



AGENDA
CANBY CITY COUNCIL MEETING
November 6, 2019
7:00 PM
Council Chambers
222 NE 2nd Avenue, 1st Floor

Mayor Brian Hodson

Council President Tim Dale
Councilor Trygve Berge
Councilor Traci Hensley

Councilor Greg Parker
Councilor Sarah Spoon
Councilor Shawn Varwig

1. CALL TO ORDER

- A. Invocation
- B. Pledge of Allegiance

2. COMMUNICATIONS

3. 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. You are first required to fill out a testimony/comment card prior to speaking and hand it to the City Recorder. These forms are available by the sign-in podium. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. For Agenda items, please fill out a testimony/comment card and give to the City Recorder noting which item you wish to speak on.)

4. MAYOR'S BUSINESS

5. COUNCILOR COMMENTS & LIAISON REPORTS

6. CONSENT AGENDA

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

- A. Approval of Minutes of the October 16, 2019 City Council Meeting and the October 23, 2019 Special Called City Council Meeting. Pg. 1
Pg. 8
- B. New Full On-Premises, Commercial Liquor License Application for Los dos Agaves Mexican Restaurant. Pg. 10

7. RESOLUTION

- A. Res. 1328, approving an intergovernmental agreement between Clackamas County and the City of Canby for Traffic Signal Maintenance and Transportation Engineering Services. Pg. 13

8. UNFINISHED BUSINESS

- A. Findings, Conclusions & Final Order - DR 19-01/CUP 19-01/VAR 19-02- AT & T Wireless Communications Facility (Related to Stealth Monopole Tower). Pg. 28

9. NEW BUSINESS

10. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

11. CITIZEN INPUT

12. ACTION REVIEW

13. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Melissa Bisset at 503.266.0733. A copy of this Agenda can be found on the City's web page at 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.

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
October 16, 2019**

PRESIDING: Mayor Brian Hodson

COUNCIL PRESENT: Tim Dale, Shawn Varwig, Sarah Spoon, Greg Parker, Trygve Berge, and Traci Hensley

STAFF PRESENT: Scott McClure, City Administrator; Joseph Lindsay, City Attorney; Melissa Bisset, City Recorder; Bryan Brown, Planning Director; Ryan Potter, Associate Planner; Jerry Nelzen, Public Works Lead

OTHERS PRESENT: Greg Perez, John Gunter, Doug Poppen, Scott Taylor, Ken Buckles, Virginia Weller

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:00 p.m. in the Council Chambers followed by the opening ceremonies.

Hometown Hero Presentation – Mayor Hodson presented the Hometown Hero Award to Greg Perez recognizing his community leadership.

Councilor Hensley read the nomination for Greg Perez. Mayor Hodson read the other nomination letters.

Mr. Perez thanked everyone for the honor.

COMMUNICATIONS: None

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: John Gunter, Canby resident, spoke on the seven acre subdivision application on Maple Street that was approved by the Planning Commission and had been appealed to the City Council. He had spoken at the City Council hearing on the appeal in January 2018. At that time the Council upheld the Planning Commission's decision with the addition of one condition of approval. That condition was the applicant must comply with all of the conditions of the Canby Landing Conservation Easement. The condition could not be met because Oregon Department of Fish and Wildlife would not permit the construction of water/sewer lines in the conservation easement area. He thought the project should not go forward and the applicant should resubmit or withdraw the application.

Scott Taylor, Canby resident, had testified both at the Planning Commission and City Council hearings about the subdivision on Maple Street. He expressed concern about the process and lack of communication with the residents on Maple Street. He questioned if the process had been transparent. The agreement with ODFW and Bonneville had taken years to negotiate. It was set up so the City could purchase the old logging road on the property. The rerouting of the water/sewer lines was a critical shift in the conditions of approval and the conditions were not followed. He asked that the decision be reconsidered to make sure the plans still made sense. He thought SDCs, not tax money, should be used for any roadwork and new sizing of pipes if 34th Place was dug up.

Doug Poppin, Canby resident, stated that at least two of the conditions of approval for the subdivision on Maple Street were not being met for the water and sewer lines. He questioned why no one from the

City or Council knew about the Master Plan and conservation easement during the application process. In the Master Plan this site was proposed to be a future park. He thought the application would have been denied if someone had brought up the Master Plan and conservation easement. He was concerned about the lack of communication from the Planning Department to the residents on Maple Street.

Mayor Hodson asked that the City Administrator and the Planning Department work together to address the concerns.

Councilor Parker asked if staff could look at the systems in place for letting the Planning Commission and Council know when adjustments were made to approved land use decisions.

Joe Lindsay, City Attorney, said this application was appealed to LUBA and LUBA upheld the decision for approval made by the Planning Commission and Council. It was up to the applicant to work with ODFW on this issue and the City was not a party to that. If the applicant could not use the conservation easement area, they would have to get an easement from a private property owner or go through the public right-of-way on 34th Place.

There was discussion regarding the process for getting permits and bringing utilities to the property.

Mr. Taylor asked about the intent and if it was to tear up 34th Place to put in the lines for the development. He did not think tax payers should have to pay for that.

Mr. Gunter said the Council added a condition to this application and if the condition could not be met, the application was not approved.

Mayor Hodson agreed that was what he understood. If the developer could not meet the conditions of approval, then they would need to reapply with the changes. He asked staff to bring back an update on this project and he would make sure that information was passed on to the residents on Maple Street.

Greg Perez, Canby resident, stated that there would be a November 11th Veterans Day celebration at the Vietnam Memorial Park and there would be a flyover.

Ken Buckles, Canby resident, shared a story about a Vietnam vet that he met who was from New Zealand and how in 2008 New Zealand had a national Vietnam Veteran Apology Day. He commented on what Vietnam vets had done to help other veterans as they returned from service and how he had gone out to the Canby community to get support for a Canby Vietnam Veteran Apology Day. He encouraged everyone to wear a special apology t-shirt on November 11 to show support for this idea.

