscribers.**

- i. Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:
  1. The equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
  2. The amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;



3. The Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
  4. The toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
  5. The company's practices and procedures for protecting against invasions of subscriber privacy; and
  6. The notice and referral information, as set forth in subsection 2. hereof.
- ii. Notice to Subscribers.

1. The Grantee shall inform the Grantor and subscribers within 30 days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.
2. All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.
3. The Grantee shall, upon request by the Grantor and no more often than annually, send written notice approved by the Grantor to all subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement. The Grantor or its designee shall bear the cost of the printing and production of such notice; the Grantee shall be responsible for inserting and mailing out the notice.

iii. Written Complaint Acknowledgment.

Within ten (10) days following receipt of a formal written complaint as defined in subsection (h)(ii) below from a subscriber which is mailed to and received at the Grantee's primary business address, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint and of any action the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the City, such as the FCC.

**h. Complaint Resolution.**

- i. The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not attempted to reasonably settle the complaint.
- ii. For purposes of this section, a "complaint" is a grievance related to the service of the cable communications system within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

**8. GENERAL FINANCIAL AND INSURANCE PROVISIONS.**

**8.1 Compensation.**

- a. **Franchise Fee.** As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a cable communications system within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of the Gross Revenues generated in any manner through the operation of the cable system to provide cable services as defined in this Franchise. In the event any law or valid rule or regulation applicable to this Franchise limits franchise fees below the five percent (5%) of Gross Receipts required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to

allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

Any bad debts or other accrued amounts deducted from Gross Revenues in the calculation of Gross Receipts shall be included in Gross Receipts at such time as they are actually collected.

The Grantee shall at all times during the term of this Franchise maintain on file with the City Manager an up-to-date list of all entities receiving Gross Revenues as such revenues are defined in this Franchise.

In the event the obligation of Grantee to compensate Grantor through franchise fees is lawfully suspended or eliminated, in whole or in part, then the Grantee shall pay to Grantor compensation equivalent to the compensation paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

**b. Bundling.**

If Grantee's subscribers are offered a pricing discount for Cable Services, information services, or Telecommunications Services offered over Grantee's Telecommunications System where the Subscriber requests and receives more than one of these services, then the calculation of the discount of Gross Revenues for Cable Services shall be applied in a reasonably proportionate manner to Cable Services and other services. The existence and amount of a discount shall be determined on the basis of the sum of the lowest generally available standalone rates for each of the services. This apportionment of revenues shall apply only for the purpose of calculation of franchise fees payable to Grantor pursuant to the franchise agreement.

**c. Payment of Franchise Fees.**

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the Grantor to verify the amounts of franchise fee payments.

- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.
- iii. In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Oregon.
- iv. Payment of the franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be imposed by Grantor.

## **8.2 Faithful Performance Bond.**

- a. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand Dollars (\$100,000.00), or the deposit of \$100,000 in a restricted account satisfactory to the City, conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by the Grantee throughout the term of this Franchise.
- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a) and unless the City Council specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:
  - i. The remaining term of this Franchise; or
  - ii. If required by the City, the removal of all of Grantee's system installed in the City's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days written notice first being given to the City. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with the City a duplicate copy of the bond along with

written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without 30 days prior written notice to the City.

- d. In a form approved by the City, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

### **8.3 Damages and Defense.**

- a. The Grantee shall defend, indemnify and hold harmless Canby, and its officers, agents, and employees, from and against all claims, damages and penalties, including but not limited to attorney fees, as a result of any actions of the Grantee under this Franchise. These claims, damages and penalties shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; and all other damages arising out of the Grantee's actions under the Franchise or the construction, operation, maintenance or reconstruction of the cable communications system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.
- b. If the Grantee fails to defend as required in Section 8.3(a), above, then the Grantee agrees to and shall pay all expenses incurred by the City and its officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in section (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

### **8.4 Liability Insurance and Indemnification.**

- a. Grantee shall maintain automobile and Worker's Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and the City, its officers, agents and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b. The insurance shall provide coverage at all times for not less than \$1,000,000 for personal injury to each person, \$1,000,000 aggregate for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of

defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection b of this section shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on the City's liability under the Oregon Tort Claims Act.

The evidence of coverage for Workers' Compensation shall show that it includes State of Oregon Statutory Limits, and Employer's Liability limits of at least \$1,000,000.

Any insurance carrier shall have an A.M. Best rating of A or better, and be authorized to do business in the State of Oregon.

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 without thirty (30) days written notice first being given to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 13.2 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e. Grantee shall file prior to the effective date of this Franchise and shall maintain on file with the City a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the City Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of Section 13.2. At a minimum, the

certificate shall be signed by a representative with authority to bind the insurance carrier.

The certificate shall show that the general liability portion of the insurance includes:

- i. Broad form property damage;
  - ii. Products and completed operations;
  - iii. Explosion, collapse, and underground exposures;
  - iv. Contractual liability; and
  - v. Owners and contractors protective coverage.
- f. Failure to maintain adequate insurance as required under Section 13.2 shall be cause for immediate termination of this Franchise by the City.
- g. The Grantee shall also indemnify, defend and hold harmless the City and its officers, agents and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

#### **8.5 Incidental Payment.**

In consideration of this grant of Franchise on an expedited basis and based on the complexity of the review and grant of a cable Franchise over an existing Telecommunications System, Grantee agrees to an incidental payment to Grantee in the amount of \$ 8,000, to be paid at the time of acceptance of this Franchise pursuant to Section 3.7 and Exhibit B.

### **9. RIGHTS RESERVED TO GRANTOR.**

#### **9.1 Right to Purchase the System.**

Grantee shall have the right to purchase the Cable System, consistent with applicable law and recognizing that Grantee will provide Cable Services over Grantee's Telecommunications System over which it offers Telecommunications Services under Ordinance Number 1053. Grantee's Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise Agreement, or in the event of expiration of the initial

term of this Franchise Agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise Agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor

During any period of continued operation under this section, except as provided in section 3.5 of this Franchise, the Grantee shall not sell, assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

## **9.2 Condemnation.**

The City may condemn all of any portion of Grantee's Cable System only consistent with applicable law.

## **9.3 Right of Inspection of Records.**

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this Franchise, the Grantee shall provide the following information in such form as may be required by the Grantor for its records:

- a. With respect to the cable system and its operation to provide cable service, authorized under this Franchise, and to the extent deemed necessary by the Grantor for the enforcement of this Franchise, information pertaining to the operations of the Grantee as it relates to providing Cable Service over the Telecommunications System and not as it relates to providing telecommunications services under Ordinance Number 1053, and, for the specific purpose of a bona fide Franchise enforcement effort the operations of any parent company, and any Affiliate or Cable Operator, including but not limited to: the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise, and of the maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in; the number and par value of shares; the amount and character of indebtedness, if any; interest on debt; wear and tear or depreciation; and all amounts and sources of income.
- b. The amount collected by the Grantee or any parent or Affiliate of the Grantee from users of services of the Grantee's cable communications system under



this Franchise, but only to the extent that it relates to providing Cable Services and the character and extent of the service rendered therefor to them.

The information, along with any further data which may be required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

**9.4 Right to Perform Franchise Fee Audit.**

In addition to all rights granted under section 9.3, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, for the specific purposes of a bona fide Franchise enforcement effort, the books and records of any parent or Affiliate company, for the purpose of determining the Gross Receipts of the Grantee generated in any manner through the operation of the cable system under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than three (3) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of two percent (2%) or more in franchise fees than required by this Franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the full cost of the audit.

**9.5 Right of Inspection of Construction.**

The Grantor or its representatives shall have the right to inspect all construction or installation work performed pursuant to the provision of this Franchise Agreement.

**9.6 Intervention.**

The Grantee shall not object to the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

**9.7 Right to Require Removal of Property.**

Grantor shall not have the right to require the removal of any portion of the Telecommunications System in the event of a forfeiture or revocation as provided herein if Grantee continues to operate a Telecommunications System pursuant to a Telecommunications Franchise with Grantor.

#### **9.8 Inspection of Facilities.**

Grantor may inspect upon request any of the Grantee's facilities and equipment to confirm compliance with this Agreement at any time upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice.

### **10. RIGHTS OF INDIVIDUALS PROTECTED.**

#### **10.1 Discriminatory Practices Prohibited.**

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against subscribers, programmers, or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to non-discrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.
- c. The Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired customers to contact the company.
- d. Upon request by a subscriber or potential subscriber, the Grantee shall make a reasonable effort to provide information required under Section 7.6(e) and 7.6(f), or otherwise provided in the normal course of business, in both English and the primary language of the requestor.
- e. Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

**10.2 Unauthorized Monitoring or Cable Tapping Prohibited.**

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without the subscriber's written consent or a valid court order permitting the tapping.

**10.3 Privacy and Other Rights.**

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy and any other civil right of any subscriber, programmer, or person resulting from any device or signal associated with the cable communications system. The Grantee shall not place in the building, structure or any facility of any subscriber any equipment capable of two-way communications without the written consent of the subscriber, revocable at the discretion of the subscriber, and shall not utilize the two-way communications capability of the system for unauthorized or illegal subscriber surveillance of any kind. For purposes of this subsection, tenants who occupy premises shall be deemed to be subscribers, regardless of who actually pays for the service. Written consent, as required herein, shall not be required of any subscriber by Grantee as a condition of receiving any other cable service.

**10.4 Permission of Property Owner Required.**

No cable, line, wire, amplifier, converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

**10.5 Sale of Subscriber Lists and Personalized Data Prohibited.**

The Grantee shall be subject to 47 U.S.C Section 631 (Section 551 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of subscriber privacy.

#### **10.6 Landlord - Tenant.**

Grantee shall provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the Franchise Area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

- a. To Grantee's providing of the services to units of the facility;
- b. To reasonable conditions and times for installation, maintenance and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment from Grantee for permitting Grantee to provide service to the facility and to not discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not.
- e. However, Grantee shall have no obligation to provide service if the cost of installation exceeds \$223.00 per unit. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable installed on the property including line extension and pre/post wiring of the units.

The \$223.00 cost is expressed in 1998 dollars. This figure may be adjusted each year on July 1 to reflect the annual change in the Consumer Price Index for the Portland Metropolitan Region.

#### **11. TERMINATION AND EXPIRATION.**

##### **11.1 Revocation.**

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, in the event that:

- a. the Grantee is in violation of any material provision of the Franchise Agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this Franchise Agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation;

- b. the Grantee or the Guarantor becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;
- c. the Grantee is found to have engaged in fraud or deceit upon the Grantor, persons or subscribers;
- d. the Grantee fails to obtain and maintain any permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided, however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or
- e. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this Franchise.

Upon the occurrence of one of the events set out above, following 10 days written notice to Grantee of the occurrence and the proposed forfeiture and an opportunity for Grantee to be heard, Grantor may by ordinance declare a forfeiture. In a hearing of the Grantee, the Grantee shall be afforded due process rights as if the hearing were a contested case hearing subject to ORS Chapter 183, including the right to subpoena and cross-examine witnesses, to subpoena documents, and to require that all testimony be on the record. Findings from the hearing shall be written, and shall stipulate the reasons for the Grantor's decision. In the event that the Grantee believes that the Grantor improperly has declared a forfeiture, the Grantee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the Grantor properly has declared a forfeiture. If a forfeiture is lawfully declared, all rights of the Grantee shall immediately be divested without a further act upon the part of the Grantor.

## **11.2 Receivership.**

In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- a. Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a City Council resolution; and

- b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

### **11.3 Expiration.**

Upon expiration of the Franchise, Grantor shall abide by the franchise renewal provisions of the Cable Act, as amended from time to time.

### **11.4 Continuity of Service Mandatory.**

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the Franchise, the Grantee shall make its best effort to ensure that all subscribers receive continuous uninterrupted service, regardless of the circumstances, during the lifetime of the Franchise.

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a Letter of Credit or other security provided by the Grantee.

## **12. OPERATION AND MAINTENANCE.**

### **12.1 Open Books and Records.**

The Grantee shall maintain a business office within the City for managing the cable system, and, subject to the provisions of Section 10 of this Franchise and, to such privileges as may be established under Oregon law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary or desirable for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon reasonable notice, all records of the Grantee and also of any parent company, Affiliate or any Cable Operator, which relate to the operation of the Franchise. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary

information," nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Oregon law. To the extent allowed under Oregon law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure.

Upon ten (10) days written notice from the City, Grantee shall provide the Grantor access to computer files specifically requested by name, approximate date or content, and related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable subscriber information, as referenced in Section 631 of the Cable Act, and shall exclude access to computer files containing no information related to Grantee's Franchise obligations. Computer record access shall be provided in the following manner:

- a. Grantee's employee shall access requested computer file from file server or hard drive storage for City to view.
- b. Once accessed, Grantee's employee shall move slowly through the file while the City views it on the computer monitor.
- c. Grantee's employee shall facilitate the printing of requested file to paper.

#### **12.2 Communications with Regulatory Agencies.**

A list of all material written petitions, applications, communications, and reports submitted by the Grantee, and also by any Affiliate or any Cable Operator of the system authorized by this Franchise, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to this Franchise agreement, shall be submitted to the Grantor each year with Grantee's annual report, and copies of any such documents and their replies from respective agencies shall also be made available to the Grantor. In addition, copies of any communications to and from any regulatory agency pertaining to any alleged, apparent or acknowledged violation of an applicable rule or law of the agency related to or affecting operations within the Franchise Area, shall be immediately submitted to the Grantor, if the communications are to or from the Grantee, or upon written request from the Grantor if the communications are to or from an Affiliate or Cable Operator of the Cable System authorized by this Franchise.

### 12.3 Reports.

- a. Quarterly Reports. Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, upon request of the Grantor, submit to the Grantor a report of all trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken, if any, and the current status of the complaint. Upon request by the Grantor, Grantee shall also provide outage reports and summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee.

Within thirty (30) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, which shall contain an accurate statement of all Gross Revenues earned and Gross Receipts collected by the Grantee or any Cable Operator, related to operation of the cable system franchised hereunder, in sufficient detail to enable the Grantor to verify the accuracy of franchise fee payments.

- b. Annual Report. No later than June 1 following the end of the Grantee's fiscal year each year, Grantee shall present a written report to the Grantor which shall include:
  - i. Audited financial reports (or if audited reports are not available, then reviewed reports) for the previous fiscal year, including Gross Revenues from all sources, gross subscriber revenues from each category of service, as well as an income statement, statement of cash flow, and a balance sheet; a financial report for the metropolitan area system of which the Franchise is a part with reviewed Gross Revenues and receipts as well as statements of expenses, balance sheet and capital expenditures reviewed by an independent certified public accountant; and a financial report for the Franchise Area with audited Gross Revenues and receipts. In the event any audited financial report has not been published by the date due under this section, then the audited financial report and, if the audited financial report is for the Grantee then also the accompanying reviewed report and the audited report for the Franchise Area, shall be deemed presented on time if presented within thirty (30) days after publication.

All financial reports required under this section shall be presented to the Grantor accompanied by such notes and explanations as are required to fully understand the reports. Such notes and explanations



shall include, but not be limited to, an explanation of any and all deductions made from Gross Revenues in order to arrive at Gross Receipts for the calculation of franchise fees to be paid to the Grantor.

- ii. A summary of the previous year's activities including, but not limited to, subscriber totals in each category and new services.
- c. Monitoring and Compliance Reports. No later than April 15 of each year, the Grantee shall provide a written report of any FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests.
- d. Additional Reports. The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this Franchise.
- e. All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee.

#### **12.4 Safety.**

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

### **13. MISCELLANEOUS PROVISIONS.**

#### **13.1 Compliance with Laws.**

The Grantee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this Franchise, provided that any such ordinances, resolutions, rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder. The Grantor shall make a good faith effort to provide copies to the Grantee of all general ordinances, resolutions, rules, regulations, and codes, and any amendments thereto, to which the Grantee is subject under this Franchise.

#### **13.2 Severability and Preemption.**

Except as provided in Section 13.7 below, if any section, subsection, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City, and any amendments to this Franchise negotiated pursuant to this section as a result of such provision being preempted shall no longer be of any force or effect.

### **13.3 Captions.**

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

### **13.4 No Recourse Against the Grantor.**

The Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

### **13.5 Nonenforcement by Grantor.**

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

### **13.6 Force Majeure.**

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; partial or entire failure of utilities; and similar occurrences outside the control of the Grantee. The Grantee agrees, however to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

### **13.7 Entire Agreement.**

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

### **13.8 Consent.**

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

### **13.9 Notices and Time Limit for Grantee Communications.**

All communications with the City by the Grantee referred to in this Franchise shall be made through the Office of the City Manager of Canby, unless otherwise specified in this Franchise. Grantee shall provide any written communication required by this Franchise within sixty (60) days of being requested to do so by the Grantor, in each case in which no other specific minimum time limit for a communication is identified in the Franchise.

### **13.10 Consistency of Franchise with Cable Act.**

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, as amended in 1992 and 1996.

### **13.11 Future Changes in Law.**

If future change to finding federal or state law affect any material provision of the Franchise, including but not limited to the scope of Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within sixty (60) days, either party may: 1) seek appropriate legal remedies to amend the Franchise, or 2) shorten the Franchise to thirty-six (36) months from the date following conclusion of the sixty (60) day period, at which point either party may invoke the renewal procedures under 47 U.S.C. § 546. Each party agrees to participate in up to sixteen (16) hours of negotiation during the sixty (60) day period.

### **13.12 Comparability of Other Cable Franchises.**

- a. If the Grantor issues a franchise to a Cable Operator to enter upon the streets and public ways for the purpose of operating a Cable System to provide Cable Service to any part of the Franchise Area, the Grantor shall ensure that, considering all the circumstances, including any limitations on its regulatory authority, the material provisions of such other franchise are, taken together, reasonably comparable to the material provisions of this Franchise;

providing, however, that the Grantor shall not be prohibited from granting any franchise containing requirements which are, taken together, greater than those of this Franchise, nor from granting any franchise containing individual requirements which are greater or lesser than the requirements of this Franchise. This paragraph recognizes that Grantee currently operates a Telecommunications System under authority from Grantor using the streets and public ways.

- b. The Grantee agrees that its sole remedy under this provision, other than testimony before the City Council, is to seek injunctive relief to prevent the issuance of a franchise which would violate the first paragraph.
- c. No provisions of this section shall be enforceable unless all are enforceable.

### **13.13 Franchise Review.**

At any time during the seventh year of this Franchise, either the Grantor or the Grantee may request the other party to participate in good faith negotiations, for a period not to exceed six (6) months, to consider adoption of amendments to the Franchise. There shall be no obligation for either party to enter negotiations.

If the parties enter negotiations, the subjects of consideration, or areas in which the Franchise may be subject to amendment, shall be limited to the following:

- a. Technology;
- b. Parity with neighboring systems;
- c. PEG Access support by the Grantee; and
- d. Franchise term.

Following negotiations, amendments to the Franchise may be presented to the City Council for adoption. Nothing in this section requires either the Grantor or the Grantee to agree to any amendment to the Franchise, and any amendment to the Franchise must be formally accepted by both parties.

### **13.14 Notice.**

Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

Page 55-- Franchise Agreement 2005  
City of Canby/Canby Telephone Association

If to the City: City Administrator  
City of Canby  
P.O. Box 930  
Canby, OR 97013

If to the Grantee: Canby Telephone Association  
P.O. Box 880  
Canby, OR 97013

**13.15 Public Disclosure.**

Subject to the Oregon Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent.

**13.16 Time is of the Essence.**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason of force majeure, Grantee's performance shall be excused during the affected time periods and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, employees or agents.

## **EXHIBIT A**

### **HARDWIRED PROGRAMMING ORINATION POINTS**

Canby City Hall – Council Chambers

Canby High School

Canby Adult Center

Studio Facility - OCTS

**EXHIBIT B**

**ACCEPTANCE**

City Administrator  
City of Canby  
P.O. Box 930  
Canby, OR 97013

This is to advise the City of Canby, Oregon (the "City") that Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. \_\_\_\_\_, passed by the City Council on \_\_\_\_\_, 2005 (the Franchise) granting a Franchise for twelve (12) years to Canby Telephone Association. The Grantee agrees to abide by each and every term of the Franchise.

**CANBY TELEPHONE ASSOCIATION**

BY  
TITLE  
DATE



## **EXHIBIT C**

### **Existing 2-Way Active Interconnections**

**Canby System Interconnected to**

**Location of Interconnect**

Clackamas Community College

Clackamas Community College

## **EXHIBIT D**

### **City Owned Property**

|                                 |                            |              |
|---------------------------------|----------------------------|--------------|
| Canby Adult Center              | 1250 S Ivy St              | 503-266-2970 |
| Canby City Hall / Planning Bldg | 182 N Holly                | 503-266-4021 |
| Canby Police Station / Court    | 122 N Holly                | 503-266-1104 |
| Canby Pool                      | 1150 S Ivy St              | 503-266-2761 |
| Canby Public Library            | 292 N Holly St             | 503-266-3394 |
| Council Chambers                | 155 NW 2 <sup>nd</sup> Ave |              |
| Canby Finance Dept              | 133 NW 2 <sup>nd</sup> Ave | 503-266-4021 |
| Canby Public Works              | 1470 NE Territorial Rd     | 503-266-4021 |

**RESOLUTION NO. 1269**

**A RESOLUTION AMENDING THE CABLE TELEVISION FRANCHISE  
AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE  
ASSOCIATION DBA DIRECTLINK**

**WHEREAS**, Canby Telephone Association, an Oregon cooperative corporation, doing business as DirectLink, hereinafter referred to as "Grantee", currently provides cable television services to its customers within the City of Canby; and

**WHEREAS**, the City of Canby granted a twelve-year cable television Franchise to Grantee, which was only granted through March 4, 2017; and


**WHEREAS**, the City and Grantee wish to extend the term of the Franchise Agreement; and

**WHEREAS**, the City finds it is in the public interest to extend the Franchise Agreement as set forth in this Resolution.

