RESOLUTION NO. 1204

A RESOLUTION CODIFYING AND COMPILING CERTAIN EXISTING GENERAL ORDINANCES FOR THE CITY OF CANBY.

WHEREAS, on February 15, 2006 the Canby City Council adopted Ordinance 1200 which adopted a revised code of the City of Canby entitled the "Canby Municipal Code". Since that time the Council has adopted Resolutions 956, 1012, 1051, 1070, 1100, 1138, and 1172 codifying supplements.

WHEREAS, since that time Ordinances have been adopted affecting the Canby Municipal Code, causing the present general and permanent ordinances of the City to be inadequately arranged and classified and are insufficient in form and substance for the complete preservation of the public peace, health, safety and general welfare of the municipality and for the proper conduct of its affairs; and

WHEREAS, the Acts of the Legislature of the State of Oregon empower and authorize the City to revise, amend, restate, codify and compile any existing ordinances and all new ordinances not heretofore adopted or published and to incorporate such ordinances into one ordinance in book form; and

WHEREAS, the League of Oregon Cities, Ordinance Services Program, in its efforts to promote better and more efficient municipal governing, is willing to undertake the codification of the City's ordinances;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Canby that the City hereby authorizes a general compilation, revision and codification of the ordinances of the City of a general and permanent nature and publication of such ordinances in book form, at a cost according to the standard rates and billing procedures for services under the program. A copy of the 2014 S-8 Supplement (codifying ordinances 1374-1402) is attached hereto as Exhibit "A".

This resolution will take effect on December 3, 2014.

ADOPTED this 3rd day of December 2014, by the Canby City Council.

Brian Hodson
Mayor

ATTEST:

Kimberly Scheafer, MMC
City Recorder

CITY OF CANBY, OREGON

CODE OF ORDINANCES

2014 S-8 Supplement contains:
Local legislation current through Ord. 1402, passed 6-18-2014

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CANBY, OREGON
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TITLE 2: ADMINISTRATION AND PERSONNEL

Chapter

city-wide concern related to the Canby Comprehensive Plan or the Canby Planning and Development Code.
(Ord. 1109, passed 11-20-2002)

CHAPTER 2.80: PUBLIC ART MURAL PROGRAM

Section

§ 2.80.010 Purpose.

The purpose of this Title and the policy of the City of Canby are to permit and encourage Public Art Murals located within Canby's Urban Renewal District for acquisition by the Urban Renewal Agency. Public Art Murals are to be placed on public wall space and paid for in full or in part with Urban Renewal Funds administered by Canby's Urban Renewal Director. The City Council recognizes that public murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.
(Ord. 1341, passed 3-2-2011)

§ 2.80.020 Definitions.

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

Public Art Mural Advisory Committee (PMAC) means a group responsible for reviewing proposed public art murals and making recommendations to the Canby Urban Renewal Agency Director on the selection of Public Art Murals. Committee membership shall include artists, art advocates and professionals, business owners, city staff, and a representative from Canby's Main Street Design Committee.
(Ord. 1341, passed 3-2-2011)

§ 2.80.030 Guidelines.

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

A. Provide for annual reporting to the Agency;

B. Provide a method for the appointment of representatives to the Public Mural Advisory Committee;

C. Determine a method or methods of selecting and contracting with artists for the design, execution and siting of Public Art Murals;

D. Determine a process for the ongoing care, maintenance and conservation of public art murals;

E. Determine a process to deaccession public art murals;

F. Set forth any other matter appropriate to the administration of this Chapter.
(Ord. 1341, passed 3-2-2011)

§ 2.80.040 Ownership.

All Public Art Murals acquired pursuant to this Chapter shall be acquired in the name of the City of Canby Urban Renewal Agency, and title shall vest in the City of Canby Urban Renewal Agency.
(Ord. 1341, passed 3-2-2011)

§ 2.80.050 Implementation.

The Canby Urban Renewal Agency Director in consultation with the Public Mural Advisory Committee and Mural Program Staff shall implement the provisions of this Chapter, in cooperation with all participating city departments.
(Ord. 1341, passed 3-2-2011)

§ 2.90.050 Officers.

At the first meeting of each year, the Committee shall elect a Chair who shall serve for a term of 1 year ending December 31. The Finance Director shall serve as staff liaison to the Committee and keep the record of its action.
(Ord. 1393, passed 2-5-2014)

§ 2.90.060 Location of meetings.

The Municipal Audit and Financial Oversight Committee shall meet at least once per quarter, or more if necessary, at a location open to the public.
(Ord. 1393, passed 2-5-2014)

TITLE 3: REVENUE AND FINANCE

Chapter

§ 3.12.008 Custodian.

A. The City Treasurer is appointed official custodian for the care, custody and control of all public funds for the city.

B. The City Treasurer shall be bonded in the amount of not less than $100,000.

§ 3.12.010 Expenditures.

Checks or warrants may be drawn on said fund for the general operation of the city in accordance with the annual budget or budgets. The accounts of the city shall be so kept that they shall show the departments and the respective amounts for which the check or warrant is issued and paid.