MAYOR'S BUSINESS: Mayor Hodson shared that there were six Committee/Board openings. He reported on the Clackamas County Coordinating Committee where the Burnside Bridge replacement design and costs were discussed. This would retrofit the bridge to withstand the Cascadia earthquake. They also discussed the Strategic Investment Fund guidelines for the Vehicle Registration Fee. Region 1 Area Commission on Transportation had an update from the Autonomous Vehicle Task Force. He expressed to that Commission the displeasure of not being included in the congestion pricing conversation. They also had discrimination and harassment training. At the Parks and Recreation Advisory Board meeting, they had a discussion with the CAPRD Board future park planning. He had a conversation with the Molalla State Park Ranger and Regional State Park Supervisor about master planning Molalla State Park. They would be focusing on preservation and restoration.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Spoon said the Bridging Cultures' Thanksgiving Dinner was on November 23. On Halloween there would be the Downtown Spooktacular. CTV5 was hosting an event at the library on November 14. First Thursday would be on November 7. Scarecrows were beginning to go up downtown and voting would be available on the Hot Rod Dreamworks website.

CONSENT AGENDA: ****Councilor Dale moved to adopt the minutes of the October 2, 2019 City Council Regular Meeting and approve the limited on-premises liquor license application for Canby Pioneer Chapel. Motion was seconded by Councilor Hensley and passed 6-0.**

PUBLIC HEARING: Appeal (City File NO. APP 19-01) of Planning Commission Decision for Applications DR 19-01/ CUP 19-01/ VAR 19-02 – AT&T Wireless Communications Facility (Stealth Monopole Tower) – Mayor Hodson read the public hearing format.

Conflict of Interest

Councilor Berge – No conflict, plan to participate.
Councilor Parker – Was an AT&T customer, plan to participate.
Councilor Hensley – No conflict, plan to participate.
Councilor Dale – No conflict, plan to participate.
Councilor Varwig – No conflict, plan to participate.
Councilor Spoon – No conflict, plan to participate.
Mayor Hodson – No conflict, plan to participate.

Ex Parte Contact

Councilor Berge – None.
Councilor Parker – None.
Councilor Hensley – None.
Councilor Dale – None.
Councilor Varwig – None.
Councilor Spoon – Drove by the site daily. She had a couple people tell her they got poor cell service.
Mayor Hodson – No contact, drove by the site a couple of times.

Staff Report: Ryan Potter, Associate Planner, presented the staff report. This was an appeal of a Planning Commission decision to deny approval of an AT&T telecommunications facility. He explained the proposed project which included site and design review, a Conditional Use Permit, and a major variance. He discussed the proposed location for the monopole tower, timeline of the application process, new site plan with additional dimensions, and public comments that had been received. The Council could reject the appeal and confirm the Planning Commission's decision, overturn the Planning Commission's decision and approve the project, or remand the decision back to the Planning Commission. He reviewed the staff report that was presented to the Planning Commission including the applicable criteria, existing conditions, proposed facility, renderings, target search ring, projected new coverage, applicable criteria, proposed site plan, conditions of approval, correspondence received, and staff's recommendation for approval.

Mayor Hodson asked about the reasons it was turned down. Mr. Potter responded that the Planning Commission had concerns regarding health effects associated with this type of technology especially since it was near the high school, the close proximity of the pole to the gas pumps on the site and safety if the pole broke and fell on the pumps, and whether or not a different site could be available to accommodate this facility.

Councilor Hensley asked about the fall height and distances from the pumps and how the minutes from the Planning Commission meeting said it was a different distance than what was presented tonight. Mr. Potter noted that they did not have a detailed diagram of the dimensions for the Planning Commission meeting. It was an estimate, and since then the applicant had submitted the exact dimensions.

Councilor Berge asked about the search for another location especially a truck sales business on 99E. Mr. Potter said the applicant had talked to other properties owners in the area and there was no one willing.

Mayor Hodson opened the public hearing.

Applicant: Sara Springer, representing the applicant, stated the applicant had appealed because they thought there was a missed opportunity to have a greater amount of discourse and exchange of information with the Planning Commission. There were three concerns posed by the Planning Commission: alternative sites, setbacks, and environmental considerations. They had continued to look at alternative sites after the Planning Commission meeting and had reached out to the truck sales property owner as well as other property owners. It was confirmed that none of them were interested in pursuing a wireless facility on their property. There were no properties in the targeted search area that was necessary for this facility that would meet the setback requirements. In this application they requested two changes to the setbacks from property lines. Even without the breakpoint technology of the tower, the oil tanks were outside of the fall zone. The breakpoint did not have to be at the midpoint of the tower, and it could break at 80 or 90 feet depending on what the fall zone radius was. The breakpoint for this facility could be 65 feet which would avoid falling on any uses on the property. The structural analysis for the building permit would be stamped by an engineer to guarantee the breakpoint design. Federal law did not allow local jurisdictions from making decisions on an application based on health or environmental concerns if the applicant chose to meet FCC requirements. They were far below the FCC EF emissions standards for the facility. They were happy to provide more information and educational material related to how these facilities operated.

Councilor Varwig asked how often a tower collapsed. Ms. Springer did not have that information. She explained that the tower would have a rigorous design and it would be built to code. The breakpoint technology was rarely used in this area because they did not have the weather conditions as in other parts of the country.

Councilor Berge asked if a geotechnical report had been done. Ms. Springer said that was not a requirement for the application.

Proponents: None

Opponents: Virginia Weller, Canby resident, thought the tower was unattractive and very ugly. She stated that these types of towers that were made to look like trees did not look real or natural and this tower would stick out obtrusively. They should find a placement that was not visible from 99E. She thought that the Planning Commission's decision should be upheld.

Rebuttal: Ms. Springer stated that aesthetics should not be considered as that was not one of the reasons for the Planning Commission's decision. She understood that they could never please everyone and agreed it was not a real tree. The design was based on the Code requirements for a stealth facility. The applicant had worked with staff on the design to make it look more tree-like and aesthetically pleasing.

Mayor Hodson closed the public hearing at 8:43 p.m.

Councilor Spoon suggested an additional condition that the breakpoint be at a certain point so it would not hit anything on the site.

Councilor Dale asked if the 130 foot setback was a local requirement or a federal standard. Mr. Potter said it was a local requirement in the Code.

Councilor Dale said safety was not one of the requirements in the City's Code, but did it need to be since public safety was always an overriding concern of a municipality. Joe Lindsay, City Attorney, stated safety was a Comprehensive Plan policy of the City and was an overarching goal. It would always be a consideration.

Councilor Dale asked about the legal obligation when it came to granting variances. Mr. Lindsay said variances were requests for things outside of what the Code allowed outright. It was permissive, not a shall but a may, and there were conditions that the applicant had to meet. They had to make sure it was not an undue burden to meet the conditions. Mr. Potter clarified any site in this area would require a variance to the 130 foot setback. This request was a major variance as it was a 90% variance. It was up to the Council to determine if that was reasonable.