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

1. The City hereby agrees to extend the franchise granted to Canby Telephone Association, doing business as DirectLink for a three (3) year term from the effective date of March 4, 2017, and authorizes the City Administrator to sign the extension agreement attached hereto as Exhibit A on behalf of the City.
2. This Resolution shall take effect on June 21, 2017.

ADOPTED this 21<sup>st</sup> day of June 2017, by the Canby City Council

  
\_\_\_\_\_  
Brian Hodson  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

## Exhibit "A"

### FRANCHISE EXTENSION AGREEMENT

**WHEREAS**, Canby Telephone Association, an Oregon cooperative corporation, doing business as DirectLink, currently provides cable television services to its customers within the City of Canby; and

**WHEREAS**, the City of Canby granted a twelve-year cable television Franchise to DirectLink, which was only granted through March 4, 2017; and

**WHEREAS**, the City and DirectLink wish to extend the term of the Franchise Agreement for a period of three (3) years, retroactive to March 4, 2017; and

**WHEREAS**, the City finds it is in the public interest to extend the Franchise Agreement so that cable service to the public will not be interrupted; and

**WHEREAS**, City acknowledges that the duration of the term of the franchise extension granted hereby is less than the 30-month minimum advance notice required under Section 626 of the Cable Communications Policy Act of 1984, as amended (the "§626 Renewal Notice") for DirectLink to timely exercise its franchise renewal rights under federal law. Accordingly, City agrees that DirectLink shall be deemed to have provided its §626 Renewal Notice to City in a timely manner and City hereby irrevocably waives and relinquishes any right to take a contrary position.

**NOW, THEREFORE**, the City of Canby and DirectLink agree as follows:

1. The Franchise shall be extended to expire on March 4, 2020, or until a new Franchise Agreement is negotiated, whichever comes first.
2. All provisions and amendments to the Franchise, other than duration of the Franchise, shall remain in full force and effect through this agreed upon extension date.

APPROVED this 21<sup>st</sup> day of June 2017,

City of Canby, Oregon

By: 

Print Name: Richard Robinson

Title: City Administrator

ACCEPTED this 10 day of July 2017.

Canby Telephone Association (dba  
DirectLink)

By: 

Print Name: Paul E. Hauer

Title: President

**ORDINANCE NO. 1349**

**AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE  
AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE  
ASSOCIATION AND DECLARING AN EMERGENCY.**

**WHEREAS**, on February 2, 2005, the City of Canby granted a twelve year cable television franchise to Canby Telephone Association, effective March 4, 2005 (the “Franchise”); and

**WHEREAS**, the City of Canby granted a cable television franchise to the predecessor of WaveDivision VII, LLC prior to granting the Franchise, the terms of which are nearly identical to the Franchise; and

**WHEREAS**, the City is considering amending the terms of its cable franchise with WaveDivision VII, LLC, and to ensure compliance with the Cable Act and the rules enacted by the Federal Communications Commission, and to maintain competitive equity between the two cable operators, the City is offering the same substantive amendments to Canby Telephone Association; and

**WHEREAS**, the City finds it is in the public interest to amend the Franchise as set forth in this Ordinance; now therefore,

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

Section 1. The City of Canby hereby amends the Franchise with Canby Telephone Association as follows, with all other provisions, terms and conditions of the Franchise remaining unchanged and in full force and effect except as expressly stated herein:

- A. The phrase “and continuing throughout its term,” shall be deleted from the first sentence of Section 6.5(c)(i) of the Franchise. After the first sentence of Section 6.5(c)(i), the following sentence shall be added: “No sooner than November 1, 2011, Grantee shall provide two percent (2%) of its gross revenues for PEG access capital costs. Grantee shall provide two percent (2%) of its gross revenues through October 31, 2013. Commencing on November 1, 2013 and through the remaining term of the Franchise, Grantee shall provide one-percent (1%) of its gross revenues as support for PEG access capital costs.” After the first paragraph in Section 6.5(c)(i), the following paragraph shall be added: “Notwithstanding the previous paragraph, in the event of a change in federal law that permits the Grantor or its Designated Access Provider to use the support set forth in this Section 6.5(c)(i) for non-capital costs without such support being treated as a franchise fee, Grantee shall, no sooner than November 1,

- 2013 or within sixty (60) days of the effective date of the change in law, as applicable, provide a total of two percent (2%) of its gross revenues as capital and non-capital support for PEG access through the remaining term of the Franchise.”
- B. Section 6.5(c)(ii) shall be deleted in its entirety and replaced with the following: “Grantee shall help financially support the studio facility by paying \$1,724 per month to the Designated Access Provider (“DAP”) through October 31, 2014. Commencing on November 1, 2014, Grantee shall contribute eight hundred sixty two dollars (\$862.00) per month to the DAP and such amount shall be paid directly to the DAP. Grantee acknowledges and agrees that the DAP will forward this amount to WaveDivision VII, LLC (“Wave”), the incumbent cable operator in the City, which is obligated in its cable franchise with the City to provide the studio facility at Wave’s cost. Grantor and Grantee agree that this amount represents one half (1/2) of the rent for the portion of the access facility occupied by Grantor’s DAP as of June 6, 2011 (which is approximately eighty-seven percent (87%) of the leased space, the remainder of which is used by Wave). In the event that the rent for the leased space changes during the term of this Agreement pursuant to the terms of a valid lease agreement between Wave and the owner of the leased space, Grantee shall contribute to the DAP one half (1/2) of the adjusted rental amount for the portion of the access facility occupied by the DAP. Grantor and Grantee further agree that if the DAP’s proportionate use of the access facility increases or decreases by five percent (5%) or more, the payments required under this paragraph shall be increased or decreased in proportion to the change. Grantee’s obligation to make the payment set forth in this paragraph shall cease if the DAP stops using the access facility. In the event Wave no longer provides cable services in the City, Grantee agrees to assume the obligations currently being funded by Wave within thirty (30) days of written notice from Grantor.”
- C. Section 9.1 shall be deleted in its entirety and replaced with the following: “The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Cable Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Cable Act. Notwithstanding the foregoing, Grantee’s Telecommunications Services under Ordinance Number 1053 are not subject to this right of purchase.”

Section 2. Emergency declared. Inasmuch as it is in the best interest of the citizens of Canby, Oregon, to ensure uninterrupted cable service, an emergency is hereby declared to exist and this Ordinance shall therefore take effect immediately upon its enactment after final reading, provided that Canby Telephone Association files with the City its written acceptance of the amendments, in the form attached hereto as Exhibit A, by the effective date of this Ordinance. If

Canby Telephone Association fails to timely file its written acceptance, this Ordinance shall be null and void and the Franchise will be of no further force or effect.

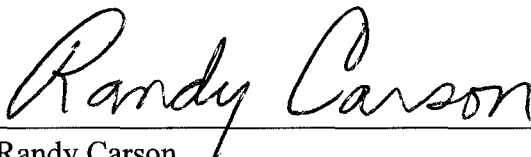
**SUBMITTED** to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, October 5, 2011, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and to come before the City Council for final reading and action at a regular council meeting thereof on Wednesday, October 19, 2011, commencing at the hour of 7:30 PM in the City Council Chambers located at 155 NW 2<sup>nd</sup> Avenue in Canby, Oregon.

  
Kimberly Scheafer, CMC  
City Recorder

**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 19<sup>th</sup> day of October, 2011 by the following vote:

YEAS 6

Nays 0

  
Randy Carson  
Mayor

ATTEST:

  
Kimberly Scheafer, CMC  
City Recorder



## EXHIBIT A

### ACCEPTANCE

City Administrator  
City of Canby  
P.O. Box 930  
Canby, Oregon 97013

The undersigned, Canby Telephone Association, does hereby accept the amendments to its Franchise with the City of Canby as set forth in Ordinance No. 1349, approved at first reading on October 5, 2011, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise as amended, subject to applicable federal, state and local law. This acceptance is conditioned upon passage and approval of Ordinance No. 1349 by the City of Canby at second reading on October 19, 2011.

CANBY TELEPHONE ASSOCIATION

BY: 

TITLE: President

DATE: 10/19/11

## EXHIBIT B

City Administrator  
City of Canby  
PO Box 930  
Canby, OR 97013

This is to advise the City of Canby, Oregon that Canby Telephone Association (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1531 passed by the City Council on August 5, 2020 (the "Franchise") granting a Franchise for ten (10) years to Canby Telephone Association (DirectLink). The Grantee agrees to abide by each and every term of the Franchise.

### **CANBY TELEPHONE ASSOCIATION (DirectLink)**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**City of Canby Bi-Monthly Report**  
**Department: Administration**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Melissa Bisset, City Recorder  
Prepared by: Same as above.  
Through: Amanda Zeiber, Interim City Administrator  
Date: July 15, 2020

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**Board and Commissions**

| <b>Board/ Commission/ Committee</b> | <b>Vacancy</b> | <b>Applications Received</b> | <b>Status</b>   |
|-------------------------------------|----------------|------------------------------|---|
| Canby Public Library Board          | 1              | 2                            | Appointment schedule for 7/15.                                    |
| Heritage and Landmark Commission    | 1              | 0                            | Vacant, accepting applications.                                   |
| Transit Advisory Committee          | 4              | 5                            | Currently 4 vacancies, three appointments are scheduled for 7/15. |

There were several reappointments to the various Boards, Commissions and Committees.

Bike and Pedestrian Committee – Russell Heinemann, Mindy Montecucco, and Shannon Hale.

Budget Committee – Jason Padden and Michelle Hensley.

Canby Public Library Board – Judi Jarosh.

Heritage and Landmark Commission – Judi Jarosh and Jennifer Giller.

Traffic Safety Commission – Robert Cambra and Janet Bailey.

Parks and Recreation Advisory Board – Mark Triebwasser.

Most of the Boards, Commissions and Committees began to meet virtually.

**Business Licenses**

|                            | <b>Issued</b> | <b>Inactivated</b> | <b>Renewals Mailed</b> | <b>Total Licenses</b>                   |
|----------------------------|---------------|--------------------|------------------------|---|
| <b>May &amp; June 2020</b> | 35            | 30                 | 327                    | 680 have Canby addresses<br>1,526 Total |
| <b>May &amp; June 2019</b> | 39            | 28                 | 315                    | 689 have Canby addresses<br>1,535 Total |

**Cemetery**

|                  | <b>Property purchases recorded</b> | <b>Internments recorded</b> |
|------------------|------------------------------------|-----------------------------|
| <b>May 2020</b>  | 9                                  | 4                           |
| <b>June 2020</b> | 7                                  | 4                           |

**City Code**

The Canby Municipal Code was recently updated to include Ordinances passed through May 6<sup>th</sup>, 2020. The vendor that hosts the Code updated the online version and it is much more user friendly. Please take a look at [https://codelibrary.amlegal.com/codes/canby/latest/canby\\_or/0-0-0-1](https://codelibrary.amlegal.com/codes/canby/latest/canby_or/0-0-0-1) . A user training will be offered this summer.

### **Communications**

We continued to be active on Facebook providing community updates and resources related to COVID-19.

### **Elections**

The Mayor and four Council positions will be on the [November 3, 2020 General Election ballot](#). The filing period for these positions has opened. The last day for candidates to submit their filing and signature sheets to the City Recorder is August 20, 2020. Candidates must have signature sheets approved before collecting signatures. One candidate filed for the position of Councilor in June.

### **Liquor Licenses**

One liquor license was processed.

### **Noise Variance Application**

No noise variance applications were processed.

### **Public Records Requests**

Five public records request were processed.

### **Sidewalk/Park Vending Permit**

No Sidewalk/Park Vending Permits were issued.

### **Special Animal Permits**

One special animal permit was issued.

### **Training**

Staff virtually attended CIS Harassment Training and LOC training: "After the Quarantine: Practical Tips for Reopening Your City."



## City of Canby Bi-Monthly Report Department: Economic Development For Months of: May & June 2020

To: The Honorable Mayor Hodson & City Council  
From: Jamie Stickel, Economic Development Director  
Prepared by: Same as above  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/6/2020

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### Economic Development Director Updates

**Canby Design Lab:** The Canby Design Lab – part of the Clackamas County Prosperity Collaborative (CCPC) – is exploring possibilities to make resources more equitable and accessible. Local Canby Design Meetings have been held in English and Spanish. The meetings focus on identifying a problem statement and determining the best steps forward to ensure Canby is equitable for all. The problem statement the Canby Design Lab has written is, “The Canby community lacks the knowledge and/or welcoming, safe and equitable support to navigate the resources, therefore they are unable to get the things they need to live, grow and move forward.” The May 13<sup>th</sup> and June 2<sup>nd</sup> meetings were focused on finding a “solution statement” and identifying resources that may help the community work towards its goal of identifying equitable access to community, county, and statewide resources.

**Strategic Investment Zone:** The City of Canby received a Strategic Investment Zone application from Columbia Distributing. As background, the Strategic Investment Zone is program within Clackamas County which serves as an incentive for large developments. The zone was created to streamline the approval process through Business Oregon, the state’s Economic Development Department. Canby falls within the Rural Strategic Investment Zone which provides a tax abatement for 15 years to businesses of \$25,000,000 or greater. Businesses pay full property taxes on the first \$25,000,000 and after that, the taxes are abated. Additionally, the business pay a Community Service Fee to assist with mitigating the impact of the development within the community.

The Oregon Business Development Commission approved the Columbia Distributing Strategic Investment Zone application at their May 22<sup>nd</sup> meeting. The meeting begins the 90 day time period for the special taxing districts to determine the distribution of the community service fee. The City of Canby hosted a meeting on June 23<sup>rd</sup> to discuss the distribution with the special taxing districts. All of the special taxing districts were invited with representation from the City of Canby, Clackamas County, Canby Fire District, Clackamas Community College, and the Canby School District. Conversations will continue in July and August to meet the Oregon Business Development Commission’s August 22<sup>nd</sup> deadline for decision on distribution schedule.

**Requests for Expressions of Interest for Former Library:** The City of Canby reopened the Requests for Expressions of Interest for the Former Canby Public Library, located at 292 N Holly Street. Previously, the City opened the Request for Expressions of Interest two times – in 2017 and 2018. After much discussion, it was decided to retain ownership and create a public market and office space in the former library. In summer of 2019, the City began work with LRS architects who had previously completed renderings on the building as part of a Clackamas County 3D Modeling Grant. The city also applied and was awarded an Oregon Main Street grant for \$200,000 for façade work on the building. In early winter, renderings and early cost estimates were received and were substantially over budget. At that same time, the City received renewed interest from three parties on the former library space. At the January 15<sup>th</sup> City Council meeting, after much robust discussion, we reopened the Requests for Expressions of Interest for the Former Canby Library.

At the May 6<sup>th</sup> City Council Work Session, the City received four unique and thoughtful proposals from:

- Neighborhood Health Centers

- Oregon City Brewing Company – the Beer Library
- Ray Kahut
- Thelma’s Place

The Canby City Council instructed City Staff to begin negotiations with the Oregon City Brewing Company’s Beer Library proposal. The Oregon City Brewing Company resubmitted their proposal and it was brought to a City Council Executive Session on June 24<sup>th</sup>.

**Wait Park:** The City of Canby received a generous donation of American flags from the Canby Knights of Columbus for Wait Park. The flags were hung at the end of June on all of the flag poles throughout the park. The City of Canby hung its Independence Day bunting on the gazebo to complement the donation for the Independence Day holiday.



#### **COVID-19 Webinars, Outreach, and Zoom Meetings**

Due to Covid-19, meetings with local, county, state, and regional partners have become more important. Below is a brief summary of the efforts attended by the Economic Development Director

- **Canby Business Outreach:** Outreach continues to the local Canby community through brainstorming efforts, business outreach, and Zoom calls. Businesses in Canby have really taken the time to think outside of the box, partner together, and utilize social media to showcase how they are open for business.
- **Canby Area Chamber of Commerce:** Ongoing work to support the Canby business community. The Chamber Director, Economic Development and Tourism Coordinator, and Economic Development Director already meet regularly to discuss business in Canby. Through the Stay at Home orders, the efforts are ongoing and coordination continues to be of the utmost importance.
- **Governor’s Regional Solutions Team Meetings:** The Governor’s Regional Solutions Team features weekly updates regarding the Governor’s Stay at Home order from an Oregon Congressman or Senator, updates from the Governor’s Regional Solutions Coordinator, Oregon Employment Department, Business Oregon, BOLI, as well as rotating involvement from other sectors such as the Small Business Advocate or Travel Or.
- **Metro Economic Development Practitioners COVID-19 Forum:** Greater Portland Inc holds a weekly call with updates from Practitioners in the region, GPI staff, and staff from the state.
- **Clackamas County Practitioners Meetings:** Clackamas County Business and Community Services has been holding bi-monthly meetings to convene practitioners from throughout the county to provide updates and a sounding board. At the April 23<sup>rd</sup> meeting, the county rolled out their “Who’s Open” website for businesses to highlight location, hours of operation, and other contact details. This is an effort to help customers find their local businesses and highlight the offerings.
- **Greater Portland Inc Webinar Series:** Greater Portland Inc has developed an ongoing Webinar series to assist Economic Development Professionals focus on the “Road To Recovery”. The webinar series features consultants and local businesses to highlight best practices, planning efforts, and additional resources that may be helpful as Oregon cities begin to open.
- **Main Street Webinars:** Main Street Now, the national Main Street organization, features webinars on their website highlighting various topics pertinent to downtown revitalization. One of the ideas highlighted on a webinar has been reproduced for Canby with the #LoveLocalCanby campaign. This effort highlights ways consumers can support local businesses during the Stay at Home order. Those ideas include ordering takeout, leaving reviews, sharing business posts, and ordering online.

## Economic Development and Tourism Coordinator Updates

### **Promotion**

- **Canby Independence Day Celebration** – Planning for the 2020 Canby Independence Day Celebration ceased on May 7th following an announcement from Governor Brown that large events would be cancelled through 2020. The Economic Development and Tourism Coordinator (ED&TC) then issued refunds to those who had registered for the event and communicated the cancellation to the public, vendors, volunteers, and performers.
- **Canby's Big Weekend** – Planning for Canby's Big Night Out Street Dance also ceased on May 7th following the Governor's announcement. The ED&TC informed vendors, performers, and the public of the cancellation.
- **Canby First Thursdays** – In May and June, the First Thursday program was depressed due to business closures and health guidelines around gathering. The Canby Business Downtown Association agree to move forward with a "Takeout Thursday" messaging for future promotions. The ED&TC is working with the Clackamas County Cultural Coalition to reallocate grant funds that had been awarded for a summer concert series on First Thursdays, now cancelled due to COVID-19.



### **Organization**

- **Bicycle and Pedestrian Advisory Committee** – The City of Canby's Bicycle and Pedestrian Advisory Committee met on June 23 for their first monthly meeting since February. On June 26, the ED&TC sent out a request for Quotes on the Molalla Forest Road Development Plan, posted here: <https://www.canbyoregon.gov/RFPs.htm> and has discussed the project with various contractors since. Quotes will be reviewed with input from the Bike and Ped Committee after a July 24 deadline for submissions.
- **Heritage and Landmark Commission (HLC)**
  - **Zion Memorial Cemetery Grant:** On June 16, A grant from Oregon Parks and Recreation for \$3,600 was awarded to the City for the Canby HLC's annual Zion Memorial Cemetery marker cleaning and repair project for 2020-2021. Volunteers lead this project while the ED&TC handles grant reporting and reimbursement requests.
  - **Comprehensive Historic Preservation Plan & Grant:** Canby's Historic Preservation Plan is complete and a presentation to Council occurred on June 3rd. The ED&TC is managing a grant through Oregon Parks and Recreation Department that helped fund the plan.

### **Economic Vitality**

- **Canby Business Downtown Association**– The ED&TC hosted Zoom video conferences on May 21 and June 18, inviting downtown businesses and stakeholders to connect. These monthly meetings are held on the Third Thursday of each month at 9am.

### **Design**

- **Facade Improvement Program** – The ED&TC worked with a 2019 applicant to update their application for the new round of funding available July 1. This application will go before the Urban Renewal Agency on July 15 and will support improvements to a historic downtown property.







**City of Canby Bi-Monthly Report**  
**Department: Finance Department**  
**For Months of: May and June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Julie Blums, Finance Director  
Prepared by: Suzan Duffy, Financial Analyst  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/1/2020

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In addition to providing services and responding to inquiries from both internal and external customers, and performing the tasks listed statistically on the last page, the Finance Department reports the following items of interest this period.