CHAPTER 3.16: (REPEALED)

CHAPTER 3.20: CONSTRUCTION EXCISE TAX

Section

§ 3.20.010 Short title.

This chapter shall be known as the construction excise tax ordinance and may be so pleaded.

§ 3.20.120 Construction.

The construction excise tax ordinance and all amendments hereinafter made thereto shall be referred to herein as this chapter.

§ 3.20.130 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Building Official means any person charged by a municipality with responsibility for the administration and enforcement of a building code.

Building Permit means a permit issued in accordance with the most recent State of Oregon Structural and Specialty Code or the State of Oregon One and Two Family Dwelling Specialty Code.

Construction means any activity for which a building permit is required.

Contractor means any person who performs construction for compensation.

Improvement means the habitable living space of any newly constructed structure, modification of any existing structure to include additional habitable living space or manufactured housing for which a building permit or installation permit is required. Improvement does not include such things as decks, storage sheds, garages used for parking of cars, unfinished basements and attics, and other like additions which are not intended to be inhabited by the occupants.

Installation Permit means a permit issued in accordance with the most recent State of Oregon Administrative Rules regarding standards for manufactured dwellings.

Manufactured Dwelling means any building or structure designed to be used as a residence that is subject to regulations pursuant to O.R.S. Chapter 446, as further defined in O.R.S. 446.003(26).

Nonprofit Corporation means those corporations developing housing projects directed at low-to-moderate income range residents.

Person means and includes individuals, domestic and foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

B. The City Administrator shall, pursuant to §§ 3.20.050 and 3.20.060, exempt from the duty to pay the tax imposed by § 3.20.070 any person who would be entitled to rebate pursuant to § 3.20.090.

§ 3.20.050 Rules and regulations promulgation.

The City Council may promulgate rules and regulations necessary for the administration and enforcement of this chapter.

§ 3.20.060 Administration and enforcement authority.

A. The City Administrator shall be responsible for the administration and enforcement of this chapter.

B. In order to carry out the duties imposed by this chapter, the City Administrator shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require attendance of witnesses before the Municipal Court to determine compliance with this chapter, rules and regulations; to require production of relevant documents at court hearings; and take testimony of any person by deposition.

§ 3.20.070 Rate.

A. An excise tax is imposed on every person who engages in the construction or installation of any improvement, including manufactured dwellings located within the corporate city limits. These rates shall be set by resolution.

B. The total tax shall be calculated upon the square footage of the improvement that appears on the building permit or installation permit.

C. In the case of multi-family structures such as duplexes, triplexes and apartment complexes, the tax shall be calculated on the square footage of each single unit (not the overall square footage of the building). The amount calculated for each single unit shall then be added together to calculate the total tax for the complex.

D. The tax shall be due and payable from the issuance of any building permit or installation permit for the improvement by any building authority. Liability for this tax shall be imposed upon every contractor or person who constructs or installs any improvement; provided, however, that only 1 tax must be paid on the construction or installation of any 1 improvement.

(Am. Ord. 1327, passed 5-19-2010)

§ 3.20.080 Statement of entire floor area required.

It shall be unlawful for any person to fail to state or to misstate the full floor area of any improvement or manufactured dwelling. When any person pays the tax within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the floor area of the improvement or manufactured dwelling is the floor area as determined by the Building Official at the time of issuance of the building permit or installation permit.

§ 3.20.090 Rebates.

A. The City Administrator shall rebate to any person who has paid a tax the amount of tax actually paid, upon the person establishing that:

1. The tax was paid for the construction of a single-family residence that was sold to its original occupant for a price less than $100,000; provided that the maximum amount that may be refunded for any 1 residence is $125;

2. The person who paid the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership, the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the construction is used for residential purposes and the property is restricted to being occupied by persons with income less than 50% of the median income for a period of 30 years or longer; or

3. The person who paid the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) and the construction is dedicated for use for the purpose of providing charitable services to persons with incomes less than 50% of the median income.

§ 3.24.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Association means any club, group or organization, whether organized for business purposes, civic purposes, religious purposes or other purposes.

Business Entity means any sole proprietorship, self-employed person, partnership, limited partnership, corporation including nonprofit corporations engaged in any business enterprise, and any firm, association or entity of any kind engaged in business. This term shall also include any personal representative or assignee of any Business Entity.

City means the City of Canby.

Collector means the tax Collector of the city. This may be an employee of the city or a contract agent or agency as the City Council shall from time to time determine. The City Finance Director shall have supervisory responsibilities over the Collector.

Commission Merchant or Commission Employee means any person who engages in the sale of goods for compensation in the form of a commission only and is subject to withholding under O.R.S. Chapter 316. This also includes any person who buys and resells goods if the person does not maintain a retail store or wholesale sales floor and does not store goods except during a short period before transportation to the buyer.

Corporation means any business corporation and any nonprofit corporation organized under the laws of this state, or under the laws of any jurisdiction.

Employee means any individual employed by another, for wages. This also includes all real estate salespeople employed by a real estate broker and paid on a commission basis, and all mechanics who perform services for customers of an auto repair shop and who are paid by the owner of the auto shop for each repair or maintenance job done, provided that the remuneration is subject to withholding under O.R.S. Chapter 316.