Councilor Spoon stated there was a neighborhood meeting where the setbacks could be discussed, but no one attended that meeting. Since then, had there been any objection from neighboring properties? Mr. Potter said no.

Councilor Hensley said with the new information about the distances and the breakpoint technology, she thought the safety issues brought up by the Planning Commission had been addressed. They had been told the health effects could not be considered. She appreciated the comments made about the aesthetics, but she thought the criteria had been met and was in favor of overturning the Planning Commission's denial.

Councilor Spoon agreed they could not consider health effects and the measurements submitted resolved the proximity to the gas pumps. She would like to add a condition that the breakpoint be at a height where they would not hit the pumps. The applicant had done the work to find other locations, but no property owners were willing. There were worse locations, and she did not think it would be as noticeable on this site. She understood the aesthetic issue, but she thought a stealth pole was preferable to a regular pole. Adding the cell tower was a net public benefit. She also was in support of overturning the Planning Commission's decision.

Councilor Varwig concurred that the Planning Commission's denial should be overturned. He understood the health and aesthetic concerns, but they could not judge this application on those items. He thought it would be a benefit to the community to have better cell coverage.

Councilor Dale did not think the setbacks were an issue. He was not persuaded that there was a procedural failing by the Planning Commission to justify not granting the variance because it was a permissive granting. He did not think the City was obligated to accommodate the optimal desires of the applicant for a location. He was not persuaded that this was the one and only site and all the alternatives had been looked into. He thought the Planning Commission's position on the radiation safety concerns was untenable, but it was not pivotal to their decision. He thought that the Planning Commission's decision should be upheld.

Councilor Parker thought that the setback was reasonably addressed. There was no evidence that granting the major variance would have a negative effect. They had a limited scope in what they could look at for approval.

Councilor Berge agreed with the Planning Commission's standpoint on the location and safety risks. There were other locations where the pole could be located. It would also hinder any future development on the property. Even though it would be stamped by an engineer, they did not know if the breakpoint technology would work. He was concerned about the safety of the kids walking to and from school. Giving the applicant their prime location was not the City's job and granting a major variance was not their job if the Planning Commission was opposed to it. He would vote to uphold the Planning Commission's denial.

Councilor Spoon noted that this was something the land owner had agreed to do on his property. She asked about the testing of the breakpoint technology.

Ms. Springer clarified that the breakpoint technology would be stamped by an engineer to verify it would operate correctly. She did not know what kind of testing was done. There would be a geotech report for this site as part of the building permit process.

****Councilor Spoon moved to overturn the Planning Commission's denial of the request based on one or more of the findings listed above, amending Condition #8 to add language that ensured the breakpoint disallowed any contact with the nearest pump in the event of a break, and including the original conditions of the approval offered in the staff report at the Planning Commission. Motion was seconded by Councilor Parker and passed 4-2 with Councilors Dale and Berge opposed.**

RESOLUTIONS & ORDINANCES: Resolution 1323 – Bryan Brown, Planning Director, explained that one of the conditions of the grant application was that the governing body should pass a resolution in support of the grant application. This was for development of an Economic Opportunities Analysis.

****Councilor Hensley moved to adopt Resolution 1323, supporting the submission of a technical assistance grant to the Department of Land Conservation and Development. Motion was seconded by Councilor Varwig and passed 6-0.**

CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Scott McClure, City Administrator, stated that he had been very busy meeting key players and projects. He had also been having meetings with Department Directors and community groups.

CITIZEN INPUT: Ms. Weller thought that neighbors should have been notified in person of the cell tower application. She did not think that they knew and would not be happy about the decision.

Mayor Hodson explained the process and noted that neighbors within 500 feet of the property were noticed of the public hearing.

Ms. Springer stated that staff had been great to work with and thanked the Council for being healthy, professional, and functional.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Overturned the Planning Commission's denial of the request for a stealth monopole tower.
3. Adopted Resolution 1323.

There was no Executive Session.

Mayor Hodson adjourned the Regular Meeting at 9:29 p.m.

Melissa Bisset
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood

DRAFT

**CANBY CITY COUNCIL
SPECIAL MEETING MINUTES
October 23, 2019**

PRESIDING: Mayor Brian Hodson

COUNCIL PRESENT: Greg Parker, Traci Hensley, Tim Dale, Shawn Varwig, and Sarah Spoon.

STAFF PRESENT: Joseph Lindsay, City Attorney; Scott McClure, City Administrator; and Melissa Bisset, City Recorder

CALL TO ORDER: Mayor Hodson called the Special Meeting to order at 5:58 p.m. in the Mt. Hood Conference Room.

Mayor Hodson welcomed Boy Scout Troop members in attendance.

Canby Citizen, Terry Tolls offered to provide Council and new staff with a history and tour of the industrial area.

DISCUSSION ON CITY ADMINISTRATOR GOALS.

City Administrator McClure provided Council with a document describing City Administrator Role Standards.

Mr. McClure explained that he wants to do a good job for the Council and his job is to make the Council's job as easy as possible. He likes to have an open relationship with Council and has met individually with each Councilor. He asked Councilors to contact him if they would like to have individual meetings with him. Discussion ensued regarding communication and bi-monthly department reports.

Mr. McClure suggested that there could be a community newsletter. Council felt that it would be helpful for the City to actively provide factual information to the community.

Mr. McClure encouraged Council to speak directly with Department Directors for information.

Mr. McClure provided his core expectations:

- Deliver high-quality services.
- Manage money wisely.
- Create a positive work environment.
- Move community forward.
- Support the Council through providing good data and advice.

He noted that there's a significant percentage of time allocated to internal and day-to-day issues.

Mr. McClure provided his six month goals:

- Understand City Operation.
- Learn about City Advisory Boards and Commissions.

- Canby Immersion.
- Improve City Communications.
- Keep the following projects moving forward:
 - Quiet Zone
 - Splash Pad
 - Walnut Street Extension Engineering
 - Downtown Arch

Mayor Hodson provided Council and the City Administrator with a list of goals for the first six months. The goals included:

- Build connections and relationships with Staff.
- Continue to drive toward completion of projects that have already been active and keep Council informed of progress.
- Creation of communication for current and new projects.
- Community engagement.
- Meet with key City Partners.
- Review and assessment of City Organizational efficiency.
- Department Director Performance Evaluations and Development Plans.
- Preliminary review and assessment of our Boards and Commissions.
- Master Planning
 - Park Master Plan, Transportation System Plan, and Comprehensive Plan
- Bring recommendations on a pathway forward on the following:
 - Ongoing funding for park development, operations and maintenance.
 - Transitioning County roads within Canby over to the City Of Canby Funding for and shortened completion timeline for Walnut and 99 E connection.