- The budget process proceeded virtually this period and concluded successfully with adoption of the 2020-2021 Budget in June. Two supplemental budgets for the 2019-2020 budget year were also approved this period. The first was primarily to address increased development activity and expenses related to Covid-19, among other adjustments. The second was to allow contribution to the PERS side account that was originally planned for 2020-2021. This contribution was moved up so the city could be assured of receiving the 25% match. If the contribution was made after June 30 there was a chance that the 25% match would no longer be available.
- Auditors were at City Hall the second week of June to do the annual interim review. Processes in Finance and Court were reviewed and staff interviewed. Selected samples of revenue and expense documentation were also reviewed. The final audit is scheduled for September.
- Late fees for utility and transit tax bills are continuing to be waived. Staff has been reaching out to employers who have not yet filed their 2019 annual return, 2019 4<sup>th</sup> quarter return or the 2020 1<sup>st</sup> quarter return. A total of 193 reminder letters have been sent. The goal is to get all the filings current and offer payment plans to any filers who are currently unable to pay due to the effects of Covid-19. In addition, the annual certification of unpaid utility fees to the assessor will be limited to those accounts that were severely in arrears prior to the pandemic.
- Finance staff participated in the following meetings, trainings and events this period:
  - CIS Harassment Training
  - Caselle webinar – payroll changes

**Statistics for FY 2019-2020:**

|                                | <b><u>July-<br/>Aug</u></b> | <b><u>Sept -<br/>Oct</u></b> | <b><u>Nov -<br/>Dec</u></b> | <b><u>Jan -<br/>Feb</u></b> | <b><u>Mar -<br/>Apr</u></b> | <b><u>May -<br/>June</u></b> |
|--------------------------------|-----------------------------|------------------------------|-----------------------------|-----------------------------|-----------------------------|------------------------------|
| <b>Accounts Payable</b>        |                             |                              |                             |                             |                             |                              |
| Invoices:                      | 522                         | 520                          | 458                         | 420                         | 366                         | 408                          |
| Invoice entries:               | 1,075                       | 1,165                        | 1,105                       | 1,058                       | 928                         | 864                          |
| Encumbrances:                  | 19                          | 13                           | 4                           | 11                          | 10                          | 17                           |
| Manual checks:                 | 3                           | 6                            | 2                           | 12                          | 2                           | 5                            |
| Total checks:                  | 354                         | 352                          | 279                         | 322                         | 234                         | 267                          |
| <b>Payroll</b>                 |                             |                              |                             |                             |                             |                              |
| Timesheets processed:          | 638                         | 478                          | 491                         | 615                         | 456                         | 373                          |
| Total checks and vouchers:     | 739                         | 539                          | 546                         | 678                         | 512                         | 434                          |
| New hires/separations:         | 7/6                         | 9/8                          | 4/3                         | 4/6                         | 3/3                         | 3/1                          |
| <b>Transit Tax Collection</b>  |                             |                              |                             |                             |                             |                              |
| Forms sent:                    | 27                          | 795                          | 1021                        | 487                         | 791                         | 800                          |
| Penalty & Int. notices sent:   | 9                           | 5                            | 17                          | 9                           | 11                          | 0                            |
| Pre-collection notices sent:   | 0                           | 122                          | 126                         | 0                           | 161                         | 0                            |
| Accounts sent to collections:  | 130                         | 52                           | 0                           | 54                          | 0                           | 0                            |
| Accounts opened/closed:        | 41/33                       | 44/45                        | 28/29                       | 39/31                       | 15/28                       | 37/30                        |
| Returns posted:                | 810                         | 719                          | 394                         | 1081                        | 820                         | 345                          |
| <b>Utility Billing</b>         |                             |                              |                             |                             |                             |                              |
| Bills sent:                    | 9,853                       | 9,951                        | 9,941                       | 9,974                       | 10,013                      | 10,071                       |
| Counter payments:              | 206                         | 216                          | 194                         | 181                         | 70                          | 0                            |
| Accounts opened and closed:    | 182                         | 158                          | 94                          | 90                          | 110                         | 130                          |
| Lien payoffs:                  | 3                           | 10                           | 6                           | 4                           | 3                           | 4                            |
| Lien payoff inquiries:         | 62                          | 33                           | 37                          | 37                          | 29                          | 31                           |
| Collection notices sent:       | 8                           | 0                            | 11                          | 41                          | 15                          | 0                            |
| Accounts sent to collections:  | 0                           | 0                            | 5                           | 0                           | 0                           | 0                            |
| New homes occupied:            | 16                          | 9                            | 21                          | 16                          | 22                          | 24                           |
| <b>General Ledger</b>          |                             |                              |                             |                             |                             |                              |
| Total Journal entries:         | 532                         | 286                          | 438                         | 294                         | 273                         | 358                          |
| <b>Cash Receipts Processed</b> |                             |                              |                             |                             |                             |                              |
| Finance:                       | 1,213                       | 1,025                        | 758                         | 1425                        | 1264                        | 781                          |
| Utility:                       | 392                         | 383                          | 382                         | 333                         | 149                         | 109                          |

**Fleet Service BI-Monthly Report**  
By Robert Stricker, Lead Mechanic

**May-20**

| Department               | Work Orders | Labor Cost | Material Cost | Fuel Cost    | Total Cost         |
|--------------------------|-------------|------------|---------------|--------------|--------------------|
| Administration           | 0           | \$0.00     | \$0.00        | \$0.00       | \$0.00             |
| Adult Center             | 1           | \$244.50   | \$19.78       | \$18.41      | \$282.69           |
| Facilities               | 1           | \$141.30   | \$243.29      | \$89.86      | \$474.45           |
| Wastewater Collections   | 2           | \$102.76   | \$0.00        | \$115.54     | \$218.30           |
| Wastewater Treatment     | 6           | \$761.13   | \$179.24      | \$199.27     | \$1,139.64         |
| Parks                    | 15          | \$1,686.28 | \$278.20      | \$960.80     | \$2,925.28         |
| Police                   | 13          | \$2,123.54 | \$1,244.25    | \$2,966.74   | \$6,334.53         |
| Streets                  | 8           | \$726.52   | \$498.36      | \$965.07     | \$2,189.95         |
| Fleet Services           | 2           | \$51.38    | \$283.71      | \$68.58      | \$403.67           |
| Canby Area Transit (CAT) | 29          | \$3,691.01 | \$1,346.68    | \$3,571.95   | \$8,609.64         |
| CUB                      | 0           |            |               |              |                    |
| <b>Total</b>             | <b>77</b>   |            |               | <b>Total</b> | <b>\$22,578.15</b> |

**Jun-20**

| Department               | Work Orders | Labor Cost | Material Cost | Fuel Cost    | Total Cost         |
|--------------------------|-------------|------------|---------------|--------------|--------------------|
| Administration           | 0           | \$0.00     | \$0.00        | \$0.00       | \$0.00             |
| Adult Center             | 1           | \$179.83   | \$18.75       | \$0.00       | \$198.58           |
| Facilities               | 1           | \$154.14   | \$16.60       | \$101.92     | \$272.66           |
| Wastewater Collections   | 4           | \$415.58   | \$4.93        | \$166.28     | \$586.79           |
| Wastewater Treatment     | 4           | \$161.40   | \$0.00        | \$0.00       | \$161.40           |
| Parks                    | 7           | \$1,150.17 | \$237.50      | \$886.71     | \$2,274.38         |
| Police                   | 8           | \$1,082.53 | \$682.91      | \$3,505.08   | \$5,270.52         |
| Streets                  | 12          | \$2,056.47 | \$6,117.89    | \$769.40     | \$8,943.76         |
| Fleet Services           | 3           | \$310.76   | \$75.77       | \$84.97      | \$471.50           |
| Canby Area Transit (CAT) | 21          | \$4,289.42 | \$2,875.22    | \$5,164.18   | \$12,328.82        |
| CUB                      | 0           |            |               |              |                    |
| <b>Total</b>             | <b>61</b>   |            |               | <b>Total</b> | <b>\$30,508.41</b> |

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**Fleet Service Highlights**



**City of Canby Bi-Monthly Report**  
**Department: Tech Services**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Amanda Zeiber, Interim City Administrator/ HR Director  
Prepared by: Valerie Kraxberger, IT Office Specialist  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/1/2020

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**May 2020-**

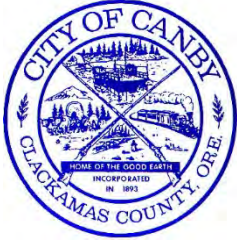
The City of Canby Tech Services Department issued:  
69 Work Orders with 69 being completed

**June 2020-**

66 Work Orders with 71 being completed

**Some of the main projects we have been working on are:**

- Set up additional TeamViewer accounts for remote access and support
- Video conferencing setup and meetings
- Network copier and scanner issues
- Network Drives
- Various PD laptop issues
- Phone setup for Library curb pickup
- Planning for new website
- Continue to support remote services for employees to work from home during the statewide Stay Home, Save Lives declaration.



**City of Canby Bi-Monthly Report**  
**Department: Library**  
**For Months of: May - June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Irene Green, Library Director  
Prepared by: Irene Green, Library Director  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/7/2020

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**LIBRARY OPERATIONS:**

The library is continuing to adapt its operations during these uncertain and rapidly changing times. The health and safety of our staff and community is our highest priority. We will progress through a phased re-opening in consultation with government and public health officials. Because the situation continues to evolve, we do not have dates set for reopening the building to patrons. We will announce updates as we have them. For now we are focused on providing no-contact curbside holds pickup and online programming.

The book drop is now open 24/7 and items will not be due until July 31<sup>st</sup>. Beyond that, all items will get an extended checkout of 4 weeks to reduce the need for frequent visits.

In accordance with the recently published Institute for Museum and Library Services (IMLS) guidelines, the 72 hour quarantine we've implemented for all returns was confirmed to be sufficient for common library materials.

The library is currently in Phase II of the library's reopening plan with the following staffing and services in place:

- ☐ Patrons can utilize book drops 24/7.
- ☐ Materials Pick-up – Stage I
  - Limited hours of curbside pick-up available for holds on the holds shelf processed and awaiting pick-up *before the March 13th closure. (completed)*
  - Pick-ups via curbside available.
  - All pick-ups transacted by the exit door in the Willamette Room.
  - Patrons call us when they arrive and are advised to stay in their vehicle until staff return to the building.
  - Staff leave the patrons items on a cart and re-enter the building.
  - Staff disinfect the pick-up carts at the end of each shift
- ☐ Materials Pick-up - Stage II
  - *Process holds placed after the March 13th closure of items currently in Canby for pick-up. (completed)*
  - After processing is complete (approx. the 2nd week), make them available for curbside pick-up the following week. *(completed)*

- 3rd or 4th week (after all backlogged holds are complete), materials on the shelves in Canby will be available for curbside pick-up by placing request over the phone or email with staff. *(in progress)*
- ☐ Social distance signage ordered/received. *(completed)*
- ☐ LINCC resumes sending automated hold notices for new holds. *(completed)*
- ☐ Daily LINCC courier service resumes. Items owned by other libraries are returned to those libraries. *(Completed)*
- ☐ Furloughed library page staff called back to work. *(completed)*

## **LIBRARY SERVICES DURING THE QUARANTINE (May - June):**

Canby Library staff continue to meet weekly to develop creative ways to offer the digital delivery of programs and services to our patrons in both Spanish and English when possible. Virtual Programming runs Monday – Saturday and changes monthly. Social media continues to be our main way of connecting with patrons right now, besides through the library website and LINCC.org. We connect with patrons through Facebook, Instagram, and Twitter.

The services listed below were developed, made available, and continue to be offered to the Canby community.

### **Adult Programs:**

- Adult Crafts (97 crafts kits have been distributed)
- Book Reviews
- Tech Tuesday Help
- Technology Help (by email)
  - eBooks & digital audiobooks
  - Zoom, Skype, FaceTime
  - Assistance with devices
  - Assistance with social media
- Trivia
- Art Challenges
- LINCC libraries have also added a resource page to lincc.org called “Let’s Talk: Conversations about Race, Identity and Social Justice”

### **Children’s Programs:**

- Summer Reading Kits (250 take and make kits have been distributed)
- Early Literacy & Math Challenges
- Storytime Bites (on our YouTube Channel)
- Window Story Walks
  - Miss Nelson Is Missing by James Marshall
  - Groovy Joe; Ice Cream and Dinosaurs by Eric Litwin
  - How Do Dinosaurs Say I Love You? By Jane Yolen
  - Chicka, Chicka 1 2 3 by Bill Martin, Jr
  - If You Give A Mouse A Cookie by Laura Numeroff
- Story Garden Window Songs and finger plays
  - Rabbits
  - Ice Cream
  - Penguins
  - The Moon
  - Pirates

#### Teen Programs:

- Summer Reading Activity Kits (40 activity kits have been distributed)
- Teen Challenges
- Art Challenges
- Trivia

#### Summer Reading Program:

The Summer Program has been reinvented into a new format that adheres to current social distancing guidelines. Packets of materials for children and teens are available for curbside pickup, including: a book (teens will get several books), the summer reading challenge, and a craft activity. Staff have also developed a method for remote notification of completion of the program (pre-stamped postcards addressed to library, included in initial packet), so we can gather the required statistics.

Teen SRP: The summer activity will be a bingo card with 16 challenges for teens to complete. They can send us a pre-addressed postcard when they complete the challenge in order to be entered in a prize drawing.

#### Reference Services:

Reference Services are available via phone and email Monday – Friday, 10am to 4 pm. Since they have resumed, library staff have answered 167 phone reference and 37 email reference questions.

#### Circulation:

Starting 6/15/2020 all materials checked out will have a checkout period of 28days. Extended checkout periods will continue until Labor Day 9/7/2020. This will prevent patrons from needing to make frequent trips to return materials with short checkout periods. (i.e. DVDs, Lucky Day, etc.)

Holds are now being held for 3 weeks (as opposed to the standard one week), to give patrons more time to navigate the new system.

Another extension of currently checked out materials to 7/31/2020. This will prevent a rush of returns as we start to provide curbside/contactless pickups and open book drops.

#### Collections/Materials:

Staff are continuing with collection development. We receive weekly purchase alerts from LINCC network on items high in demand by Canby library users. Throughout the library closure, patrons were allowed to continue to place holds on materials. (In contrast, Multnomah County Library and Washington County Cooperative Libraries blocked new holds during their closures. LINCC library directors felt that our staff was up to the challenge of addressing a large volume of new holds and we were very successful in this)

- Cataloging
- Processing
- Weeding
- Shifting
- Shelving
- Cleaning
- Taking inventory

## **LDAC:**

Both LDAC meetings and the Library District Task Force need to be on hiatus until such time is safe for us to start gathering, in-person, again.

## **Cultural Passes:**

The Oregon Garden, the Evergreen Aviation Museum, the Japanese Garden and the Portland Art Museum are now open and reservations have resumed through Cultural Pass Express. The Chinese Garden is ending their cultural pass program. The Cultural Pass Express homepage will be updated as venues open for reservations. The calendar will be updated to only include open venues and patrons will no longer be able to look months ahead to place reservations for closed venues.

## **Database Usage Statistics**

Due to low usage stats, the LINCC consortium will no longer provide the Chilton Auto Repair and Pronunciator Language Learning databases.

## **ONLINE PROGRAM ATTENDANCE**

### **MAY**

#### **Monday - What We're Cookin'**

- 5/4 (13)
- 5/11 (9)
- 5/18 (10)
- 5/25 (10)

#### **Tuesday - Trivia Tuesday**

- 5/5 (6)
- 5/12 (5)
- 5/19 (8)
- 5/26 (10)

#### **Wednesday - Children & Family Virtual Storytime Bites**

- 5/6 (48)
- 5/13 (60)
- 5/20 (47)
- 5/27 (42)

#### **Thursday - Art Challenge**

- 5/7 (8)
- 5/14 (19)
- 5/21 (9)
- 5/28 (6)

#### **Friday - Early Literacy & Math Challenge**

- 5/1 (6)
- 5/8 (10)
- 5/15 (7)
- 5/22 (8)
- 5/29 (6)



**Saturday - Book Reviews**

- 5/2 (9)
- 5/9 (7)
- 5/16 (9)
- 5/23 (6)
- 5/30 (14)

**JUNE****Monday - Quaranteen Scavenger Hunt (+37)**

- 6/1 (9)
- 6/8 (6)
- 6/15 (6)
- 6/22 (9)
- 6/29 (7)

**Tuesday - Trivia Tuesday (+35)**

- 6/2 (8)
- 6/9 (7)
- 6/16 (8)
- 6/23 (4)
- 6/30 (8)

**Wednesday - Storytime Bites (+346)**

- 6/3 (67)
- 6/10 (116)
- 6/17 (90)
- 6/24 (73)

**Thursday - Craft Challenge (+49)**

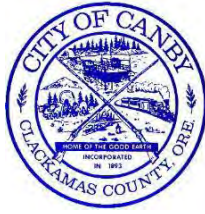
- 6/4 (13)
- 6/11 (15)
- 6/18 (10)
- 6/25 (11)

**Friday - Early Literacy & Math Challenge (+30)**

- 6/5 (9)
- 6/12 (3)
- 6/19 (9)
- 6/26 (9)

**Saturday - What's Blooming!? (+50)**

- 6/6 (8)
- 6/13 (16)
- 6/20 (16)
- 6/27 (10)



City of Canby Bi-Monthly Report  
Department: Court  
May and June 2020

To: The Honorable Mayor Hodson and City Council  
Prepared By: Jessica Roberts, Municipal Court Supervisor  
Through: Amanda Zeiber, Interim City Administrator  
Date: July 2, 2020

Canby Municipal Court has jurisdiction over all city and state law offenses committed within city limits other than felonies. These include: violations, traffic crimes, misdemeanors and City code violations. *Note: Statistic category terms outlined on page 2*

| Monthly Statistics                                | May         | June        |
|---|-------------|-------------|
| <b>Misdemeanors</b>                               |             |             |
| Offenses Filed                                    | 16          | 27          |
| Cases Filed                                       | 11          | 25          |
| Warrants Issued                                   | 0           | 26          |
| <b>Misdemeanor Case Detail</b>                    |             |             |
| Diversion/Deferred Sentence                       | 1           | 4           |
| Offenses Dismissed                                | 4           | 12          |
| Offenses Sentenced                                | 0           | 3           |
| Offenses not filed by City Prosecutor             | 0           | 2           |
| <b>Traffic &amp; Other Violations</b>             |             |             |
| Offenses Filed                                    | 76          | 120         |
| Cases/Citations Filed                             | 54          | 104         |
| Parking Citations Filed                           | 11          | 10          |
| <b>Traffic &amp; Other Violations Case Detail</b> |             |             |
| Diversion (Good Driver Class)                     | 1           | 7           |
| Dismissal (Fix It Tickets)                        | 0           | 6           |
| Dismissed by City Prosecutor or Judge             | 1           | 1           |
| Sentenced by Judge                                | 1           | 11          |
| Handled by Violations Bureau                      | 16          | 41          |
| Guilty by Default                                 | 24          | 98          |
| <b>Traffic and Criminal Trials</b>                |             |             |
| Court Trial (Misdemeanor)                         | 0           | 0           |
| Jury  | 0           | 0           |
| Traffic Trial                                     | 0           | 0           |
| Defendant Accounts referred to Collections        | \$0         | \$78,303.25 |
| Fines & Surcharges Collected                      | \$33,022.70 | \$31,399.46 |

### **Explanation of terms:**

1. Difference between Offenses Filed vs. Cases Filed
  - Multiple offenses (charges) can be filed on any one defendant from a single traffic stop or arrest.
  - Offenses filed reflects this number. Cases filed (also called docket numbers) refers to a single defendant's matter before the court.
2. Offenses not filed by City Prosecutor. Crimes cited by the police department go to the city prosecutor for review. At times those charges are not filed on against the defendant at the determination of the City Prosecutor.
3. Guilty by Default. When a defendant does not appear or contact the court on their scheduled court date a defaulted conviction is entered against them on the following Wednesday. A court clerk processes the default convictions.
4. The Violations Bureau applies to traffic violations only.

Under the Judge's authority, court clerks can accept pleas, offer a deferred sentence program (if qualified) and set a payment plan. Where a crime is charged, a court appearance before the judge is mandatory.

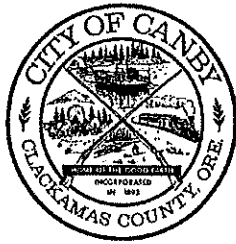
If a defendant qualifies, the clerks can offer an option to participate in an informative driving education course for a fee to the court. If there are no convictions during the following two months, the case will be dismissed.

Current programs and to qualify:

- Good Drivers Program (no prior traffic convictions in the last five years and no further convictions for 60 days)
- 1st Offender – Traffic violation (if under the age of 18)
- 1st Offender - Minor in Possession of Alcohol/Marijuana citation

### **5. Fix It Citations**

The court offers a Fix It program, which allows the defendant to have a citation dismissed if an issue with their vehicle, registration or license is fixed. There is a \$50 dismissal fee owed for each fixed violation. This is reflected in the traffic violations dismissed statistic.