Discussion ensued regarding improving communications, direction for Boards and Commissions and working on inclusive citizen involvement.

It was noted that there would be a discussion again in six months to follow up on goals and set new goals.

Discussion ensued regarding continuing to stay the course and about how the proposed goals are suggestions and aggressive for six month goals. Council acknowledged that there were a lot of proposed goals and it might be a good idea to develop short term goals related to the proposed goals.

Mayor Hodson adjourned the meeting at 6:59 p.m.

Melissa Bisset
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: October 17, 2019
Re: Liquor License Application / Los Dos Agaves Mexican Restaurant

I have reviewed the attached liquor license application completed by Mr. Jose Angel Ramirez, for the business, "Los Dos Agaves" Mexican Restaurant, located at 102 N. Ivy Street, Canby, Oregon. Mr. Ramirez is the listed owner (25%) who is responsible to manage/operate the business.

On October 17, 2019, I went to the restaurant and spoke with Mr. Ramirez and Ms. Andrea Gonzalez (49% owner of the business) and we discussed the expectations and responsibilities involving the sale of alcoholic beverages. Mr. Ramirez and Ms. Gonzalez told me they are aware that they and any employee selling alcoholic beverages must know the laws regulating the sale of alcoholic beverages and they both have prior experience serving alcoholic beverages. They said they know there are consequences for failure to comply with rules as set forth by Oregon State Law. They said any staff 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).



LIQUOR LICENSE APPLICATION

\$75.00
pd 10/16/19
8 ✓ #1019

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 1 st Location	Date application received and/or date stamp:
<input type="checkbox"/> Brewery 2 nd Location	Name of City or County:
<input type="checkbox"/> Brewery 3 rd Location	Canby
<input type="checkbox"/> Brewery-Public House 1 st location	Recommends this license be:
<input type="checkbox"/> Brewery-Public House 2 nd location	<input type="checkbox"/> Granted <input type="checkbox"/> Denied
<input type="checkbox"/> Brewery-Public House 3 rd location	By: _____
<input type="checkbox"/> Distillery	Date: _____
<input checked="" type="checkbox"/> Full On-Premises, Commercial	OLCC USE ONLY
<input type="checkbox"/> Full On-Premises, Caterer	Date application received:
<input type="checkbox"/> Full On-Premises, Passenger Carrier	10/1/19
<input type="checkbox"/> Full On-Premises, Other Public Location	By: JanZ
<input type="checkbox"/> Full On-Premises, For Profit Private Club	License Action(s):
<input type="checkbox"/> Full On-Premises, Nonprofit Private Club	C/O + C/TN
<input type="checkbox"/> Grower Sales Privilege 1 st location	
<input type="checkbox"/> Grower Sales Privilege 2 nd location	
<input type="checkbox"/> Grower Sales Privilege 3 rd location	
<input 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 1 st Location	
<input type="checkbox"/> Winery 2 nd Location	
<input type="checkbox"/> Winery 3 rd Location	

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

Ramirez & Gonzalez LLC
(Applicant #1)

(Applicant #2)

(Applicant #3)

(Applicant #4)

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

dos dos Agaves Mexican Restaurant

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

102 N Ivy St

City

Canby

County

OR

Zip Code

97013

**LIQUOR LICENSE APPLICATION**

5. Trade Name of the Business (Name Customers Will See) <u>los dos Agaves Mexican Restaurant.</u>			
6. Does the business address currently have an OLCC liquor license? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
7. Does the business address currently have an OLCC marijuana license? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
8. Mailing Address/PO Box, Number, Street, Rural Route (where the OLCC will send your mail) <u>102 N Ivy St</u>			
City <u>Canby</u> <u>OR</u>		State <u>OR</u>	Zip Code <u>97013</u>
9. Phone Number of the Business Location <u>503 266 1441</u>		10. Email Contact for this Application <u>losdosamigosangelramirez@hotmail.com</u>	
11. Contact Person for this Application <u>Jose Angel Ramirez</u>		Phone Number <u>[REDACTED]</u>	
Contact Person's Mailing Address (if different) <u>Los dos Amigos Hacienda</u> <u>3140 Lancaster dr NE</u>		City <u>Salem</u>	State <u>OR</u>
		Zip Code <u>97305</u>	

Please note that liquor license applications are public records. A copy of the application will be posted on the OLCC website for a period of several weeks.

I understand that marijuana (such as use, consumption, ingestion, inhalation, samples, give-away, sale, etc.) is **prohibited** on the licensed premises.

I attest that all answers on all forms, documents, and information provided to the OLCC are true and complete.

Applicant Signature(s)

- Each individual person listed as an applicant must sign the application.
- If an applicant is an entity, such as a corporation or LLC, at least one person who is authorized to sign for the entity must sign the application.
- A person with the authority to sign on behalf of the applicant (such as the applicant's attorney or a person with power of attorney) may sign the application. If a person other than an applicant signs the application, please provide proof of signature authority.

[REDACTED]
(Applicant #1)

[REDACTED]
(Applicant #2)

[REDACTED]
(Applicant #3)

[REDACTED]
(Applicant #4)



City of Canby

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City Council Staff Report

DATE: November 6, 2019
TO: Honorable Mayor Hodson and City Council
THRU: Scott McClure, City Administrator
FROM: Jerry Nelzen, Operations Supervisor

Summary

The City of Canby is in the process of building a traffic signal at the intersection of SE Hazeldell Way and Sequoia Parkway. We would like to enter an Intergovernmental Agreement (IGA) with Clackamas County for signal maintenance staff to assist with design review, oversight, and maintenance of City's new and existing traffic signals, and intelligent transportation system.

Background

The City of Canby is having rapid growth in the industrial park and now requires signalization at the intersection of SE Hazeldell Way and Sequoia Parkway. We hope to have this operational in twelve months to help with the amount of traffic that is expected to increase with the new businesses moving into the industrial park.

Discussion

At this time the City cannot justify having a signalized traffic engineering department. Clackamas County has years of experience working with the timing coordination with Oregon Department of Transportation (ODOT) and Union Pacific. The City of Canby contacted ODOT to see if they were interested in the same agreement and they recommended Clackamas County.

Attachments

1. Resolution No. 1328
2. Intergovernmental Agreement

Fiscal Impact

The County estimates the total annual cost associated with the work described in the IGA will be approximately \$3,000 per traffic signal.

Options

1. Approve Resolution No. 1328.
2. Take no action on Resolution No. 1328.

Recommendation

Staff recommends the Council approve Resolution No. 1328.

Proposed Motion:

I move to approve Resolution No. 1328; a resolution approving an intergovernmental agreement between Clackamas County and the City of Canby for traffic signal maintenance and transportation engineering services.

RESOLUTION NO. 1328

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY FOR TRAFFIC SIGNAL MAINTENANCE AND TRANSPORTATION ENGINEERING SERVICES

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, the City needs professional transportation engineering and signal maintenance staff to assist with design review, oversight, and maintenance of the City's new and existing traffic signal(s), intelligent transportation system ("ITS"), and roadway beacons; and

WHEREAS, the County has particular expertise in this area and is able and willing to provide traffic engineering review oversight support, signal timing, and perform signal maintenance for the City on the terms and conditions provided below; and

WHEREAS, the Intergovernmental Agreement (IGA) sets forth the responsibilities of the County for traffic signal maintenance on the City's signals, ITS devices, and roadway beacons at the locations listed in Attachment A of the IGA; and

WHEREAS, the City and County believe it is in the public interest to enter into an IGA to set forth the circumstances under which the City may request the County to provide traffic engineering and traffic signal maintenance support on City roads and streets lying within the boundaries of the City; and

WHEREAS, the County estimates the total annual cost of the work associated with the work described herein will be approximately \$3,000 per traffic signal; and

WHEREAS, the City would like to engage the County to perform the work associated with the Project and the County is willing to perform the work.

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

- (1) The City agrees to enter into agreement with Clackamas County in pursuant to ORS 190.010 for purposes of the terms and conditions as outlined in the **INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY FOR TRAFFIC SIGNAL MAINTENANCE AND TRANSPORTATION ENGINEERING SERVICES**, Exhibit "A".

This resolution will take effect on November 6th, 2019.

ADOPTED this 6th day of November, 2019 by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Melissa Bisset, CMC
City Recorder

Exhibit A

INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY FOR TRAFFIC SIGNAL MAINTENANCE AND TRANSPORTATION ENGINEERING SERVICES

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“COUNTY”), a corporate body politic, and the City of Canby (“CITY”), a corporate body politic, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the City needs professional transportation engineering and signal maintenance staff to assist with design review, oversight, and maintenance of the City’s new and existing traffic signal(s), intelligent transportation system (“ITS”), and roadway beacons;

WHEREAS, the County has particular expertise in this area and is able and willing to provide traffic engineering review oversight support, signal timing, and perform signal maintenance for the City on the terms and conditions provided below;

WHEREAS, this Agreement sets forth the responsibilities of the County for traffic signal maintenance on the City’s signals, ITS devices, and roadway beacons at the locations listed in Attachment A;

WHEREAS, this Agreement sets forth the responsibilities of the City to compensate the County for the work contemplated herein;

WHEREAS, the City and County believe it is in the public interest to enter into this Agreement to set forth the circumstances under which the City may request the County to provide traffic engineering and traffic signal maintenance support on City roads and streets lying within the boundaries of the City;

WHEREAS, the County estimates the total annual cost of the work associated with the work described herein will be approximately \$3,000 per traffic signal; and

WHEREAS, the City would like to engage the County to perform the work associated with the Project and the County is willing to perform the work;

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective on the last date signed by the Parties below and shall continue thereafter in perpetuity unless terminated earlier by either party consistent with Section 5.
2. **County Obligations.**
 - A. The County shall provide all necessary labor and equipment to perform traffic signal consulting, inspection, configuration, testing, routine and preventive maintenance and repairs on both a regular scheduled and an on-call basis on those facilities identified in

Attachment A. Work shall be performed to International Municipal Signal Association (IMSA), Manual on Uniform Traffic Control Devices (MUTCD) with Oregon Supplement and Institute of Transportation Engineers (ITE) industry standards, as well as the State of Oregon guidelines and specifications.

- B. If spare materials and replacement parts are unavailable from City inventory, County shall provide spare materials and replacement parts as necessary to repair a signal that is deemed by the City to create a dangerous condition.
- C. The County shall assist City with developing a recommended inventory list of spare materials and replacement parts to store/maintain on a regular basis.
- D. The County shall provide engineering review and construction inspection services as requested by City Engineer or designee for new equipment installations not yet identified in Attachment A. New equipment which the Parties agree should be subject to the terms of this Agreement may be added to Attachment A by written amendment to this Agreement, signed by the City's operations supervisor for the Public Works Department, and the County's Director of the Department of Transportation and Development.
- E. The County shall assign an Oregon State-licensed Professional Civil Engineer (with expertise in Traffic Signal Operation) to assist the City as requested with traffic signal design review, alterations or additions to the traffic signal system, intelligent transportation systems (ITS), roadway flashing beacons, signal timing, review of development proposals with traffic impacts, and other traffic engineering matters. The County's Oregon State-licensed Professional Civil Engineer shall work in close coordination with the City's Public Works Engineering staff for design review oversight on the City's traffic signal, ITS, and roadway beacon projects.
- F. The County shall utilize IMSA Certified Technicians/Electricians when performing traffic signal maintenance, repairs, inspection, configuration, setup, or testing of the City's signal system. Certification level shall be commensurate with the task performed in accordance with IMSA specifications. Technicians/Electricians should be certified in temporary traffic control per IMSA guidelines.
- G. The County shall provide regular scheduled annual testing and maintenance of traffic signal components required for a fully functional traffic signal system, which includes all items shown in Attachment B.
- H. The County shall provide short term temporary traffic control measures as required by the most current Oregon Temporary Traffic Control Handbook and/or state adopted Manual on Uniform Traffic Control Devices ("MUTCD") during routine maintenance activities.
- I. The County shall provide responsive 24-hour on-call service that includes weekends and holidays.
 - i. The County shall respond to any calls involving an emergency, defined below, within four (4) hours, and shall respond to routine calls within forty-eight (48) hours.
Emergencies are:
 - 1. controller failures;
 - 2. dark signals;
 - a. In the event of a "dark signal," the County will verify with the Utility Service Provider (Canby Utility) before responding to ensure the outage is not due to a power outage, and the County will only be obligated to respond if the issue is isolated to the traffic signal. It will be the responsibility of the

technician/electrician on duty to evaluate conditions at the site and determine the action necessary, including temporary repairs or traffic control.