**City of Canby Bi-Monthly Report**  
**Department: Parks**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
 From: Jeff Snyder, Parks Maintenance Lead Worker  
 Prepared by: Same as above  
 Through: Amanda Zeiber, City Administrator  
 Date: 7/8/2020

**Two Month Deferred Maintenance Report**

**May and June**

| City Park Properties   | May June<br>2019                    | May June<br>2020 | Deferred Maintenance Tasks                   |
|------------------------|-------------------------------------|------------------|--|
|                        | <b>Snapshot of Actual<br/>Hours</b> |                  |  |
| Arneson Gardens        | 59                                  | 39.5             | Decrease in landscaping                      |
| Baker Prairie Cemetery | 22                                  | 25               | Increase in landscaping                      |
| Community Park         | 187.5                               | 201.5            | Increase in cleaning                         |
| Disc Golf              | 5                                   | 22.5             | Increase in trail maintenance, no volunteers |
| Eco Park               | 10.5                                | 12               | Increase in cleaning                         |
| Faist 5 - Undeveloped  | 3.5                                 | 6                | Increase mowing, weed spraying               |
| Legacy Park            | 110                                 | 146              | Increase in cleaning                         |
| S. Locust Park         | 91.5                                | 56.5             | Decrease in landscaping                      |
| Forest Road Path       | 103.5                               | 122              | Increase in trail maintenance                |
| Fish Eddy              | 15.5                                | 14               | Decrease in maintenance                      |
| Maple Park             | 147.5                               | 197.5            | Increased landscaping-splash pad management  |
| 19 <sup>th</sup> Loop  | 0                                   | 2.5              | Increased mowing                             |
| Northwood Park         | 56.5                                | 68.5             | Increase in landscaping                      |
| Simnitt - Undeveloped  | 0                                   | 0                | Service as needed                            |
| Skate Park             | 24                                  | 28               | Increase in cleaning                         |
| Territorial CLC        | 0                                   | 0                | Maintained by volunteers                     |
| Timber Park            | 56.5                                | 76.5             | Increased cleaning                           |
| Triangle Park          | 29                                  | 12.5             | Reduced landscaping                          |
| Wait Park              | 159.5                               | 116              | Reduced landscaping/increased cleaning       |

Within the body of the May/June snapshot, the difference between the 2019 and 2020 cycles, there has been an increase of 65.5 hours dedicated towards all park maintenance.

Our priority for the *next reporting cycle* will be to start deferred maintenance tasks in the following order:  
 (1) Continue turf restoration (2) Adjust, repair water systems (3) Clean park assets to keep sites open

# Parks Maintenance

May – June 2020

## Park Renovations and Volunteers

Matthias Armstrong installed a Ga Ga Ball Pit at Community Park to earn his Eagle Scout rank.

2KG started construction mobilization on May the 11<sup>th</sup> for the development of the Maple St. Park Splash Pad. Expected substantial completion of the project should be the end of August.

Staff installed poles in Wait Park for the WIFI in the Parks project. Meetings were also held with DirectLink to plan the Installation of WIFI at Legacy and S. Locust St. Parks.

## Park Maintenance

Parks staff has been busy with daily cleaning of the restroom facilities to keep them open during the COVID-19 pandemic. Playground closed signage has been maintained at all the cities playgrounds. Normal routine spring landscaping tasks have been keeping staff busy. Mowing, edging, weed spraying, shrub/tree trimming and bark dusting have been accomplished. All the irrigation systems are now operational in anticipation of warmer weather. Life jacket vests were placed on the kiosk at Community Park to promote water safety. Valley Green performed a weed control application in the parks turf areas. Light pole planters were cleaned out and planted with flowers for the summer on 2<sup>nd</sup>. Ave. and in the civic plaza. Shrubs were trimmed on 1<sup>st</sup>. and 2<sup>nd</sup>. Ave. to address vision clearance issues. Drip irrigation was installed in three tree planters on 2<sup>nd</sup>. Ave. Hazard tree/ limb removal and storm debris cleanup has also been perform over the last two months. Trail/right-of-way maintenance and rough area mowing is still in progress at this point.

Canby Municipal Courts community service referrals were not utilized in the parks due to COVID-19.

The Parks Department spent 13 hrs. addressing graffiti and vandalism over the last two months.

Regular maintenance was not performed at the 34 areas the Parks Department is responsible for, the Adult Center, Arneson Gardens Horticultural Park, Baker Prairie Cemetery, Beck Pond, Community Park (River), CPiP sign, Disc Golf Park, Eco Park natural area, Faist V property, Holly & Territorial welcome sign property, Hulbert's welcome sign property, Klohe Fountain, Knights Bridge right of way, Legacy Park, South Locust Street Park, Logging Road Trail and Fish Eddy/Log Boom property, Maple Street Park, Nineteenth Loop Natural area, Northwood Estates Park, NW 1<sup>st</sup> Ave., NW 2<sup>nd</sup> Ave., Police Department landscaping, Simnitt Property, Skate Park, Shop Ground, Swim Center, Timber Park, Territorial Estates Future CLC Park, Transit Bus Stop, Triangle Park, Wait Park, Willow Creek Wetlands (19<sup>th</sup> Loop), WWTP property and Zion Cemetery.

## Meetings attended

I met with Jon Champlin (Landscape Architect) and 2KG contractor to discuss the Maple St. Park splash pad design changes.

We all watched the No Harassment Training video and I held two employee evaluations.

## Zion Cemetery

At the cemetery storm debris removal, mowing, floral decoration cleanup, weed spraying, building maintenance issues and sexton duties were performed. Canby Municipal Courts community service referrals were not utilized at the cemetery. **For May and June we received 0 hours of labor at the cemetery from the court referrals. Due to the new social distancing practices, we were not able to utilize this labor force.**

## For your Information

Plases see attached park maintenance actual hours for the months of March and April 2020. Hours are based on number of employee's (each day) x 7.5hrs.

| Parks Department       | May 2020 Actual Hours |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    | Total |       |
|------------------------|-----------------------|---|---|------|------|------|------|------|---|----|------|------|------|------|------|----|----|------|------|------|------|------|----|----|----|------|------|------|------|----|----|-------|-------|
|                        | 1                     | 2 | 3 | 4    | 5    | 6    | 7    | 8    | 9 | 10 | 11   | 12   | 13   | 14   | 15   | 16 | 17 | 18   | 19   | 20   | 21   | 22   | 23 | 24 | 25 | 26   | 27   | 28   | 29   | 30 | 31 |       |       |
| Adult Center           |                       |   |   | 0.5  |      | 2.5  |      |      |   |    | 0.5  | 7.5  |      | 13.0 |      |    |    |      |      |      |      |      |    |    |    |      |      | 1.0  | 1.0  |    |    |       | 26.0  |
| Arneson Gardens        |                       |   |   | 0.5  | 0.5  |      |      | 0.5  |   |    | 0.5  |      | 0.5  |      | 0.5  |    |    | 0.5  | 15.5 | 0.5  | 2.0  | 0.5  |    |    |    | 0.5  |      | 1.0  | 1.0  |    |    |       | 24.5  |
| Baker Prairie Cem.     |                       |   |   |      | 2.0  |      |      |      |   |    |      |      |      | 1.5  |      |    |    | 9.0  |      | 2.0  |      |      |    |    |    |      |      |      |      |    |    |       | 14.5  |
| Beck Pond              |                       |   |   |      |      |      | 1.5  | 2.5  |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      | 1.0  |      |    |    |       | 5.0   |
| Community Park         |                       |   |   | 3.0  | 6.5  | 5.0  |      | 2.0  |   |    | 2.0  | 7.5  | 0.5  | 4.5  | 8.0  |    |    | 2.0  |      | 11.5 | 3.0  | 4.0  |    |    |    | 10.5 | 10.0 | 2.0  | 3.0  |    |    |       | 85.0  |
| CPIP Sign Property     |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Disc Golf Course       |                       |   |   |      |      |      |      |      |   |    | 4.0  | 4.0  |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 8.0   |
| Eco Park               |                       |   |   | 0.5  |      | 1.5  |      |      |   |    | 0.5  |      |      |      |      |    |    |      |      |      |      | 0.5  |    |    |    | 0.5  |      |      | 1.5  |    |    |       | 5.0   |
| Faist V (5)            |                       |   |   |      |      |      | 1.0  |      |   |    |      |      |      |      |      |    |    |      | 1.0  |      |      |      |    |    |    |      |      | 1.0  |      |    |    |       | 3.0   |
| Holly-Territorial Sign |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Hulberts-sign prop.    |                       |   |   |      | 1.0  |      |      |      |   |    |      |      |      |      |      |    |    |      |      | 2.0  |      |      |    |    |    |      |      | 1.5  |      |    |    |       | 4.5   |
| Klohe Fountain         |                       |   |   | 0.5  |      |      |      | 4.0  |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 4.5   |
| Knights Brdg.          |                       |   |   | 1.5  |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      | 1.0  |      |    |    |       | 2.5   |
| Legacy Park            |                       |   |   | 3.5  | 7.0  | 10.5 |      | 0.5  |   |    | 3.5  |      |      | 3.0  | 0.5  |    |    | 0.5  |      | 3.0  |      | 1.5  |    |    |    | 10.5 | 6.5  | 4.5  | 2.5  |    |    |       | 57.5  |
| S. Locust Park         |                       |   |   | 0.5  | 4.0  | 2.0  |      | 8.0  |   |    | 1.0  |      | 0.5  |      | 0.5  |    |    | 0.5  |      | 0.5  |      | 1.5  |    |    |    | 2.0  | 4.0  | 3.0  | 2.5  |    |    |       | 30.5  |
| Logging Rd. Path       |                       |   |   | 0.5  |      |      | 1.0  |      |   |    | 0.5  | 3.5  | 2.5  | 5.5  | 6.5  |    |    |      |      |      | 9.0  | 2.5  |    |    |    | 3.0  |      | 0.5  | 3.5  |    |    |       | 38.5  |
| Fish Eddy-Log Boom     |                       |   |   | 0.5  |      |      |      |      |   |    | 3.5  |      |      |      | 1.0  |    |    |      |      | 0.5  |      | 0.5  |    |    |    |      |      |      | 0.5  |    |    |       | 6.5   |
| Maple St. Park         |                       |   |   | 3.0  | 3.0  | 4.0  | 3.0  | 1.0  |   |    | 1.5  |      |      | 3.0  | 5.5  |    |    | 1.5  | 2.0  | 0.5  | 19.5 | 1.5  |    |    |    |      | 4.0  | 11.0 | 16.0 |    |    |       | 80.0  |
| 19th Loop              |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Northwood Park         |                       |   |   | 0.5  | 3.0  |      | 12.5 | 0.5  |   |    | 0.5  |      | 0.5  |      | 3.0  |    |    | 0.5  |      | 2.5  | 2.0  | 0.5  |    |    |    |      | 4.5  | 1.0  | 0.5  |    |    |       | 32.0  |
| Street Landscaping     |                       |   |   | 1.0  |      | 0.5  | 5.0  | 6.5  |   |    | 19.5 | 15.0 | 30.5 |      | 0.5  |    |    | 6.0  |      | 0.5  |      | 0.5  |    |    |    | 0.5  | 1.5  |      |      |    |    |       | 87.5  |
| Storm/Collect mow      |                       |   |   | 0.5  |      | 2.5  |      |      |   |    |      |      |      |      |      |    |    |      |      | 0.5  |      |      |    |    |    |      |      |      | 2.5  |    |    |       | 6.0   |
| Police Department      |                       |   |   | 3.0  |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      | 3.0  |      |      |    |    |    |      |      |      |      |    |    |       | 6.0   |
| Simnitt Property       |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Skate Park             |                       |   |   | 4.0  |      |      |      | 0.5  |   |    | 0.5  |      |      |      | 2.5  |    |    | 0.5  |      | 4.0  |      | 0.5  |    |    |    |      |      | 1.0  | 0.5  |    |    |       | 14.0  |
| Shops/tools trucks     |                       |   |   |      |      |      |      |      |   |    |      |      | 4.0  | 1.5  |      |    |    |      |      |      |      | 8.0  |    |    |    |      |      | 1.0  |      |    |    |       | 14.5  |
| Swim Center            |                       |   |   | 1.0  |      |      |      |      |   |    | 1.0  |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      | 1.5  | 0.5  |    |    |       | 4.0   |
| Territorial-CLC Prop.  |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Timber Park            |                       |   |   | 3.5  | 5.0  |      |      | 0.5  |   |    | 2.5  |      | 0.5  |      | 0.5  |    |    | 0.5  |      | 0.5  |      | 1.5  |    |    |    | 4.0  | 1.0  | 3.0  | 1.0  |    |    |       | 24.0  |
| Transit Bus stop       |                       |   |   |      |      |      |      | 0.5  |   |    | 0.5  |      |      |      |      |    |    | 8.5  |      | 0.5  |      | 1.0  |    |    |    | 2.0  |      | 0.5  | 0.5  |    |    |       | 14.0  |
| Triangle Park          |                       |   |   | 0.5  | 4.5  |      |      |      |   |    |      |      |      | 1.0  |      |    |    |      |      |      |      |      |    |    |    |      |      | 0.5  |      |    |    |       | 6.5   |
| Wait Park              |                       |   |   | 0.5  |      | 5.0  | 6.0  | 4.0  |   |    | 1.0  |      | 1.0  | 3.5  |      |    |    | 0.5  |      | 0.5  |      | 2.5  |    |    |    | 3.0  | 9.0  | 2.0  | 2.0  |    |    |       | 40.5  |
| Veterans Memorial      |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    | 0.5  | 18.0 | 3.0  |      |      |    |    |    |      |      |      |      |    |    |       | 21.5  |
| WWTP property          |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    |       | 0.0   |
| Zion Cemetery          |                       |   |   | 17.0 | 15.0 | 15.0 | 15.0 | 16.0 |   |    | 8.5  | 15.0 | 11.0 | 15.0 | 15.0 |    |    | 14.0 | 15.0 | 15.0 | 15.0 | 15.0 |    |    |    | 7.5  | 7.5  | 9.0  | 6.5  |    |    |       | 247.0 |
| Administration         | 1.0                   |   |   | 3.0  | 1.0  | 4.0  | 7.5  | 5.5  |   |    | 1.0  |      | 1.0  | 1.0  | 1.0  |    |    |      | 2.0  | 1.0  | 2.0  | 3.0  |    |    |    | 1.0  | 2.5  | 3.5  |      |    |    |       | 41.0  |
| Monthly Total          |                       |   |   |      |      |      |      |      |   |    |      |      |      |      |      |    |    |      |      |      |      |      |    |    |    |      |      |      |      |    |    | 954.0 |       |

| Parks Department       | June 2020 Actual Hours |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    | Total |      |
|------------------------|------------------------|------|------|------|------|---|---|------|-----|------|------|------|----|----|------|------|------|------|------|----|----|-----|------|------|------|-----|----|----|------|------|----|-------|------|
|                        | 1                      | 2    | 3    | 4    | 5    | 6 | 7 | 8    | 9   | 10   | 11   | 12   | 13 | 14 | 15   | 16   | 17   | 18   | 19   | 20 | 21 | 22  | 23   | 24   | 25   | 26  | 27 | 28 | 29   | 30   | 31 |       |      |
| Adult Center           |                        | 1.0  |      |      |      |   |   |      |     |      | 0.5  |      |    |    |      |      |      |      |      |    |    |     | 0.5  |      |      |     |    |    |      |      |    | 2.0   |      |
| Arneson Gardens        |                        | 2.5  |      |      | 0.5  |   |   | 1.0  |     |      | 0.5  | 0.5  |    |    | 0.5  |      |      | 2.5  | 0.5  |    |    | 1.5 | 2.0  | 0.5  |      | 2.0 |    |    | 0.5  |      |    | 15.0  |      |
| Baker Prairie Cem.     | 4.5                    |      |      | 1.0  |      |   |   |      |     |      |      |      |    |    |      |      | 1.5  |      |      |    |    |     |      |      |      | 3.5 |    |    |      |      |    | 10.5  |      |
| Beck Pond              |                        |      |      |      | 0.5  |   |   |      |     | 2.0  |      |      |    |    |      |      |      |      |      |    |    |     |      | 1.0  |      |     |    |    |      |      |    |       | 3.5  |
| Community Park         | 1.0                    | 3.5  | 8.0  | 1.0  | 27.5 |   |   | 6.0  | 7.0 | 6.5  | 5.0  | 8.5  |    |    | 4.0  | 0.5  |      | 1.5  | 6.0  |    |    | 5.5 | 8.0  | 11.5 |      | 3.0 |    |    | 1.5  | 1.0  |    | 116.5 |      |
| CPIP Sign Property     |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      | 0.5  |      |      |    |    |     |      |      |      |     |    |    |      | 1.0  |    | 1.5   |      |
| Disc Golf Course       |                        |      |      |      |      |   |   |      |     |      |      |      |    |    | 9.5  |      |      |      |      |    |    | 3.0 |      |      | 2.0  |     |    |    |      |      |    | 14.5  |      |
| Eco Park               |                        |      |      | 0.5  |      |   |   |      | 0.5 |      | 0.5  | 0.5  |    |    |      |      | 2.0  | 1.5  | 0.5  |    |    |     |      |      | 0.5  | 0.5 |    |    |      |      |    |       | 7.0  |
| Faist V (5)            |                        | 2.0  |      |      |      |   |   |      |     |      |      |      |    |    |      |      | 1.0  |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 3.0  |
| Holly-Territorial Sign |                        | 0.5  |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 0.5  |
| Hulberts-sign property |                        |      |      |      | 1.0  |   |   |      |     |      | 2.0  |      |    |    |      |      |      |      |      |    |    |     | 1.0  |      |      |     |    |    |      |      |    |       | 4.0  |
| Klohe Fountain         |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      | 1.0  |     |    |    |      |      |    |       | 1.0  |
| Knights Brdg.          |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      | 1.0  |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 1.0  |
| Legacy Park            | 4.0                    | 5.0  | 0.5  | 2.0  | 1.0  |   |   | 1.5  | 8.0 | 24.5 | 17.5 | 0.5  |    |    | 1.5  | 0.5  | 2.0  | 0.5  | 6.0  |    |    | 3.0 | 4.0  | 1.0  | 2.5  | 1.0 |    |    | 1.0  | 1.0  |    | 88.5  |      |
| S. Locust Park         | 0.5                    | 0.5  | 0.5  | 4.0  | 1.0  |   |   | 1.0  | 3.5 | 1.5  | 1.5  | 0.5  |    |    |      | 0.5  |      |      | 0.5  |    |    | 2.5 | 2.5  | 1.0  | 0.5  | 1.0 |    |    | 2.5  | 0.5  |    | 26.0  |      |
| Logging Rd. Path       |                        | 0.5  |      | 1.0  |      |   |   | 1.0  |     |      | 1.0  | 0.5  |    |    |      | 4.5  | 11.5 | 19.0 | 7.5  |    |    | 4.5 | 10.0 | 1.5  | 10.5 | 8.0 |    |    | 2.5  |      |    | 83.5  |      |
| Fish Eddy-Log Boom     |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      | 1.0 |    |    | 2.5  | 4.0  |    |       | 7.5  |
| Maple St. Park         | 11.0                   | 10.0 | 23.5 | 20.5 | 4.5  |   |   | 1.0  | 5.0 | 2.0  | 0.5  | 1.5  |    |    | 1.0  | 1.0  | 5.0  | 9.0  | 5.0  |    |    | 4.0 | 1.5  | 4.5  | 6.0  | 1.0 |    |    |      |      |    | 117.5 |      |
| 19th Loop              | 2.0                    |      |      |      | 0.5  |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 2.5  |
| Northwood Park         |                        | 0.5  | 4.0  | 1.5  | 1.5  |   |   | 0.5  | 0.5 |      | 3.5  | 8.0  |    |    | 1.0  |      | 0.5  |      | 0.5  |    |    | 0.5 | 2.0  | 3.0  | 3.0  | 0.5 |    |    | 0.5  | 5.0  |    | 36.5  |      |
| Street Landscaping     |                        | 1.5  |      | 6.0  |      |   |   | 1.5  |     |      |      | 0.5  |    |    | 0.5  | 11.0 | 3.0  |      | 3.5  |    |    | 5.0 |      |      | 9.0  | 6.0 |    |    | 5.0  | 19.0 |    | 71.5  |      |
| Storm/Collect mow      | 10.0                   |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      | 0.5  | 1.0  |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 11.5 |
| Police Department      | 2.5                    | 1.0  |      | 1.0  |      |   |   | 7.5  | 6.0 | 3.0  | 0.5  | 8.5  |    |    |      |      |      |      | 1.0  |    |    |     |      | 1.5  | 2.0  | 1.0 |    |    |      |      |    |       | 35.5 |
| Simnitt Property       |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 0.0  |
| Skate Park             |                        | 0.5  |      | 0.5  | 0.5  |   |   | 0.5  | 0.5 |      |      | 0.5  |    |    | 0.5  |      | 1.5  |      | 0.5  |    |    |     |      | 3.0  | 2.0  | 3.0 |    |    | 0.5  |      |    |       | 14.0 |
| Shops/ tools-trucks    |                        | 1.0  |      |      | 2.0  |   |   |      | 0.5 | 2.0  | 1.0  | 1.0  |    |    | 3.0  | 3.0  |      |      |      |    |    | 1.0 |      | 5.0  |      |     |    |    |      |      |    |       | 19.5 |
| Swim Center            |                        | 2.5  |      |      |      |   |   |      |     |      | 1.0  |      |    |    |      |      |      |      |      |    |    |     | 2.0  |      |      |     |    |    |      | 2.0  |    |       | 7.5  |
| Territorial-CLC Prop.  |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 0.0  |
| Timber Park            | 0.5                    | 3.5  | 0.5  | 1.0  | 1.0  |   |   | 1.0  | 6.5 | 0.5  | 2.5  | 0.5  |    |    | 5.5  | 15.0 | 0.5  | 0.5  | 0.5  |    |    | 1.5 | 3.0  | 1.0  | 1.5  | 1.0 |    |    | 4.0  | 1.0  |    | 52.5  |      |
| Transit Bus stop       | 0.5                    | 2.5  | 0.5  | 1.0  | 1.0  |   |   | 1.0  | 0.5 | 0.5  |      | 0.5  |    |    | 0.5  |      | 0.5  | 0.5  | 0.5  |    |    | 0.5 | 1.0  | 0.5  | 0.5  | 1.5 |    |    | 1.0  |      |    |       | 15.0 |
| Triangle Park          |                        | 1.0  |      |      | 0.5  |   |   |      |     |      |      |      |    |    |      |      | 1.0  |      |      |    |    |     | 0.5  | 1.0  | 1.0  |     |    |    | 1.0  |      |    |       | 6.0  |
| Wait Park              | 0.5                    | 2.0  | 4.0  | 2.0  | 2.0  |   |   | 17.0 | 6.5 | 1.5  | 0.5  | 1.0  |    |    | 3.0  | 1.0  | 3.5  | 0.5  | 10.0 |    |    | 3.0 | 5.0  | 3.0  | 1.5  | 3.0 |    |    | 1.0  | 4.0  |    | 75.5  |      |
| Veterans Memorial      |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      | 1.5  |      |    |    | 1.5 |      |      |      |     |    |    | 9.5  | 0.5  |    |       | 13.0 |
| WWTP property          |                        |      |      |      |      |   |   |      |     |      |      |      |    |    |      |      |      |      |      |    |    |     |      |      |      |     |    |    |      |      |    |       | 0.0  |
| Zion Cemetery          | 8.0                    | 7.5  | 7.5  | 7.5  | 7.5  |   |   | 7.5  | 7.5 | 7.5  | 8.0  | 13.5 |    |    | 16.5 | 13.5 | 15.0 | 15.0 | 7.5  |    |    | 7.5 | 5.0  | 7.5  | 7.5  | 4.0 |    |    | 10.0 | 8.0  |    | 199.0 |      |
| Administration         |                        | 3.5  | 3.5  | 1.0  |      |   |   |      |     | 1.0  | 6.5  | 3.5  |    |    | 2.0  | 0.5  | 2.0  | 1.0  | 1.0  |    |    | 0.5 | 2.0  | 2.0  | 1.5  | 1.5 |    |    |      |      |    |       | 33.0 |

1095.5 Monthly Total



## City of Canby Bi-Monthly Report

### Department: Development Services

### For Months of: May & June 2020

To: The Honorable Mayor Hodson & City Council  
From: Sandy Freund, Planning Director  
Prepared by: Laney Fouse, Office Specialist II  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/8/2020

The following report provides a summary of the Planning and Development Services activities for the months of May and June, 2020. Please feel free to call departmental staff if you have questions or desire additional information about any of the listed projects or activities. This report includes planning activities, a listing of land use applications and development site plan review coordination projects for building permits.

#### **Development Services Activities:**

- 1. DLCD Continues to Implement New State Housing Mandates.** New State requirements are headed our way with the first requirements to be in effect starting in 2022 as a result of the passage of House Bills 2001 and 2003 which will require the effective elimination of the single-family zone by allowing duplexes wherever single-family homes are permitted, and new housing reporting requirements and standards that will require cities – including Canby - to create a Housing Production Strategy which will be monitored with actual production goals to be enforced by DLCD, and adoption of a Housing Needs Analysis addressing specific land and associated zoning to address all identified housing type deficiencies with associated actionable solutions. The plan is to pursue formal Council adoption of the previously prepared and reviewed Housing Needs Analysis with the inclusion of necessary actionable items this coming fall/winter timeframe.
- 2. Splash Park.** The preferred and final design/layout has been decided on for the upcoming splash pad at Maple Park. The project scope was expanded to include sidewalks, benches, and a gazebo. The components included in the splash pad represent the feedback provided by the community. The design theme reflects Canby's status as the "Garden Spot." Construction has been delayed due to the COVID-19 health crisis.
- 3. DLCD Technical Assistance Grant Application.** Planning Director, Sandy Freund solicited responses from consultants with previous experience in preparing an Economic Opportunities Analysis (EOA) for Canby. A consultant was chosen in coordination with DLCD in April. The consultant and staff have begun the process of the Tasks as outlined in the grant project and are working towards the formation of a Project Advisory Committee, as well as creating an in-depth scope of work for the EOA. The analysis will assist in developing a cohesive strategy for continued economic growth of our community through a focused identification of local barriers and challenges to growth, as well as market trends. The EOA document will also provide targeted information for staff in order to identify policies to bring forward to Council for discussion for an update to the Economic Element of the City of Canby Comprehensive Plan, as well as meeting the requirements of Statewide Planning Goal 9.
- 4. Project Proposal for Federal CDBG Funds.** Planning staff, with assistance from public works and our consulting City Engineering staff prepared and submitted for a competitive Community Development Block Grant application proposal in December to access federal grant funding coordinated and awarded by Clackamas County's Community Development Division that is primarily to benefit low and moderate income people. The City's project proposal involves either new construction and/or retrofit reconstruction of inventoried American with Disabilities Act corner street intersection sidewalk ramps that are required to meet new ADA technical design and slope standards. Funding will enable the construction of 32 new sidewalk ramps – 25 ramps inside the designated Low to Moderate Income mapped area, and 7 ramps just outside this designated area in Canby. Funding has been requested for the 2020 – 2021 program year.
- 5. PSU Population Forecast Survey.** Every 4-years PSU is charged by State legislation to provide State-wide population forecasts by Region on a rotating basis. These include both a 25 and 50-year forecast and they rely on survey input



from all local jurisdictions to provide information on all current and known planned development, knowledge about the demographics of the population, any observations about housing in the community, future employers locating to the community, indication of the capacity of the communities infrastructure to accommodate growth, and any promotions or hindrances to new population growth, and any plans for UGB expansion. Staff attended a Region 3 Small Cities in Clackamas Population Forecast Webinar. Reviewing generated forecasts from the models used are expected next.

## 6. Miscellaneous Items of Interest:

- We welcomed Brianna Addotta, as our additional Associate Planner to help us meet our demanding workload.

Panning Staff continues to see a high volume of Site Plan and land use applications during the last two months, especially for new homes being built in Canby.

- The City's newest subdivision is Ivy Ridge Estates located in SW Canby. The site is bordered on the east by S Fir St, to the west by S Ivy St and to the south from NE 18<sup>th</sup> Ave to the top of the bank of the Molalla River. A model home is currently being built by Ed Netter Construction.

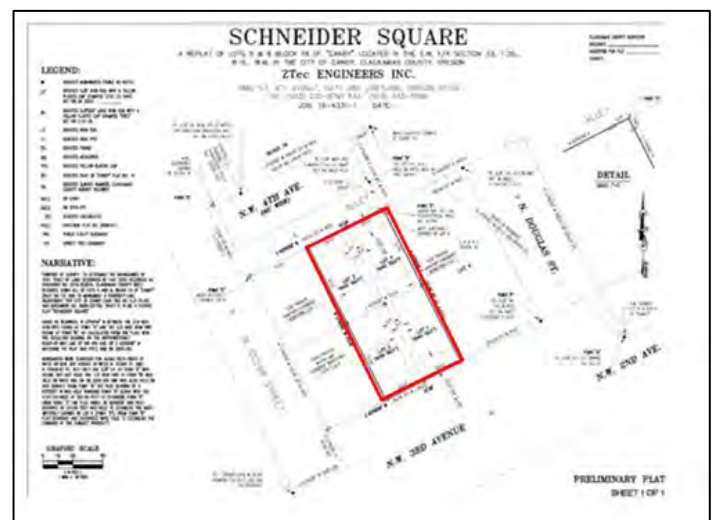


- Our staff continues to operate within the parameters of the COVID-19 crisis which has brought about a new normal with processing Site Plan and Land Use applications via telecommuting through phone, Email and meeting virtually using Zoom, thus helping stop the spread of the virus.

## LAND USE APPLICATION ACTIVITY

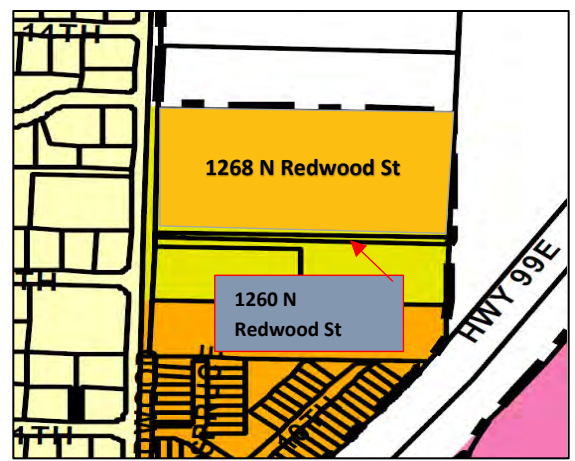
### 7. Pre-Application Conference(s) Submitted May 1 – June 30, 2020:

- PRA 20-02 Schneider Square – This pre-application is for a 4-lot subdivision consisting of 4 townhomes on individual lots. The site has street frontage on N.W. 3rd Ave. This application requests approval of a subdivision to divide the property into four parcels. The preliminary plan is construct two structures consisting of two townhomes each with 70% or less impervious surfaces. The construction plans will be designed to be two-stories in height.



**Land Use Applications Submitted May 1 – June 30, 2020:**

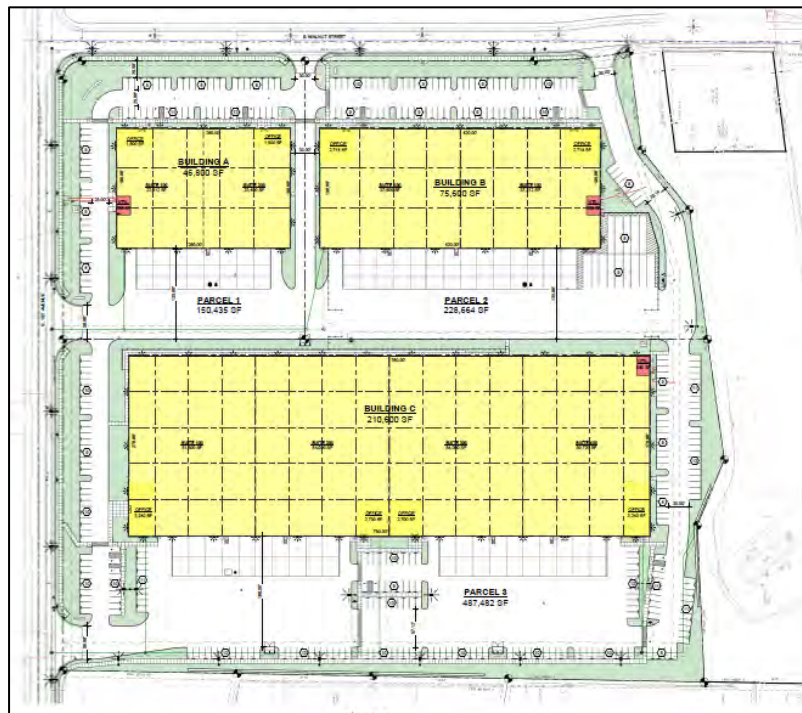
- ANN/ZC/SUB 20-01 Redwood Landing Phase II 1260 N Redwood St – The annexation and zone change portions of the application consists of 10,878 square feet comprised of a 16.5-foot wide strip of land that provides access from N. Redwood Street, and includes the portion of the N. Redwood Street right-of-way, from centerline to the easterly right-of-way line, fronting the subject property. Following the annexation and zone change there is a 29-lot subdivision planned as the second phase of Redwood Landing.



- DR/CUP/PUD 20-01 Hope Village, So of 1535 S Ivy St – Plans to expand the SW Campus will include a mix of low rise units as duplexes and mid-rise buildings (3 stories) that have higher massing and larger numbers of units, making use of elevators to provide access to units on the upper floors. This will be a new style of housing for Hope Village.



- DR 20-02 – Baker Center, SE 1<sup>st</sup> Ave & S Walnut – This industrial site is for the proposed construction of three speculative buildings designed to accommodate a combination of warehouse and light manufacturing tenants. The development will include a partition that will create three separate parcels.



**8. Pre-Construction Conference(s), including separate Plan Review meetings Held May 1 – June 30, 2020:**

- June 11, 2020 – Dodds 82-lot Subdivision
- June 17, 2020 -- Bergmann Square – 4-lot Subdivision
- June 23, 2020 --17<sup>th</sup> Ave Subdivision (Canby 2) – 9-lot Subdivision
- Caruso Produce – June 29, 2020 – Proposed construction of a 95,037 sf building & associated site work.
- Stanton Furniture – June 29, 2020 – Proposed construction of a 150,350 SF building & associated site work
- Tofte Farms – June 30, 2020 – 16-lot Subdivision

**9. PC Agenda Items Reviewed May 1 – June 30, 2020:**

- To consider a Remand from the City Council of APP 20-01(DR 19-02) by Caruso Produce, appealing language of two conditions of approval in the Final Findings of DR 19-02 but not the Commission's final approval of the project.
- To consider the 17th Avenue Subdivision (SUB 20-01) consisting of 9 lots at 1629 N Redwood St.

**10. Site Plans Submitted for Zoning Conformance and Authorization for Release of County Building Permits May 1 – June 30, 2020:**

| CITY FILE # | APPLICANT                | PROJECT                                       | ADDRESS  |
|-------------|--------------------------|---|--|
| SP 20-121   | Ed Netter Construction   | SFR   | 1866 S Fir Loop, Ivy Ridge Estates, Lot 29             |
| SP 20-120   | Ed Netter Construction   | SFR   | 303 SW 18th Ave, Ivy Ridge Estates, Lot 6 (Model Home) |
| SP 20-119   | NW Contracting, LLC      | Garage Renovation to master suite & bathroom. | 1195 N Lupine St                                       |
| SP 20-118   | OCI Reimers              | Roof Access                                   | 138 S Hazel Dell Way, Suite 101                        |
| SP 20-117   | Stafford Homes           | SFR   | 1707 N River Alder St, Redwood Landing Lot 7           |
| SP 20-116   | Stafford Homes           | SFR   | 1705 N River Alder St, Redwood Landing Lot 6           |
| SP 20-115   | Stafford Homes           | SFR   | 1701 N River Alder St, Redwood Landing Lot 5           |
| SP 20-114   | Clackamas Co Fairgrounds | Drive in theatre screen                       | 694 NE 4th Ave   |
| SP 20-113   | Lennar NW, Inc.          | SFR   | 1723 S Fir St, Beck Pond Lot 41                        |
| SP 20-112   | Locke Buildings          | Accessory pole building                       | 165 SE 10th Ave  |
| CITY FILE # | APPLICANT                | PROJECT                                       | ADDRESS  |
| SP 20-111   | Academy Mortgage         | Change of Use                                 | 209 SE 1st Ave   |

|                    |                               |  |  |
|--------------------|-------------------------------|--|--|
| SP 20-110          | VLMK                          | Construct a 160,134 sf building and associated site work | 23849 S Mulino Rd                              |
| SP 20-109          | Danny Sprague                 | Seven Acres Grading                                      | 3500 N Maple St                                |
| SP 20-108          | Lennar NW, Inc.               | SFR  | 432 SE 16th Avenue, Beck Pond, Lot 4           |
| SP 20-107          | Richmond American Homes       | SFR  | 1542 N Sweetgum St, Redwood Landing, Lot 48    |
| SP 20-106          | Richmond American Homes       | SFR  | 1631 N Sycamore St, Redwood Landing, Lot 40    |
| SP 20-105          | Ed Netter Construction        | SFR  | 1920 S Fir Loop, Ivy Ridge Estates, Lot 25     |
| SP 20-104          | Lennar NW, Inc.               | SFR  | 438 SW 5th Ave, Beck Pond Lot 5                |
| SP 20-103          | Ed Netter Construction        | SFR  | 1402 S Fir Loop, Ivy Ridge Est Lot 27          |
| SP 20-102          | Richmond American Homes       | SFR  | 1611 NE 15th Ave, Redwood Landing Lot 72       |
| SP 20-101          | Steve Gibson Construction     | TI - Oliver Ins office                                   | 101 N Ivy St                                   |
| SP 20-100          | Dale Borgaes                  | Accessory Structures                                     | 1450 N Birch St                                |
| SP 20-99           | Tony Smith Construction       | Accessory Structures                                     | 318 NE 9th Ave, Canby Acres                    |
| SP 20-98           | Nick Netter Construction      | SFR  | 2086 SE 12th Ave, Faist 8, Lot 48              |
| SP 20-97           | Charlie Clark                 | New covered rear patio                                   | 1487 SE 9th Ave, S Redwood Estates             |
| SP 20-96           | Caruso Produce/VLMK           | Mass Grading   | 2100 SE 4th Ave, CPIP                          |
| SP 20-95           | Lennar NW, Inc.               | SFR  | 442 SW 16th Avenue, Beck Pond Lot 6            |
| SP 20-94           | Lennar NW, Inc.               | SFR  | 448 SW 16th Avenue, Beck Pond Lot 7            |
| SP 20-93           | Lennar NW, Inc.               | SFR  | 452 SW 16th Avenue, Beck Pond Lot 8            |
| SP 20-92           | Lennar NW, Inc.               | SFR  | 454 SW 16th Avenue, Beck Pond Lot 9            |
| SP 20-91           | Richmond American Homes       | SFR  | 1525 N River Alder St, Redwood Landing, Lot 64 |
| SP 20-90           | Lennar NW, Inc.               | SFR  | 1764 S Evergreen, Beck Pond, Lot 64            |
| SP 20-89           | Holt Homes                    | SFR  | 2291 SE 11th Avenue, Timber Park, Lot 48       |
| SP 20-88           | Holt Homes                    | SFR  | 2260 SE 11th Place, Timber Park, Lot 31        |
| <b>CITY FILE #</b> | <b>APPLICANT</b>              | <b>PROJECT</b>   | <b>ADDRESS</b>                                 |
| SP 20-87           | Richmond American Homes       | SFR  | 1693 NE 15th Avenue, Redwood Landing, Lot 77   |
| SP 20-86           | Richmond American Homes       | SFR  | 1585 NE 15th Avenue, Redwood Landing, Lot 70   |
| SP 20-85           | Curran-McLeod (City of Canby) | WWTP, Scum Receiving Station                             | 1480 NE Territorial Road                       |



|          |                               |                           |  |
|----------|-------------------------------|---------------------------|--|
| SP 20-84 | Curran-McLeod (City of Canby) | WWTP, Primary Clarifier   | 1480 NE Territorial Road                       |
| SP 20-83 | Curran-McLeod (City of Canby) | WWTP, Collection Station  | 1480 NE Territorial Road                       |
| SP 20-82 | Lennar NW, Inc.               | SFR                       | 1749 S Evergreen St, Beck Pond, Lot 57         |
| SP 20-81 | Lennar NW, Inc.               | SFR                       | 1714 S Evergreen St, Beck Pond, Lot 61         |
| SP 20-80 | Holt Homes                    | SFR                       | 1232 S Willow St, Timber Park, Lot 29          |
| SP 20-79 | Stafford Development Co       | Dodds Subdivision Grading | 1882 N Holly Street                            |
| SP 20-78 | B & K Development             | SFR                       | 1030 N Hawthorne Street                        |
| SP 20-77 | Charles Clark Construction    | SFR                       | 902 N Locust St, Canby Gardens, Lot 25         |
| SP 20-76 | ICON Construction             | SFR                       | 1516 N Sycamore St, Redwood Landing, Lot 82    |
| SP 20-75 | ICON Construction             | SFR                       | 1510 N Sycamore St, Redwood Landing, Lot 81    |
| SP 20-74 | ICON Construction             | SFR                       | 1502 N Sycamore St, Redwood Landing, Lot 80    |
| SP 20-73 | ICON Construction             | SFR                       | 1703 N River Alder St, Redwood Landing, Lot 22 |
| SP 20-72 | Lennar NW, Inc.               | SFR                       | 475 SW 16th Ave, Beck Pond, Lot 32             |
| SP 20-71 | Lennar NW, Inc.               | SFR                       | 472 SW 16th Ave, Beck Pond, Lot 12             |
| SP 20-70 | Lennar NW, Inc.               | SFR                       | 468 SW 16th Ave, Beck Pond, Lot 11             |
| SP 20-69 | Lennar NW, Inc.               | SFR                       | 463 SW 16th Ave, Beck Pond, Lot 34             |
| SP 20-68 | Lennar NW, Inc.               | SFR                       | 467 SW 16th Ave, Beck Pond, Lot 33             |
| SP 20-67 | Lennar NW, Inc.               | SFR                       | 466 SW 16th Ave, Beck Pond, Lot 10             |

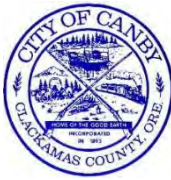
**11. Signs Submitted for Plan Review May 1 – June 30, 2020:**

| CITY FILE # | APPLICANT       | PROJECT                         | ADDRESS                 |
|-------------|-----------------|---------------------------------|-------------------------|
| SN 20-05    | Salem Signs     | Verizon Wall Sign               | 1109 SW 1st Ave Suite G |
| SN 20-04    | Randy Rasmussen | Columbia Distributing Wall Sign | 2525 SE 1st Ave         |

|                 |              |                   |                 |
|-----------------|--------------|-------------------|-----------------|
| <b>SN 20-03</b> | Ramsey Signs | Safeway Wall Sign | 1051 SW 1st Ave |
|-----------------|--------------|-------------------|-----------------|