3. any red lamp outage;
 4. any intersection in a flashing mode;
 5. any turn lane with only one signal head having an outage (red, yellow, or green);
 6. any equipment involved in a crash; or
 7. any condition involving a signal that the City Public Works Director or City Engineer or their designee declares to be an “emergency” or otherwise requests immediate response (subject to County personnel availability) because the City deems a dangerous condition to exist.
- ii. Except for emergency work described in Section 2(I) and routine maintenance work described in Attachment B, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the Public Works Director for the City and the Director of the Department of Transportation and Development for the County, or their respective designees.
 - iii. The County shall not be liable for any claim or action arising out of, or based upon, damages or injuries to persons or property caused by signal issues for which no request for work was made by the City to the County pursuant to the terms of this Section 2.
 - iv. The County shall record all activities performed any time staff is responding to a service call at the site of traffic signal facilities. This can be done on a County-standard form, but should include at minimum:
 1. the time and date the call is received;
 2. the time staff arrives onsite;
 3. who placed the call;
 4. location and condition upon arrival;
 5. necessary equipment, labor and materials;
 6. specifics of repair;
 7. additional repairs still needed;
 8. time site was secured; and
 9. time leaving site.
- J. The County will provide to the City reports on all work performed at the traffic signal(s) as requested by the City. Annual reports shall contain completed maintenance checklists as provided in Attachment B, as well as copies of all work reports, tests, etc. for any activities performed onsite.
- K. The County shall maintain an updated log book in each cabinet for traffic signals that details any and all maintenance or repairs performed.
- L. The County shall provide annual reports that include all of the information in Section 2(J), or earlier upon request of the City.

- M. The County shall submit a detailed monthly invoice to the City with work descriptions, labor costs, and material costs. The County shall invoice the City within sixty (60) days of performing City-authorized work at rates established by the County to local governments.
- N. The County shall submit to City new rates for staff not less than 45 days before the rates per Attachment C change.

3. City Obligations.

- A. The City shall compensate the County for the services provided based on the rates of staff in the County Department of Transportation and Development as shown in Attachment C. Payment shall be made within thirty (30) days.
- B. The City agrees to promptly contact the County any time signal issues are witnessed or reported to ensure timely repairs can be made.
- C. The City shall have the ultimate responsibility to approve the plans in writing for signal upgrading, phasing, timing, and coordination after recommendation by the County.
- D. The City grants County the right to enter into and occupy City rights-of-way for the purpose of performing routine maintenance and emergency repairs of the traffic signal equipment, ITS devices, and roadway beacons owned by the City.
- E. The City shall maintain responsibility for temporary traffic control from the time the signal issue is discovered until such time as the City deems the traffic control unnecessary or County staff arrive and provide traffic control per Section 2(H) or Section 2(I)(ii).
- F. The City's inventory of spare materials and replacement parts for common repairs shall be stored at City's Maintenance Center and shall be accessible to County technicians/electricians during weekday business hours with the assistance of City personnel.

4. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. City may terminate this Agreement without cause upon:
 - i. Rate Increase: Within 30 days following County's notice of rate increase to City (rate increase shall not be effective until 45 days following notice to City); or
 - ii. For Convenience: Upon 60 days' notice.
- C. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- D. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one

breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- E. The County may terminate this Agreement upon 60 days' notice in the event the County is unable to provide staffing sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to provide services for performance of this Agreement.
- F. Nothing herein shall prevent the Parties from meeting to mutually discuss the Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- G. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

6. Party Contacts

- A. Bikram Raghubansh or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
150 Beavercreek Road
Oregon City, OR 97045
(503) 742-4706 or BikramRag@clackamas.us

- B. Jerry Nelzen or his/her designee will act as liaison for the City for the Project.

Contact Information:

City of Canby – Public Works Department
1470 NE Territorial Road
Canby, OR 97013
(503) 266-0759 or nelzenj@canbyoregon.gov

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

7. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of at least three (3) years; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties and any prior agreements between the Parties affecting the subject matter of this Agreement are hereby terminated. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on Following Page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Canby

Chair, Board of County Commissioners

City Administrator

Date

Date

Approved as to form:

Joseph Lindsay, City Attorney

Attachment A

County Maintained Traffic Signal and Flasher Beacon Locations

The County agrees to provide preventive maintenance, on-call repair, locates, and traffic engineering consultation services for signal and flasher facilities at the following locations within the City's Jurisdiction:

TRAFFIC SIGNALS

All traffic signals, pedestrian signals, vehicle detection, ITS devices, and related facilities at the following locations:

Intx No.	Address	Major Street	Minor Street
7752	280 S Hazel Dell Way	Sequoia Parkway	SE Hazel Dell Way

ROADWAY FLASHING BEACONS

Includes school zone flashers, intersection flashers, and Rectangular Rapid Flashing Beacons (RRFB) at the following locations:

ID No.	Device Type	Address	Major Street	Minor Street

Maintenance Checklist

ANNUAL AERIAL INSPECTION REPORT

DEPART:

POLES			
	OS	ATH	MA
CONDITION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HAND HOLE COVERS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
T-CANS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
LUMINAIRES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

[illegible]

City Council Packet Page 25 of 35



Jackson County

Transportation Maintenance Division

Ann Cabin

#: TC-

Date:

Location:
Owner:

Arrive:
Depart:

I:

FAIL

VAC: VDC:

	OK	ATTN	N/A	
Controller Timing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Timing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Cabinet Print	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Intersection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Verify Inputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Verify Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Flasher Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Locks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Thermostat/Fan Test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note:
Change Air Filter(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
Cabinet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Pass **Fail**
☐ ☐

Attachment C

Schedule of Rates

Clackamas County Traffic Engineering & Traffic Signal Maintenance Labor Rates

2019/20 Fiscal Year

Employee Class Description	Group	Labor Rate
Engineering Supervisor	Engineering	\$178.89
Civil Engineer, Senior	Engineering	\$161.64
Civil Engineer	Engineering	\$129.26
Civil Engineer, Associate	Engineering	\$99.1100
Engineering Tech 3	Engineering	\$108.93
Engineering Tech 2	Engineering	\$94.05
Engineering Intern	Engineering	\$24.63
Traffic Signal Electrician	Maintenance	\$130.40



City of Canby

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

Phone: 503.266.4021
Fax: 503.266.7961
www.canbyoregon.gov

Staff Report

DATE: November 6, 2019
TO: Honorable Mayor Hodson and City Council
THRU: Scott McClure, City Administrator
FROM: Ryan Potter, AICP, Associate Planner

Summary

City Council are hereby presented with a written decision and findings to review and adopt pertaining to an appeal heard on October 16, 2019 (City File APP 19-01, AT&T Wireless Telecommunications Facility).