**12. City of Canby Signoff for Active Permit Finals for Occupancy by Clackamas County, May 1 – June 30, 2020:**

| DATE<br>FINALLED | APPLICANT                               | PROJECT | ADDRESS                                    |
|------------------|---|---------|--|
| <b>5/4/2020</b>  | ED NETTER<br>CONSTRUCTION INC           | SFR     | 1947 SE 11TH PL, FAIST 8, LOT 4            |
| <b>5/5/2020</b>  | HERITAGE HOMES OF<br>MOLALLA OREGON INC | SFR     | 2255 SE 11TH PL, TIMBER PARK - LOT 24      |
| <b>5/7/2020</b>  | LENNAR HOMES NW                         | SFR     | 1697 S FIG ST, BECK PPOND, LOT 35          |
| <b>5/18/2020</b> | HERITAGE HOMES OF<br>MOLALLA OREGON INC | SFR     | 2176 SE 12TH AVE, TIMBER PARK, LOT 14      |
| <b>5/18/2020</b> | STAFFORD HOMES & LAND<br>LLC            | SFR     | 1646 NE 17TH AVE, REDWOOD LANDING, LOT 12  |
| <b>5/20/2020</b> | RAY KAHUT                               | SFR     | 790 NW 11TH AVE, NORTHWOOD ESTATES, LOT 88 |
| <b>5/27/2020</b> | HERITAGE HOMES OF<br>MOLALLA OREGON INC | SFR     | 2132 SE 12TH AVE, TIMBER PARK, LOT 16      |
| <b>5/27/2020</b> | TIETON CONSTRUCTION                     | SFR     | 1502 NE 17TH AVE, REDWOOD LANDING, LOT 1   |
| <b>5/27/2020</b> | ED NETTER<br>CONSTRUCTION INC           | SFR     | 2084 SE 11TH PL, FAIST 8, LOT 54           |
| <b>5/28/2020</b> | TIETON CONSTRUCTION                     | SFR     | 1568 NE 17TH AVE, REDWOOD LANDING, LOT 4   |
| <b>5/28/2020</b> | HERITAGE HOMES OF<br>MOLALLA OREGON INC | SFR     | 2264 SE 12TH AVE, TIMBER PARK, LOT 9       |
| <b>6/17/2020</b> | STAFFORD HOMES & LAND                   | SFR     | 1582 NE 17TH AVE, REDWOOD LANDING, LOT 9   |



## City of Canby Bi-Monthly Report Department: Police May / June 2020

To: The Honorable Mayor Hodson and City Council  
From: Chief Bret Smith  
Through: Amanda Zeiber, Interim City Administrator  
Date: June 7, 2020

|   | May | June |
|---|-----|------|
| Calls for Service Dispatched 911 and non-emergency calls                      | 742 | 850  |
| <b>Property Crimes Reported</b>   |     |      |
| Burglary  | 2   | 2    |
| Unauthorized Use of Motor Vehicle / Unlawful entry of Motor Vehicle           | 1   | 5    |
| Fraud   | 0   | 1    |
| Robbery   | 0   | 0    |
| Theft I, II, & III  | 13  | 25   |
| Forgery   | 3   | 2    |
| Trespass  | 2   | 4    |
| Vandalism (Criminal Mischief)   | 5   | 6    |
| <b>Person Crimes Reported</b>   |     |      |
| Assault I, II, IV   | 1   | 2    |
| Carrying Concealed Weapons (knife, blade, etc.)                               | 0   | 0    |
| Disorderly Conduct (includes resisting arrest)                                | 0   | 0    |
| Endangering Welfare of a Minor/Recklessly endangering                         | 1   | 0    |
| Felon in possession of firearm/restricted weapon                              | 0   | 0    |
| Harassment, Intimidation or Threats   | 4   | 3    |
| Identity Theft  | 4   | 3    |
| Interfering with Peace Officer  | 1   | 0    |
| Menacing  | 1   | 1    |
| Sex Offenses  | 0   | 0    |
| Strangulation   | 1   | 1    |
| <b>Arrests</b>  |     |      |
| Warrant Arrests (and contempt of court, restraining order, parole violations) | 6   | 11   |
| Adult and Juvenile Custodies (includes juvenile curfew)                       | 28  | 33   |
| <b>Drug Crimes</b>  |     |      |
| Possession Controlled Substance (Cocaine, Heroin, Marijuana, Meth.)           | 15  | 7    |
| Delivery of a Controlled Substance (Cocaine, Heroin, Marijuana, Meth.)        | 0   | 1    |
| Manufacture Controlled Substance (Cocaine, Heroin, Marijuana, Meth.)          | 0   | 0    |
| <b>Traffic Crimes, Accidents, Citations</b>                                   |     |      |
| Attempt to Elude  | 1   | 0    |
| Driving Under the Influence of Intoxicants                                    | 14  | 6    |
| Other Traffic Crimes (hit & run, driving while suspended, etc.)               | 10  | 6    |
| Traffic Accidents   | 9   | 14   |
| Traffic Citations   | 172 | 254  |

Crimes combine misdemeanor and felony offenses,  
reported to State of Oregon for inclusion in the annual national FBI crime report.





**City of Canby Bi-Monthly Report**  
**Department: Public Works**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
 From: Jerry Nelzen, Operations Supervisor  
 Prepared by: Same as above  
 Through: Amanda Zeiber, Interim City Administrator  
 Date: 7/1/2020

**Facilities**

Facility Maintenance Department had Public Works' HVAC system repaired after the pump failed..



| Zone   | Location         | Current Temp | Setting          |
|--------|------------------|--------------|------------------|
| Zone 1 | Jerry's Office   | 72°          | Cool Setting 72° |
| Zone 2 | CUB Water        | 68°          | Heat Setting 68° |
| Zone 3 | Lunch Room       | 72°          | Cool Setting 72° |
| Zone 4 | Front Office's   | 70°          | Cool Setting 72° |
| Zone 5 | Entry, Secretary | 72°          | Cool Setting 72° |
| Zone 6 | Conference       | 69°          | Heat Setting 68° |

| Facilities | Total Hours |
|------------|-------------|
| May        | 155         |
| June       | 208         |



## Streets Department

Public Works Department received all the components for the new signal for Hazeldell Way & Sequoia Parkway.



| May Streets                              | Total Hours |
|--|-------------|
| Street Sweeping                          | 110         |
| Street Maintenance                       | 144         |
| Sidewalks                                | 215         |
| Driveway Approach & Sidewalk Inspections | 7           |
| Street Sign Maintenance                  | 5           |
| Street Sign Installation                 | 3           |
| Vactor Usage                             | 4           |
| Mini Trackhoe                            | 29          |

| June Streets               | Total Hours |
|----------------------------|-------------|
| Street Sweeping            | 96          |
| Street Sweeper Maintenance | 1           |
| Street Maintenance         | 278         |
| Sidewalks                  | 41          |
| Street Sign Manufacturing  | 1           |
| Street Sign Maintenance    | 10          |
| Street Sign Installation   | 4           |
| Vactor Usage               | 19          |

## Sewer Collections

New site for S Ivy Street's sewer lift station, should be operational by Fall.



Sewer/Collections crew replaced pump at NW 3<sup>rd</sup> & N Baker sewer lift station.



| May Sewer                | Total Hours |
|--------------------------|-------------|
| Sewer Cleaning           | 8           |
| Sewer TV'ing             | 9           |
| Sewer Maintenance/Repair | 5           |
| Sewer Laterals           | 18.5        |
| Locating Utilities       | 43          |
| Sewer Inspections        | 1           |
| Lift Station Maintenance | 14          |

| June Sewer                 | Total Hours |
|----------------------------|-------------|
| Sewer TV                   | 12          |
| Sewer Laterals/Maintenance | 119         |
| Sewer Cleaning             | 11          |
| Lift Station Maintenance   | 48          |
| Locating Utilities         | 77          |
| Sewer Inspections          | 2           |
| Vactor Usage               | 2           |



## Storm Water

The crew working with full PPE during the Covid-19 pandemic.



| May Stormwater                  | Total Hours |
|---------------------------------|-------------|
| Catch Basins Maintenance/Repair | 4           |
| Erosion Control                 | 1           |
| Drywell Maintenance             | 3           |
|                                 |             |
|                                 |             |

| June Stormwater                 | Total Hours |
|---------------------------------|-------------|
| Catch Basins Maintenance/Repair | 4           |
| Storm line Maintenance/Repair   | 12          |
| Drywell Maintenance             | 3           |
| Erosion Control                 | 3           |
| Storm line Inspections          | 3           |



**City of Canby Bi-Monthly Report**  
**Department: Public Works**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
 From: Jerry Nelzen, Operations Supervisor  
 Prepared by: Same as above  
 Through: Amanda Zeiber, Interim City Administrator  
 Date: 7/1/2020

**Facilities**

Facility Maintenance Department had Public Works' HVAC system repaired after the pump failed..



| Zone   | Location         | Current Temp | Setting          |
|--------|------------------|--------------|------------------|
| Zone 1 | Jerry's Office   | 72°          | Cool Setting 72° |
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| Zone 3 | Lunch Room       | 72°          | Cool Setting 72° |
| Zone 4 | Front Office's   | 70°          | Cool Setting 72° |
| Zone 5 | Entry, Secretary | 72°          | Cool Setting 72° |
| Zone 6 | Conference       | 69°          | Heat Setting 68° |

| Facilities | Total Hours |
|------------|-------------|
| May        | 155         |
| June       | 208         |



## Streets Department

Public Works Department received all the components for the new signal for Hazeldell Way & Sequoia Parkway.



| May Streets                              | Total Hours |
|--|-------------|
| Street Sweeping                          | 110         |
| Street Maintenance                       | 144         |
| Sidewalks                                | 215         |
| Driveway Approach & Sidewalk Inspections | 7           |
| Street Sign Maintenance                  | 5           |
| Street Sign Installation                 | 3           |
| Vactor Usage                             | 4           |
| Mini Trackhoe                            | 29          |

| June Streets               | Total Hours |
|----------------------------|-------------|
| Street Sweeping            | 96          |
| Street Sweeper Maintenance | 1           |
| Street Maintenance         | 278         |
| Sidewalks                  | 41          |
| Street Sign Manufacturing  | 1           |
| Street Sign Maintenance    | 10          |
| Street Sign Installation   | 4           |
| Vactor Usage               | 19          |

## Sewer Collections

New site for S Ivy Street's sewer lift station, should be operational by Fall.



Sewer/Collections crew replaced pump at NW 3<sup>rd</sup> & N Baker sewer lift station.



| May Sewer                | Total Hours |
|--------------------------|-------------|
| Sewer Cleaning           | 8           |
| Sewer TV'ing             | 9           |
| Sewer Maintenance/Repair | 5           |
| Sewer Laterals           | 18.5        |
| Locating Utilities       | 43          |
| Sewer Inspections        | 1           |
| Lift Station Maintenance | 14          |

| June Sewer                 | Total Hours |
|----------------------------|-------------|
| Sewer TV                   | 12          |
| Sewer Laterals/Maintenance | 119         |
| Sewer Cleaning             | 11          |
| Lift Station Maintenance   | 48          |
| Locating Utilities         | 77          |
| Sewer Inspections          | 2           |
| Vactor Usage               | 2           |



## Storm Water

The crew working with full PPE during the Covid-19 pandemic.



| May Stormwater                  | Total Hours |
|---------------------------------|-------------|
| Catch Basins Maintenance/Repair | 4           |
| Erosion Control                 | 1           |
| Drywell Maintenance             | 3           |
|                                 |             |
|                                 |             |

| June Stormwater                 | Total Hours |
|---------------------------------|-------------|
| Catch Basins Maintenance/Repair | 4           |
| Storm line Maintenance/Repair   | 12          |
| Drywell Maintenance             | 3           |
| Erosion Control                 | 3           |
| Storm line Inspections          | 3           |



**City of Canby Bi-Monthly Report**  
**Department: Canby Swim Center**  
**Year End 2019-2020**

To: The Honorable Mayor Hodson & City Council  
From: Eric Laitnen, Aquatic Program Manager  
Prepared by: Same as above  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/7/2020

To say FY19-20 has been one to remember would be an understatement. The Swim Center hummed along for eight months, posting strong numbers in Public Lessons and reaching Knight, Eccles and 91 second-graders through the School Lesson program. Meanwhile, the Canby Gators hosted several successful meets and qualified multiple swimmers for state and regional championships, all of which would later be cancelled. Not to be outdone, the Canby High School swim teams qualified boys and girl's relays along with two individual girls for the OSAA High School State Championship. The Girls 200 Medley Relay went on to break the team record and all swimmers posted personal bests.

Then came March.... Since closing on March XX we have seized the opportunity to recoat the ceiling, beams and air ducts, to rebuild the sand filters and to address other maintenance items that will allow us to bypass our usual Fall Closure. Similarly, we have moved ahead with the onboarding process for a nationally recognized Starfish Swim Institute swimming lesson program. We have worked closely with bodies such as the American Red Cross, USA Swimming, the Oregon Health Authority and Clackamas County to develop protocols that protect the health and safety of patrons and staff. Moreover, we continue to collaborate with our regional aquatic partners, some of which are already open, to iron out best practices and flatten the learning curve.

We may only speculate when we will be allowed to reopen to the public. We do know, however, that despite the many changes our commitment to the community's health and safety remains unwavering just as it has for 50 years. When we finally receive the green light the Canby Swim Center will be prepared.





**City of Canby Bi-Monthly Report**  
**Department: Transit**  
**For Months of: March & April 2020**

To: The Honorable Mayor Hodson & City Council  
From: Todd M. Wood, Transit Director  
Prepared by: Same as above  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/6/2020

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1) Grant Funding and Contracts:

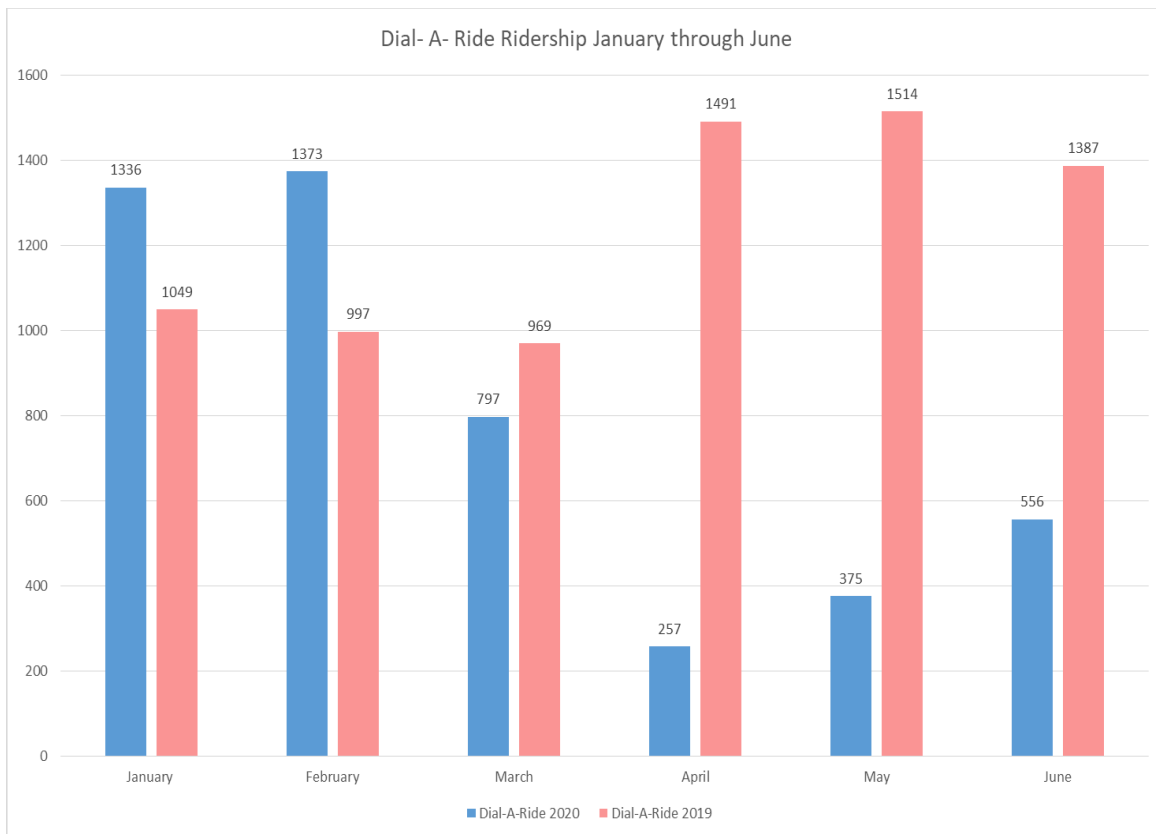
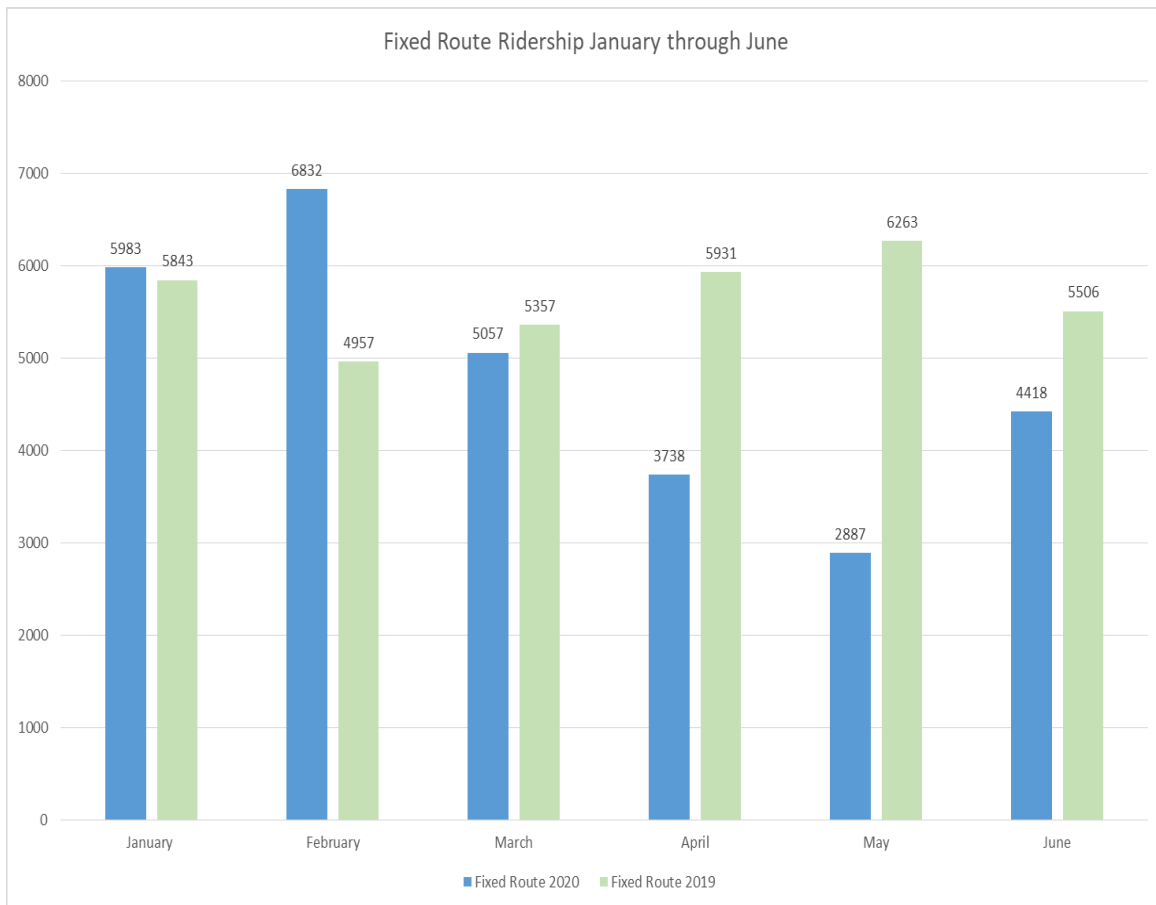
- a) On April 20, 2020 an application for Federal Transit 5311 CARES funds was submitted to ODOT in the amount of \$280,663. CAT received the full amount of the CARES fund and will continue to draw on it to offset COVID related expenses as well as shore up losses in revenue.
- b) The 5339 Grant for 10 bus stop improvements on 99x has been received and signed. The main project will begin in FY 2022 with some possible improvements beginning in 2021. CAT is coordinating with ODOT to install six of the stops at during the 99e improvement project. CAT will be installing the bus stops at Territorial and Redwood outside of the ODOT project.
- c) Monthly Elderly and Disabled Transportation reports were submitted to TriMet.
- d) The TriMet Quarterly STF Reports were submitted electronically to TriMet.
- e) The TriMet Quarterly STIF Reports were submitted electronically in OPTIS.
- f) The ODOT Quarterly Report and Reimbursement was submitted in OPTIS.
- g) Charter service reports were submitted to ODOT.

2) Ridership:

CAT has continued to operate as normal during the COVID pandemic providing critical trips for those who have no other transportation options. Additionally, Fixed route has continued to carry critical workers to places of employment including hospitals, nursing homes, grocery stores etc.

Due to the fact that many businesses closed and most have been social distancing ridership has taken a steep decline. Fixed route has seen a drop of more than 40% while Dial-A-Ride services saw a drop of nearly 80%.

Some ridership has returned and will continue to do so, however, the system will continue to see ridership well below normal for quite some time.