Background

On October 16, 2019, the City Council held a duly noticed public hearing regarding the appeal of a Planning Commission decision to deny applications DR 19-01, CUP 19-01, and VAR 19-02 for a proposed 130-foot-tall stealth “monofir” telecommunications tower with antenna. By a vote of 4-2, the Council approved the applicant’s appeal to overturn the Planning Commission decision, thereby approving the proposed project, which would be located at 640 SW 2nd Avenue. The Council added one condition of approval in addition to those identified in the Staff Report dated August 16, 2019. The Council directed staff to prepare a final written decision for the Council to review and adopt at their next regular council meeting.

Discussion

This item does not require a public hearing. No additional discussion is required unless the Council wishes to amend and/or revise the proposed written findings. These findings were intended to memorialize and document the reasoning supporting the Council’s oral decision. Note that, consistent with the Council’s oral decision, the written decision includes the identification of an additional condition of approval beyond those identified in the August 16, 2019 staff report.

Attachments

- Findings, Conclusion, and Final Order

Fiscal Impact

Approval of this item would have no fiscal impact on the City of Canby.

Options

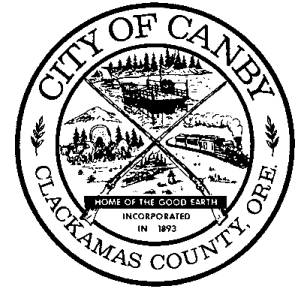
1. Approve the proposed written decision and findings for APP 19-01 as prepared by the applicant team and City Staff.
2. Approve the proposed written decision and findings for APP 19-01 with amendments and/or revisions.

Recommendation

Staff recommends the Council approve the proposed written decision and findings as prepared.

Proposed Motion

I move to approve the written decision and findings for Appeal No. 19-01 as prepared by the applicant team and City Staff.



**BEFORE THE CITY COUNCIL
OF THE
CITY OF CANBY**

In re:

**DR 19-01, CUP 19-01, VAR 19-02
APPEAL OF PLANNING COMMISSION
DECISION DENYING SITE AND DESIGN
REVIEW, CONDITIONAL USE PERMIT, &
MAJOR VARIANCE FOR A NEW AT&T
WIRELESS COMMUNICATIONS FACILITY**

APP 19-01

FINDINGS, CONCLUSION, & FINAL ORDER

I. PROPOSAL

New Cingular Wireless PCS, LLC (“AT&T” and the “Applicant”) seeks approval of Site and Design Review (**DR 19-01**), Conditional Use Permit (**CUP 19-01**), and Major Variance (**VAR 19-02**) applications (collectively, the “Land Use Applications”) to construct a 130-foot-tall stealth “monofir” telecommunications tower with antennas that will provide new wireless telephone and data service coverage and additional capacity to portions of downtown Canby (the “Facility”). The subject property for the Facility is located at 640 SW 2nd Avenue and is described as Tax Map/Lot 31E33CC06500, Clackamas County, Oregon (the “Property”). The Property is zoned Heavy Commercial Manufacturing (C-M) under the Canby Municipal Code (CMC) and its current use is a Pacific Pride fueling station.

II. PROCEDURAL HISTORY

On March 27, 2019, Applicant met with City staff for a pre-application meeting to discuss the proposed new Facility. On July 5, 2019, Applicant submitted the Land Use Applications to the City and the City deemed the Land Use Applications complete on July 30, 2019.

On August 16, 2019, City staff issued their staff report, which recommended approval of the Land Use Applications (the “Staff Report”).

On August 26, 2019, the Planning Commission held a duly noticed public hearing regarding the Land Use Applications. The Commission received oral testimony from the Applicant and from persons opposed to the Land Use Applications. Upon closing the public hearing the Commission deliberated and voted 5-2 to deny the Land Use Applications and directed staff to prepare the written findings, conclusion, and decision for the Commission to review and adopt at their next meeting.

On September 9, 2019, the Planning Commission adopted Findings, Conclusion, & Decision in support of their vote to deny the Land Use Applications (the “Planning Commission Decision”).

Staff issued proper notice of the Planning Commission Decision on September 10, 2019.

On September 20, 2019, the Applicant filed a timely appeal to the City Council (APP 19-01) pursuant to CMC 16.89.050 (the "Appeal"), requesting the Council to overturn the Planning Commission Decision and approve the Land Use Applications.

On October 16, 2019, the City Council held a duly noticed public hearing on the Appeal and designated a record which included the August 16, 2019 Staff Report; the written and oral testimony at the August 26, 2019 public hearing; the Commission's deliberation and vote at the August 26, 2019 meeting; the Planning Commission Decision; the staff report submitted for the October 16, 2019 Appeal public hearing, and the written and oral testimony at the October 16, 2019 Appeal public hearing. Upon closing the Appeal hearing, the Council deliberated and voted 4-2 to approve Applicant's Appeal to overturn the Planning Commission Decision and thereby approve the Land Use Applications as recommended in the original Staff Report, with one additional condition of approval. The Council directed staff to prepare a final written decision for the Council to review and adopt at their next regular council meeting.

At its November 6, 2019 meeting, the City Council considered a draft final written decision on the Appeal and voted unanimously to approve this final written decision.

III. PROCESS AND SCOPE OF REVIEW

Pursuant to CMC 16.89.050, this Appeal is a Type III quasi-judicial action before the City Council.

Pursuant to CMC 16.89.050.I.3.:

The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:

- a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;
- b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or
- c. That the Commission did not adequately consider all of the information which was pertinent to the case.

In preparing these findings, conclusion, and decision the City Council finds that it is only obligated to consider arguments raised during the appeal and not arguments raised during the Planning Commission hearing that were not also raised during this appeal. *Miles v. City of Florence*, 190 Or App 500, 504–507 (2003).

IV. APPROVAL CRITERIA AND FINDINGS

As findings supporting the conclusions and decision herein, the City Council incorporates in its entirety the findings included in the August 16, 2019 Staff Report. The findings, conclusion, and decision herein shall control in the event of a conflict with the Staff Report.

The following are the supplementary findings of the City Council based upon its review of the Planning Commission Decision, the record, and the arguments and issues presented in the

appeal process.