3) COVID-19 Responses: Due to COVID-19 the following changes have been made:

- a) The rider of the month program is suspended.
- b) All fares are suspended until further notice. All rides are free.
- c) All buses have been reduced in capacity to meet COVID social distancing guidelines.
- d) All buses are being cleaned and disinfected on a daily basis by drivers.
- e) Barriers have been installed to protect drivers.
- f) All drivers have been provided with and instructed on PPE use while operating their vehicle.
- g) All passengers are required to wear masks. Masks are being provided as needed.

4) Other Updates:

- a) The transit advisory is set to meet August 2020 to discuss grant applications, and funding impacts for the next biennium and planning for current and future projects based on the available funding.
- b) Senate bill 1601 is currently in process which, if passed, will result in the combining of the State transportation fund grant, which is currently used for elder and disabled transportation, with STIF (HB 2017). The impacts on this combination are yet unknown.
- c) Senate bill 1601, if passed, will provide for additional flexibility in STIF to allow transit agencies to use the money to help keep existing services intact. Prior STIF language prevented funding existing services.
- d) A Request for Quotes for four buses has been submitted. These buses will replace aging buses as well as prepare for a hopeful new service in the future. The buses are being paid for by STIF funding and a 5310 Grant with a small match component.
- e) Transit will be seeking to replace the soon to be retiring Transit Coordinator Nancy Muller who has served the city for over 14 years.



**City of Canby Bi-Monthly Report**  
**Department: Tech Services**  
**For Months of: May & June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Amanda Zeiber, Interim City Administrator/ HR Director  
Prepared by: Bryce Frazell, WebsThatWork  
Through: Amanda Zeiber, Interim City Administrator  
Date: 7/7/2020

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## Google Analytics Summary Report: May and June 2020

### **Open Business Days**

#### **May**

The City is currently open for business, despite being closed to the public. Staff members can be reached by phone or email during the public closure.

#### **June**

The City is currently open for business, despite being closed to the public. Staff members can be reached by phone or email during the public closure.

### **Audience Overview**

#### **May**

|                                       |              |
|---------------------------------------|--------------|
| Page Views                            | 14,201       |
| Sessions (site visits)                | 6,867        |
| Users                                 | 4,251        |
| New Users                             | 3,692        |
| Pages per Session                     | 2.07         |
| Number of Sessions per User           | 1.62         |
| Average Session Duration              | 1 min 31 sec |
| Bounce Rate (% of single-page visits) | 60.97%       |

#### **June**

|                                       |              |
|---------------------------------------|--------------|
| Page Views                            | 14,306       |
| Sessions (site visits)                | 6,797        |
| Users                                 | 4,176        |
| New Users                             | 3,587        |
| Pages per Session                     | 2.1          |
| Number of Sessions per User           | 1.63         |
| Average Session Duration              | 1 min 28 sec |
| Bounce Rate (% of single-page visits) | 60.36%       |

*Slight increase in site visits for May as compared to April. Similar results in June.*

### **New Vs. Returning Visitors**

#### **May**

|           |        |
|-----------|--------|
| New       | 72.36% |
| Returning | 27.64% |

#### **June**

|           |        |
|-----------|--------|
| New       | 71.48% |
| Returning | 28.52% |

### **Browser & Operating System**

#### **May - Top 5 Browsers**

Google Chrome  
Safari  
Microsoft Edge  
Mozilla Firefox  
Internet Explorer

#### **June - Top 5 Browsers**

Google Chrome  
Safari  
Microsoft Edge  
Mozilla Firefox  
Internet Explorer

*Microsoft Edge is again in the top 3 browser rankings - first time since Feb 2015*

### **Overview (Technology)**

#### **May**

|         |        |
|---------|--------|
| Desktop | 54.35% |
| Mobile  | 41.65% |
| Tablet  | 4.00%  |

#### **June**

|         |        |
|---------|--------|
| Desktop | 54.82% |
| Mobile  | 41.97% |
| Tablet  | 3.21%  |

*Similar results as compared to March/April 2020 report*

### **Mobile Devices (top 3)**

#### **May**

Apple iPhone  
Apple iPad  
Samsung Galaxy S9

#### **June**

Apple iPhone  
Apple iPad  
Samsung Galaxy S10

*iPhone & iPad continue to dominate mobile devices - Samsung Galaxy S10 now appearing*

### **Landing Pages (top 5)**

#### **May**

Home Page (Index)  
Job Openings  
Transit Home Page  
Swim Center Home Page  
Transit Routes

#### **June**

Home Page (Index)  
Transit Home Page  
Job Openings  
Swim Center Home Page  
Transit Routes

*Top 5 Landing Pages remain pretty consistent*

## KEY

**Sessions** (total number of sessions to your site)

**Users** (total number of unique users to your site – unduplicated visits)

**Pageviews** (total number of pages viewed on your site – repeated views of a single page are counted)

**Pages per Session** (average number of pages viewed per session - repeated views of a single page are counted)

**Average Session Duration** (average session length of all users)

**Bounce Rate** (percent of single-page sessions – visits in which a person left your site from the entrance page)

**New Sessions/Users** (percent of total users who came your site for the first time)

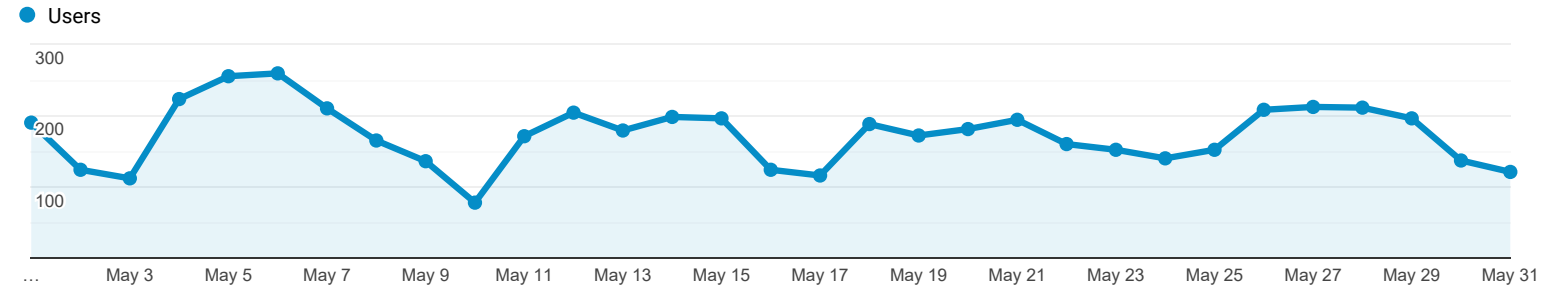
## Audience Overview

All Users

100.00% Users

May 1, 2020 - May 31, 2020

Overview



Users

4,251

New Users

3,692

Sessions

6,867

Number of Sessions per User

1.62

Pageviews

14,201

Pages / Session

2.07

Avg. Session Duration

00:01:31

Bounce Rate

60.97%

New Visitor

Returning Visitor

| Language     | Users | % Users |
|--------------|-------|---------|
| 1. en-us     | 3,492 | 81.67%  |
| 2. en        | 700   | 16.37%  |
| 3. es-419    | 20    | 0.47%   |
| 4. en-gb     | 8     | 0.19%   |
| 5. ko        | 8     | 0.19%   |
| 6. zh-cn     | 8     | 0.19%   |
| 7. es-us     | 7     | 0.16%   |
| 8. es-xl     | 5     | 0.12%   |
| 9. (not set) | 3     | 0.07%   |
| 10. en-au    | 3     | 0.07%   |

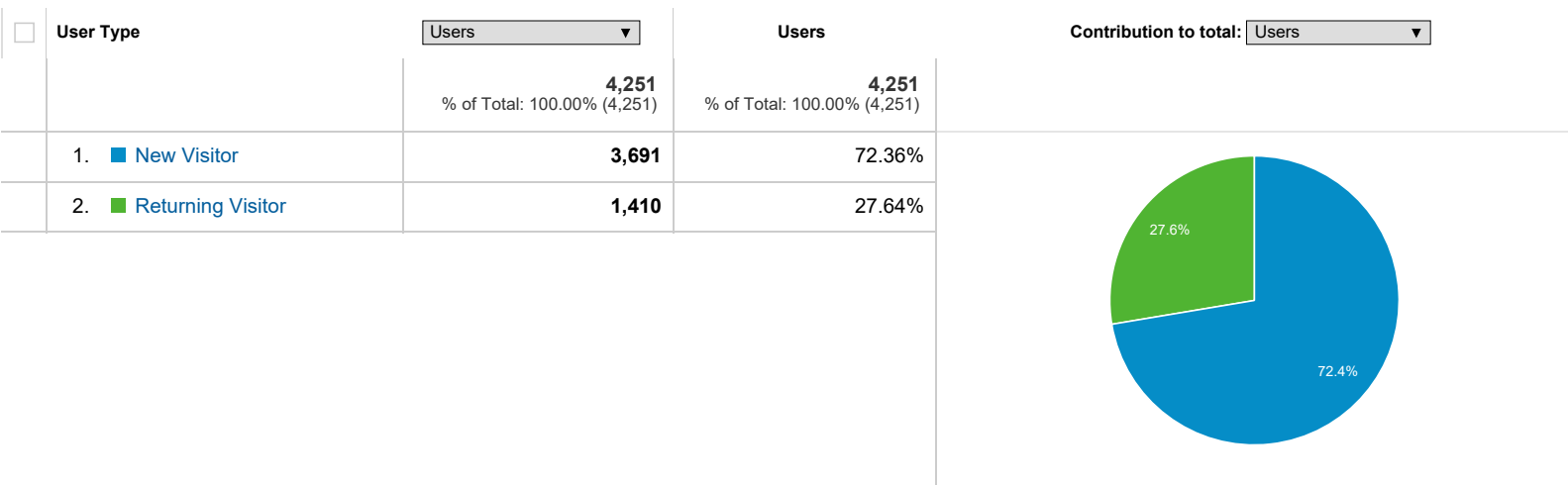
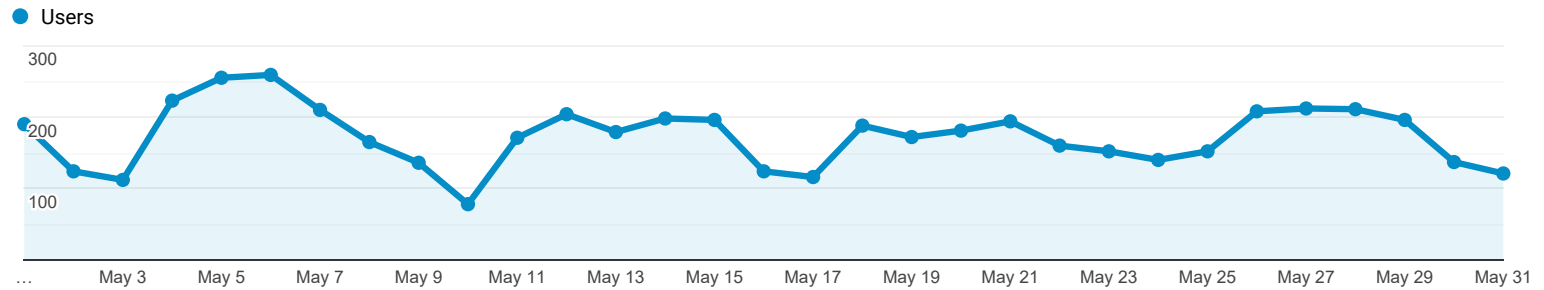
## New vs Returning

 All Users  
100.00% Users

May 1, 2020 - May 31, 2020

## Explorer

## Summary



Rows 1 - 2 of 2



# Browser & OS

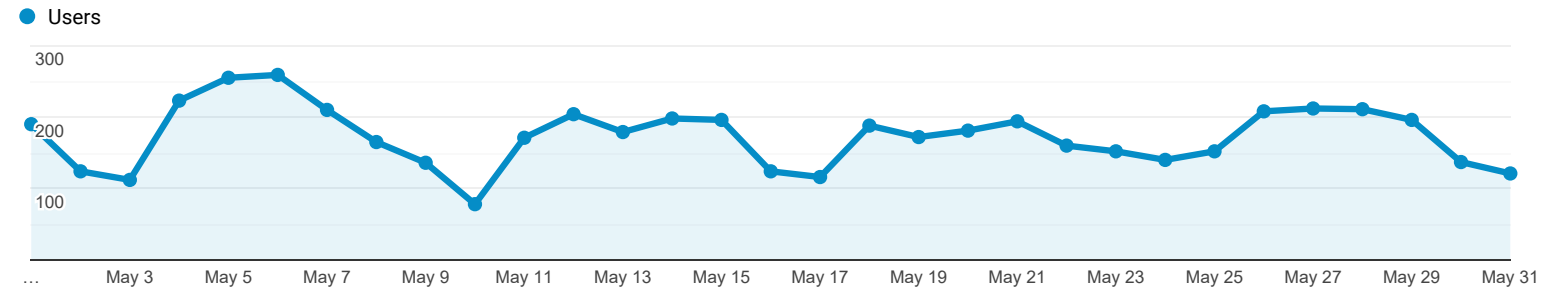
All Users

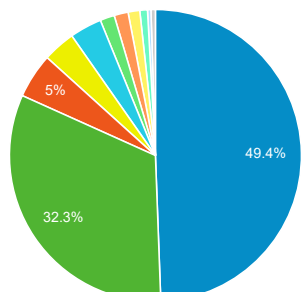
100.00% Users

May 1, 2020 - May 31, 2020

Explorer

Summary



| Browser              | Users                                | Users                                | Contribution to total: Users   |
|----------------------|--------------------------------------|--------------------------------------|--|
|                      |                                      |                                      |  |
|                      | 4,251<br>% of Total: 100.00% (4,251) | 4,251<br>% of Total: 100.00% (4,251) |  |
| 1. Chrome            | 2,101                                | 49.41%                               |  |
| 2. Safari            | 1,374                                | 32.31%                               |  |
| 3. Edge              | 211                                  | 4.96%                                |  |
| 4. Firefox           | 153                                  | 3.60%                                |  |
| 5. Internet Explorer | 151                                  | 3.55%                                |  |
| 6. Mozilla           | 68                                   | 1.60%                                |  |
| 7. Samsung Internet  | 66                                   | 1.55%                                |  |
| 8. Safari (in-app)   | 55                                   | 1.29%                                |  |
| 9. Android Webview   | 36                                   | 0.85%                                |  |
| 10. Amazon Silk      | 16                                   | 0.38%                                |  |

Rows 1 - 10 of 16

Overview

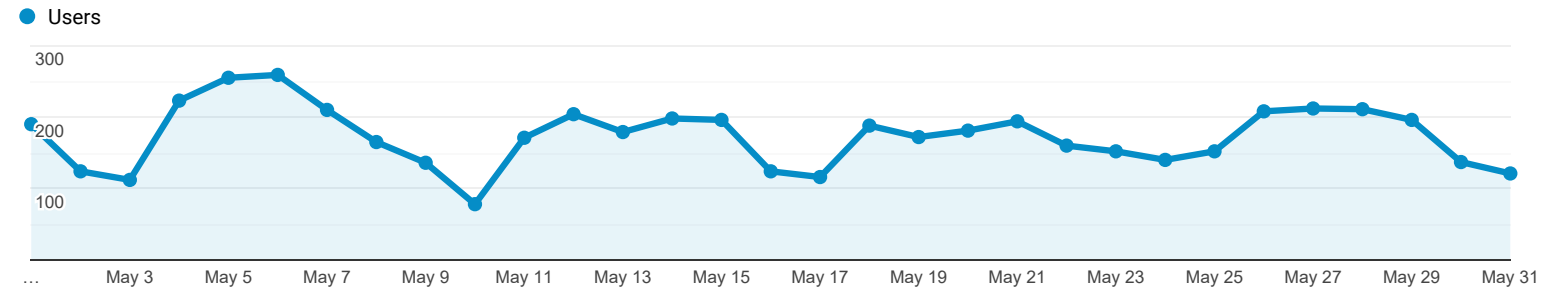
All Users

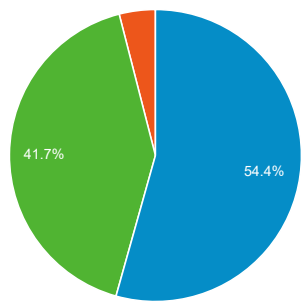
100.00% Users

May 1, 2020 - May 31, 2020

Explorer

Summary



| Device Category | Users   | Users   | Contribution to total: Users   |
|-----------------|---|---|--|
|                 | <div>4,251</div> <div>% of Total: 100.00% (4,251)</div> | <div>4,251</div> <div>% of Total: 100.00% (4,251)</div> |  |
| 1. desktop      | 2,311   | 54.35%  |  |
| 2. mobile       | 1,771   | 41.65%  |  |
| 3. tablet       | 170   | 4.00%   |  |

Rows 1 - 3 of 3

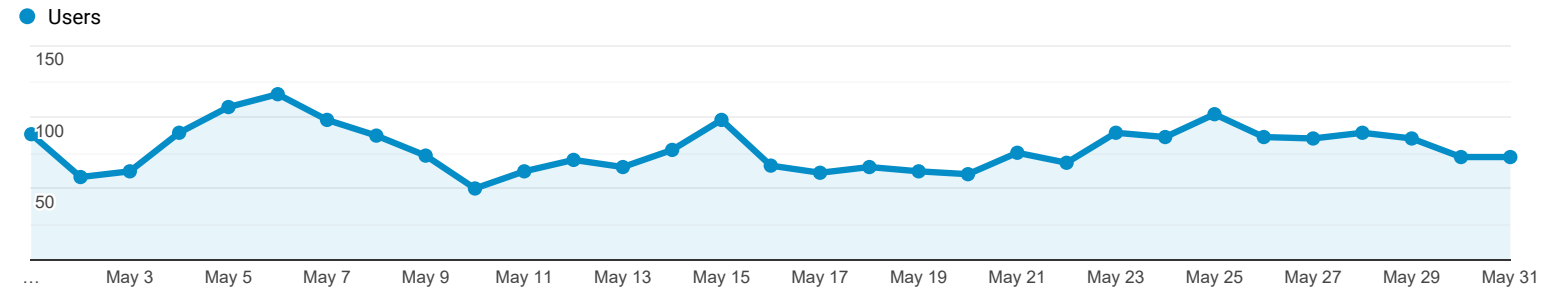
Devices


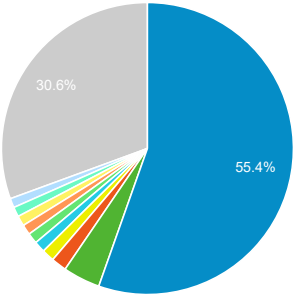









All Users  
45.66% Users

May 1, 2020 - May 31, 2020

Explorer

Summary



| Mobile Device Info   | Users  | Users  | Contribution to total: Users   |
|--|--|--|--|
|  | <div>1,941</div> <div>% of Total: 45.66% (4,251)</div> | <div>1,941</div> <div>% of Total: 45.66% (4,251)</div> |  |
| 1.  Apple iPhone                    | 1,076  | 55.41%   |  |
| 2.  Apple iPad                    | 80   | 4.12%  |  |
| 3.  Samsung SM-G960U Galaxy S9    | 33   | 1.70%  |  |
| 4.  Samsung SM-G975U Galaxy S10+  | 27   | 1.39%  |  |
| 5.  Samsung SM-G973U Galaxy S10   | 24   | 1.24%  |  |
| 6.  Microsoft Windows RT Tablet   | 23   | 1.18%  |  |
| 7.  Samsung SM-G950U Galaxy S8    | 22   | 1.13%  |  |
| 8.  Samsung SM-N960U Galaxy Note9 | 22   | 1.13%  |  |
| 9.  Samsung SM-A205U Galaxy A20   | 21   | 1.08%  |  |
| 10.  (not set)                    | 20   | 1.03%  |  |

Rows 1 - 10 of 236

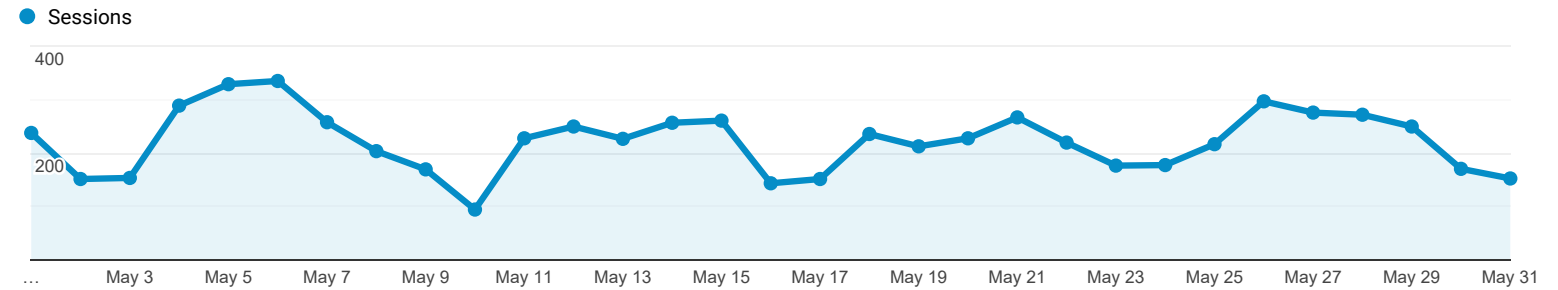
### Landing Pages

All Users  
100.00% Entrances

May 1, 2020 - May 31, 2020

Explorer

Summary



| Landing Page  | Sessions                             | Sessions                             | Contribution to total: Sessions |
|---|--------------------------------------|--------------------------------------|---------------------------------|
|   | 6,867<br>% of Total: 100.00% (6,867) | 6,867<br>% of Total: 100.00% (6,867) |                                 |
| 1. /index.html  | 1,969                                | 28.67%                               |                                 |
| 2. /Jobs/jobopenings.htm                                      | 500                                  | 7.28%                                |                                 |
| 3. /transportation/CAThome page.htm                           | 486                                  | 7.08%                                |                                 |
| 4. /Departments/swim/swim center.htm                          | 352                                  | 5.13%                                |                                 |
| 5. /transportation/routes.htm                                 | 304                                  | 4.43%                                |                                 |
| 6. /Departments/pw_operations/parks/parks.htm                 | 203                                  | 2.96%                                |                                 |
| 7. /Departments/cemetery/cemetery.htm                         | 186                                  | 2.71%                                |                                 |
| 8. /Departments/development_services/development_services.htm | 152                                  | 2.21%                                |                                 |
| 9. /cityservices/utilities.htm                                | 141                                  | 2.05%                                |                                 |
| 10. /CityGovernment/council/council_members.htm               | 139                                  | 2.02%                                |                                 |