- The first finding in the Planning Commission Decision states:

The Planning Commission found that approval of a Major Variance would be detrimental to existing land uses on the subject property (i.e., highly flammable fuel pumps less than 50 feet away from the proposed monopole) and surrounding properties by creating a safety hazard in the event that the proposed facility fell or collapsed. The commission concluded that the required 1-1 setback (i.e., a 130-foot setback for a 130-foot facility) was intended, in part, to prevent safety hazards and that a setback of 13.5 feet from the nearest property line was an unreasonably excessive variance from the required 130 feet of setback, which was established specifically for a facility of this type in this zone. The commission concluded that, despite the collapsible, “break point” design proposed for the facility, structural failure in this location could present a danger to the community due to its fall radius and nearby storage of flammable fuels.

FINDING: The Council observes that there is no specific code criteria that limits the distance of the Facility to other uses on the same parcel; there is no analysis in the record by a qualified engineer to contradict that the monopole can be designed with breakpoint engineering to limit the fall zone to a specific radius to prevent contact with the gas pumps on same property; the Commission did not acknowledge that applicable zoning, building, and fire codes already allow for highly flammable liquids—fuel for the back-up generator—to be stored within the Facility’s compound; and that no comment or concern was submitted by the adjacent property owner with the most significantly reduced setback (13.5 feet). The Council finds that the record lacks substantial evidence to support the Commission’s finding above. Therefore, pursuant to CMC 16.89.050.1.3, the Council finds that the Commission did not correctly interpret the requirements of Title 16, the Comprehensive Plan, or other requirements of law and did not adequately consider all of the information which was pertinent to the case.

- The second finding in the Planning Commission Decision states:

The Planning Commission also concluded that the applicant had not adequately performed a study of—or provided sufficient documentation of—potential alternative sites, which resulted in a proposed variance from setbacks that was more than the minimum variance required to alleviate the hardship of locating the facility within AT&Ts targeted service area. The commission concluded that other nearby similarly-zoned sites would not require such a large variance and therefore the unique conditions dictated by the chosen site (i.e., close proximity to property lines and adjacent land uses) were self-imposed.

FINDING: Upon review of the record, as well as testimony from the Applicant at the Appeal hearing, the Council finds that the “other nearby similarly-zoned sites” discussed by the Planning Commission is the Lovell Trucking site to the west of the proposed Facility’s location. Accordingly, the Council accepts the October 14, 2019 email from Chip O’Hearn of Smartlink as substantial evidence that the Lovell Trucking site is not a viable alternative location for siting the Facility as the property owner does not desire to lease their land for the Facility. The Council also finds that

Applicant provided substantial evidence in their alternative site analysis in the Zoning Application to support Staff's finding that there are no available parcels within AT&T's targeted service area that would allow the Facility to meet applicable setback requirements. The Council further finds that the record lacks substantial evidence to support a finding that the requested setback variance is more than the minimum required. Therefore, pursuant to CMC 16.89.050.1.3, the Council finds that the Commission did not correctly interpret the requirements of Title 16, the Comprehensive Plan, or other requirements of law and did not adequately consider all of the information which was pertinent to the case.

- The third finding in the Planning Commission Decision states:

Lastly, the Planning Commission received oral and written testimony from members of the public expressing concerns related to the potential health effects of wireless technologies. While the commission acknowledged that the applicant had supplied an engineer's statement regarding human exposure to radio frequencies generated by the proposed facility (Non-Ionizing Electromagnetic Exposure Analysis & Engineering Certification)—and that this statement indicated conformance with Federal Communications Commission (FCC) guidelines—the Planning Commission also expressed concern that the facility is too close to a sensitive population (i.e., children at Canby High School approximately 250 feet to the southwest). For this reason, the commission concluded that the proposed facility was inconsistent with the City of Canby Comprehensive Plan, which promotes grouping of compatible land uses in the interest of public health and safety (e.g., Policy 1, and related implementation measures in the Comprehensive Plan Land Use Element).

FINDING: The Council accepts the NIER Report provided in the Land Use Applications as substantial evidence that supports Staff's finding that the proposed Facility will not exceed the RF emission standards set by the FCC. Therefore, pursuant to federal law, the Council finds that environmental and/or health safety concerns cannot be a consideration or criteria used for denying the Land Use Applications. The Council further finds that there is a lack of substantial evidence in the record to support the Commission's finding above that the Facility is inconsistent with Policy 1 of the Comprehensive Plan. Therefore, pursuant to CMC 16.89.050.1.3, the Council finds that the Commission did not correctly interpret the requirements of Title 16, the Comprehensive Plan, or other requirements of law and did not adequately consider all of the information which was pertinent to the case.

V. CONCLUSION

Based upon the above findings, the City Council concludes that the substantial evidence in the record demonstrates that the Land Use Applications satisfy—or can satisfy—all applicable criteria, either as proposed or pursuant to the conditions of approval as indicated in this decision and that the Land Use Applications can be approved as recommended by Staff subject to the additional condition of approval as indicated in the decision herein.

VI. ORDER

The City Council by motion made, hereby ADOPTS the findings and recommendation of City staff in the August 16, 2019 Staff Report APPROVING the Land Use Applications (**DR 19-01**, **CUP 19-01**, and **VAR 19-02**) with the following CONDITIONS OF APPROVAL:

- All conditions of approval included in the August 16, 2019 Staff Report; and
- Breakpoint engineering on the monofir structure shall be designed so that its fall zone—*i.e.* the radius area in which the top portion of the tower would collapse or fall in the unlikely event of structural failure—does not reach the nearest existing gas pump on the subject property (pursuant to the revised site plan submitted with the October 4, 2019 Staff Report, the nearest existing gas pump is approximately 67' 11" from the center of the proposed location of the monofir).

VII. APPEAL INFORMATION

Pursuant to CMC 16.89.050.K., the decision of the City Council regarding an appeal of a Planning Commission decision is the final decision of the City. It may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period or this land use review.

I CERTIFY THAT THIS ORDER APPROVING APP 19-01 AT&T CELL TOWER was presented to and APPROVED by the City Council of the City of Canby.

DATED THIS 6th day of November, 2019.

Brian Hodson
Mayor

Bryan C. Brown
Planning Director

ORAL DECISION – October 16, 2019

AYES:
NOES:
ABSTAIN:
ABSENT:

WRITTEN FINDINGS – November 6, 2019

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Melissa Bisset, CMC
City Recorder