Rows 1 - 10 of 198

# June 2020

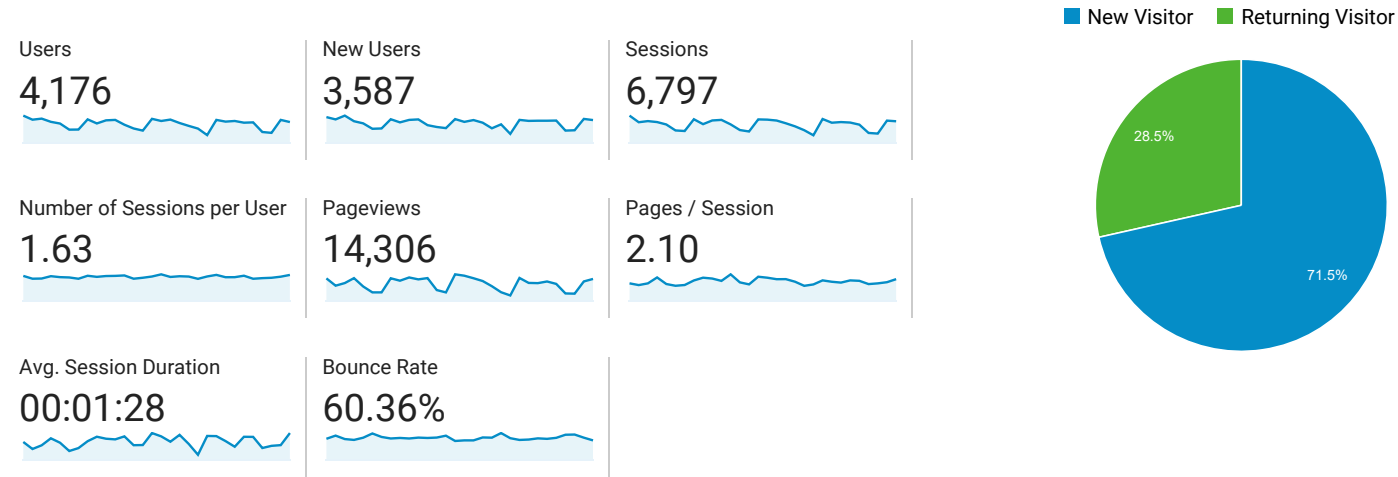
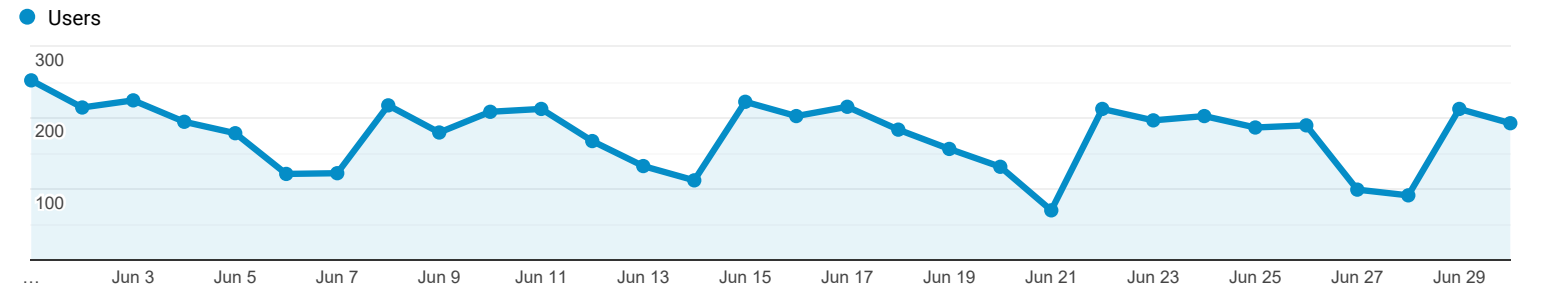
## Audience Overview

All Users

100.00% Users

Jun 1, 2020 - Jun 30, 2020

Overview



| Language |        | Users | % Users |
|----------|--------|-------|---------|
| 1.       | en-us  | 3,079 | 73.68%  |
| 2.       | en     | 1,033 | 24.72%  |
| 3.       | es-419 | 14    | 0.34%   |
| 4.       | en-gb  | 13    | 0.31%   |
| 5.       | es-xl  | 7     | 0.17%   |
| 6.       | en-au  | 4     | 0.10%   |
| 7.       | ko     | 4     | 0.10%   |
| 8.       | c      | 3     | 0.07%   |
| 9.       | en-ca  | 2     | 0.05%   |
| 10.      | en-in  | 2     | 0.05%   |

New vs Returning

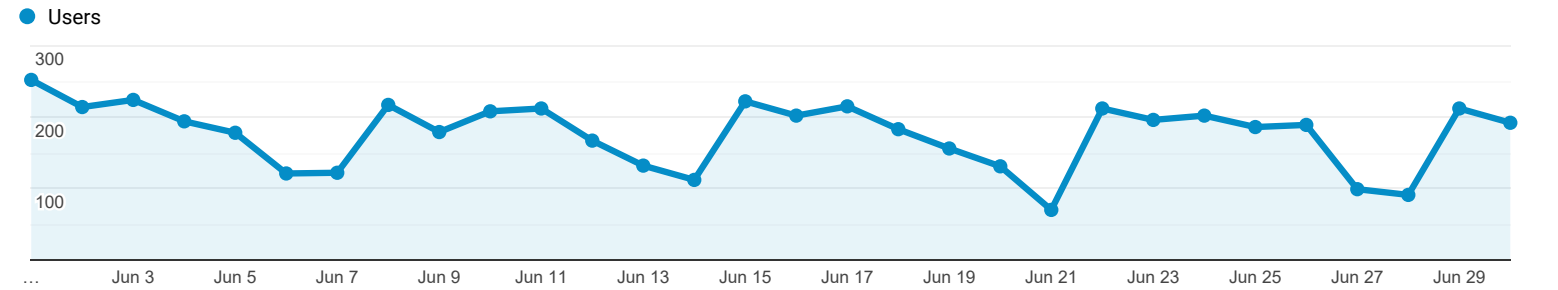
All Users

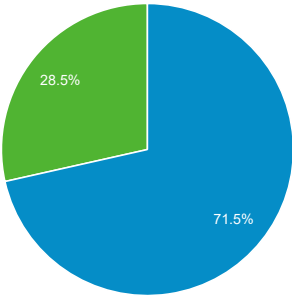
100.00% Users

Jun 1, 2020 - Jun 30, 2020

Explorer

Summary



| User Type                       | Users   | Users   | Contribution to total: Users   |
|---------------------------------|---|---|--|
|                                 | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> |  |
| 1. <div>New Visitor</div>       | <div>3,587</div>  | <div>71.48%</div>                                       |  |
| 2. <div>Returning Visitor</div> | <div>1,431</div>  | <div>28.52%</div>                                       |  |

Rows 1 - 2 of 2

Browser & OS

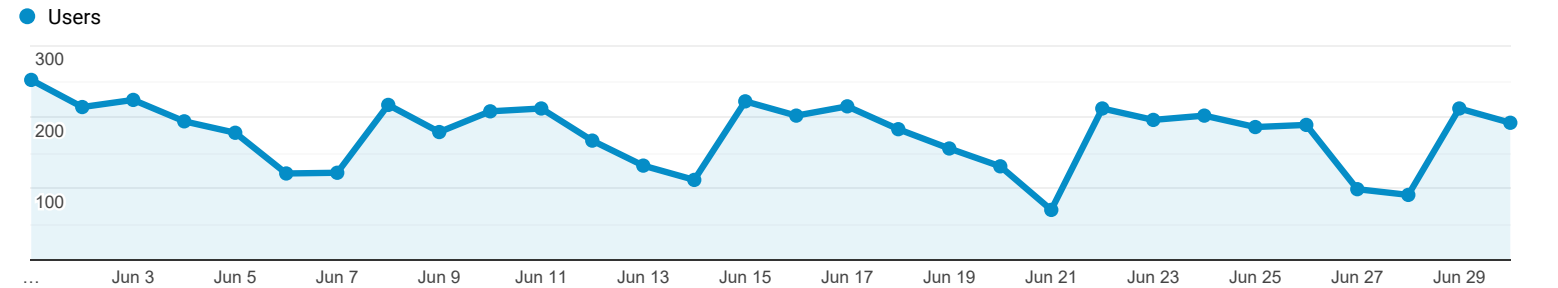
All Users

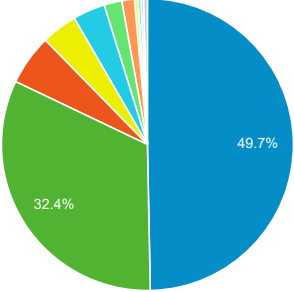
100.00% Users

Jun 1, 2020 - Jun 30, 2020

Explorer

Summary



| Browser                     | Users   | Users   | Contribution to total: Users   |
|-----------------------------|---|---|--|
|                             | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> |  |
| 1. Chrome                   | 2,075   | 49.69%  |  |
| 2. Safari                   | 1,353   | 32.40%  |  |
| 3. Edge                     | 233   | 5.58%   |  |
| 4. Firefox                  | 166   | 3.98%   |  |
| 5. Internet Explorer        | 149   | 3.57%   |  |
| 6. Mozilla                  | 82  | 1.96%   |  |
| 7. Samsung Internet         | 58  | 1.39%   |  |
| 8. Amazon Silk              | 16  | 0.38%   |  |
| 9. Mozilla Compatible Agent | 14  | 0.34%   |  |
| 10. Safari (in-app)         | 12  | 0.29%   |  |

Rows 1 - 10 of 17



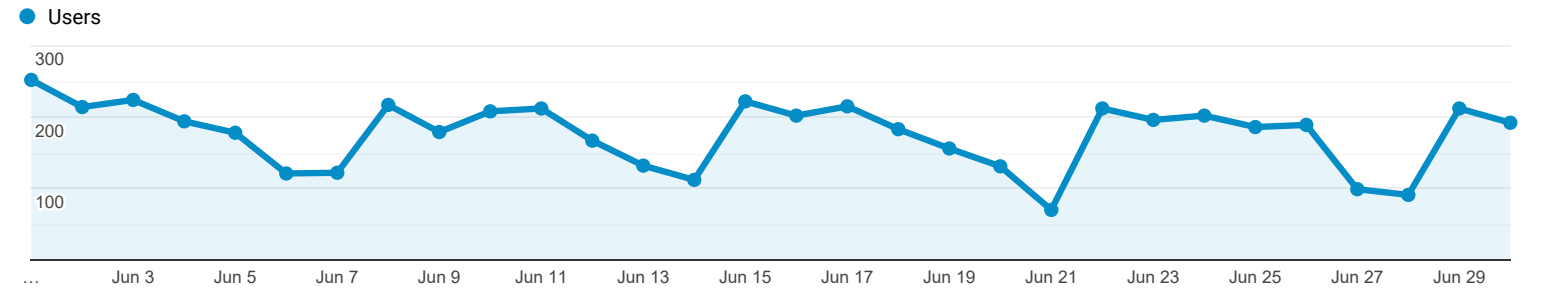
Overview

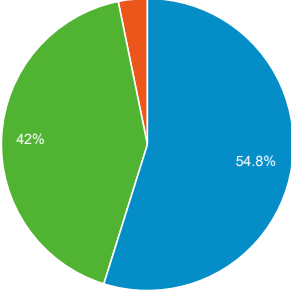
All Users  
100.00% Users

Jun 1, 2020 - Jun 30, 2020

Explorer

Summary



| Device Category | Users   | Users   | Contribution to total: Users   |
|-----------------|---|---|--|
|                 | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> | <div>4,176</div> <div>% of Total: 100.00% (4,176)</div> |  |
| 1. desktop      | 2,290   | 54.82%  |  |
| 2. mobile       | 1,753   | 41.97%  |  |
| 3. tablet       | 134   | 3.21%   |  |

Rows 1 - 3 of 3

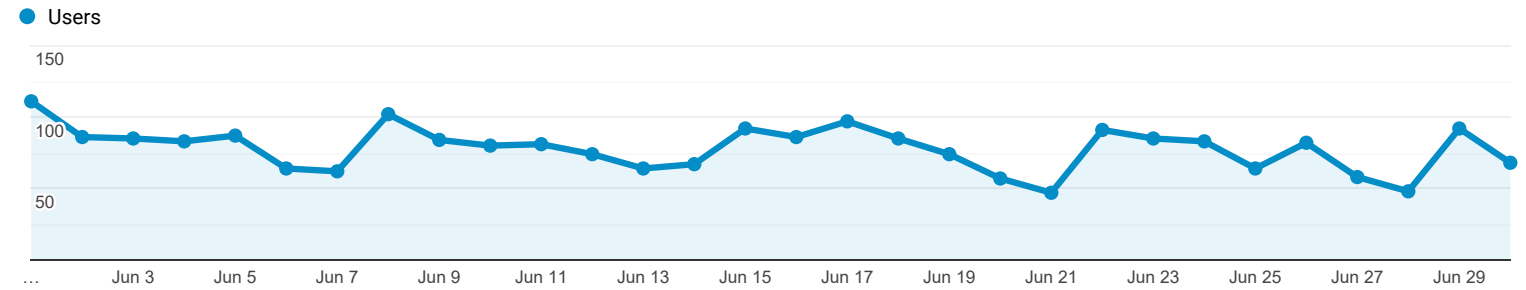
## Devices

All Users  
45.19% Users

Jun 1, 2020 - Jun 30, 2020

### Explorer

Summary



| Mobile Device Info               | Users                               | Users                               | Contribution to total: Users |
|----------------------------------|-------------------------------------|-------------------------------------|------------------------------|
|                                  | 1,887<br>% of Total: 45.19% (4,176) | 1,887<br>% of Total: 45.19% (4,176) |                              |
| 1. Apple iPhone                  | 1,098                               | 58.13%                              |                              |
| 2. Apple iPad                    | 65                                  | 3.44%                               |                              |
| 3. Samsung SM-G975U Galaxy S10+  | 31                                  | 1.64%                               |                              |
| 4. Microsoft Windows RT Tablet   | 26                                  | 1.38%                               |                              |
| 5. Samsung SM-G960U Galaxy S9    | 26                                  | 1.38%                               |                              |
| 6. Samsung SM-N960U Galaxy Note9 | 25                                  | 1.32%                               |                              |
| 7. Samsung SM-G970U Galaxy S10e  | 23                                  | 1.22%                               |                              |
| 8. Samsung SM-G973U Galaxy S10   | 23                                  | 1.22%                               |                              |
| 9. Samsung SM-G965U Galaxy S9+   | 21                                  | 1.11%                               |                              |
| 10. Samsung SM-G950U Galaxy S8   | 19                                  | 1.01%                               |                              |

Rows 1 - 10 of 230

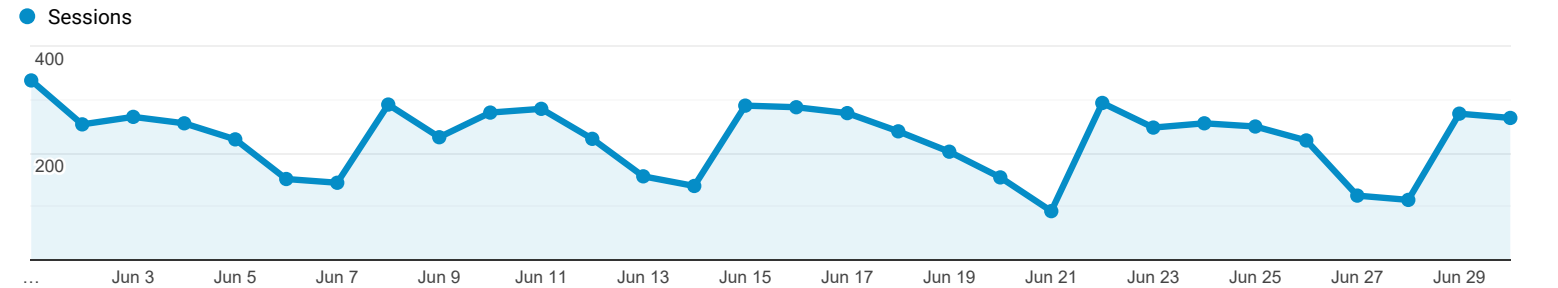
# Landing Pages


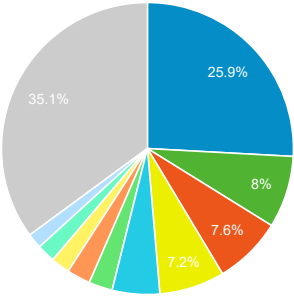









All Users  
100.00% Entrances

Jun 1, 2020 - Jun 30, 2020

Explorer

Summary



| Landing Page  | Sessions  | Sessions  | Contribution to total: Sessions  |
|---|---|---|--|
|   | <div>6,797</div> <div>% of Total: 100.00% (6,797)</div> | <div>6,797</div> <div>% of Total: 100.00% (6,797)</div> |  |
| 1.  /index.html  | 1,758   | 25.86%  |  |
| 2.  /transportation/CAThome page.htm                           | 542   | 7.97%   |  |
| 3.  /Jobs/jobopenings.htm                                      | 514   | 7.56%   |  |
| 4.  /Departments/swim/swim center.htm                          | 492   | 7.24%   |  |
| 5.  /transportation/routes.htm                                 | 357   | 5.25%   |  |
| 6.  /cityservices/utilities.htm                                | 178   | 2.62%   |  |
| 7.  /Departments/pw_operations/parks/parks.htm                 | 178   | 2.62%   |  |
| 8.  /Departments/development_services/development_services.htm | 142   | 2.09%   |  |
| 9.  /Chap16/chap16.htm   | 137   | 2.02%   |  |
| 10.  /RFPs.htm   | 114   | 1.68%   |  |

Rows 1 - 10 of 165



## **City of Canby Bi-Monthly Report**

### **Department: Wastewater Treatment Plant**

### **For Months of:**

### **May & June 2020**

To: The Honorable Mayor Hodson & City Council  
From: Dave Conner, Lead Operator  
Through: Amanda Zeiber, Interim City Administrator  
Date: July 6, 2020

#### **Facility Operations & Maintenance**

The water quality for the months of May and June remain good with no violations. Plant Operators continue daily process control and operations of the plant to maintain NPDES permit compliance. All reports and DMR's were completed on time and without any issues.

The list below highlights a few of the maintenance tasks and WWTP program duties since the last bi-monthly report.

- Developed in line orifices to help control pump pressures on aeration basin recirculation pumps.
- Installed new level transducer on Eff. Filter #1.
- Replaced 4 cloth filters on Eff. Filter #1.
- Installed new actuator on splitter box valve.
- Cleared North and East property fence line.
- Replaced PLC batteries on U.V system.
- Purchased new high pressure booster pump for belt press.
- Received and reviewed bids for roof replacement on generator room.
- Routine daily maintenance and repairs of equipment, buildings and grounds.

#### **Biosolids Program:**

- **May** Production: Belt run time = 18 days. 3 loads to Heard farms 85.22 wet tons. 5 loads to Wasco County Landfill 100.43 wet tons.
- **June** Production: Belt run time = 16 days. 6 loads to Heard Farms, 173 wet tons.

### **Pretreatment Inspection/Reporting, FOG Program**

- **May** Pump Outs: 22
- Inspections: 4 fog, 1 pretreatment
- **June** Pump Outs: 16
- Inspections: 3 fog, 2 pretreatment

Issued Grand Northern Products a Compliance Order with due dates to install an effective treatment system.

Pretreatment activities also included monthly review of business license, reviewing environmental surveys, plan review, industrial inspection, industrial permit/compliance data review of reports and working with businesses on BMP agreements.

### **Daily Lab Activity**

- Routine daily lab procedures, process control and permit testing.
- Grand Northern Products TSS Testing.
- Weekly BOD's, E-coli, solids, NH3 and Alkalinity testing.
- Continued monitoring and calibrating of aeration basin D.O meters.

### **Personnel Meetings/Training Attended**

- Work site safety and city safety meeting.
- Pre-construction meeting.
- ACWA on line meeting.