Employer has the meaning prescribed by O.R.S. 267.380.

Firm means any sole proprietorship, partnership, corporation, joint venture, limited partnership or other form of organization formed for the purpose of doing business.

Individual means a natural person.

Local Transit Area means designated areas within the city and the Canby Urban Growth Boundary which will receive benefits of operation, management or delivery of a transit system.

Net Earnings from Self-Employment has the definition as prescribed by O.R.S. 267.380.

Payroll Expense means the wages paid by any employer to any employee. Payroll Expenses also include the commission received by a commission merchant or a commission employee, if that person is subject to withholding under O.R.S. Chapter 316.

Personal Representative means any trustee, receiver, executor, administrator, guardian, conservator or similar Personal Representative of any person, firm, association or corporation.

Taxpayer means any person, firm, corporation or association required by this chapter to file a return or to pay a payroll and/or self-employment tax.

Wages has the meaning prescribed by O.R.S. 267.380.

(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

employment if any of the earnings are subject to the Tri-Met payroll and self-employment tax or any like tax.
(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.050 Alternate method of apportioning tax.

Any taxpayer may, at the taxpayer's sole option, propose an alternate method to the methods of apportioning the payroll tax set out in the preceding section of this chapter. If, due to the circumstances of the taxpayer's business, the methods set out in the preceding section result in more of the taxpayer's payroll being taxed than can reasonably be attributed to the connection of the taxpayer and the employees, commission merchants or commission employees within the local transit district, and if the proposed alternate method does provide for a reasonably accurate proportion of the taxpayer's payroll to be subject to the tax, the Collector may approve the alternate method and the amount of payroll and self-employment tax owed by the taxpayer shall be the amount determined by the alternate method.
(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.060 Fixed percentage.

If the Collector finds that the percentage of any taxpayer's payroll required to be apportioned to business done in the local transit area remains stable with little variation, the Collector may notify the taxpayer that a fixed percentage has been established and that the percentage does not have to be calculated when each return is filed. If the taxpayer objects within 30 days of receiving the notice, the fixed percentage shall not be put into effect and the percentage shall continue to be determined as before. If the taxpayer does not object, the fixed percentage shall remain in effect until changed by action of the Collector, or changed by the taxpayer as follows: At any time the use of the fixed percentage may be discontinued, at the sole option of the taxpayer, by the taxpayer giving 30 days' written notice to the Collector. Each taxpayer whose payroll tax is determined by use of a fixed percentage under this section has a continuing duty to notify the Collector immediately of any significant change in conditions which would change the proportion of the payroll reasonably attributable to business done or work done in the local transit district. The Collector may change or discontinue the use of a fixed percentage at any time.
(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.070 Employer located outside of local transit area.

Employers located outside of the local transit area are subject to the payroll and self-employment tax if any employee, commission merchant or commission employee of the employer does business in the local transit area in any way designated in § 3.24.020 of this chapter. Each employer shall contact the city Collector to obtain forms and shall file all returns required by this chapter.
(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.080 Exceptions.

A. Wages which are excluded as remuneration paid under O.R.S. 267.380.

B. Any payroll of any employer subject to the Tri-Met payroll or self-employment tax or any like tax. Refer to § 3.24.040.
(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.090 Nature of the tax.

The tax imposed by this chapter is a tax on persons, firms, corporations and associations doing business in the local transit area. It is not a tax on employees. The payroll and self-employment tax shall not be withheld by the employer from the employee's compensation.
(Ord. 1081, passed 11-21-2001)

§ 3.24.100 Date due, returns, payments, prepayments and extensions.

A. Taxpayers shall comply with the following requirements concerning returns, payments, prepayments and extensions.

B. Taxes shall be determined for:

F. The Collector may delegate duties assigned to the Collector in this chapter to any officer or employee under the Collector's supervision, provided that the Collector shall approve the form of all returns and written instructions;

G. The Collector shall prepare pamphlets for distribution to the public, clearly explaining the payroll and self-employment tax and the returns and payments required; and

H. The Collector shall perform all of the other duties assigned to the Collector by this chapter.

(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.130 Penalties, interest and fees.

A. Original Delinquency. Any taxpayer who has not been granted an extension of time for filing a return or remittance of tax due and who fails to remit any tax imposed by §§ 3.24.030 *et seq.* prior to delinquency, shall pay a penalty of 10% of the amount of tax due in addition to the amount of the tax unless the taxpayer shows that the failure to file timely is due to reasonable cause not due to negligence.

B. Continued Delinquency. Any taxpayer who has not been granted an extension of time for filing a return or remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.

C. Fraud. If the Collector determines that the failure to file a return or that the nonpayment of any remittance due under §§ 3.24.030 *et seq.* is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions A. and B. of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit a tax imposed by §§ 3.24.030 *et seq.* shall pay interest at the rate of 1.5% per month or a fraction thereof, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Said interest cannot be waived by the Collector.

E. Payment Submitted without Return. A fee, set by resolution, shall be charged should a taxpayer remit a payment without a return unless said return is received by the Collector within 5 business days of receiving the payment.

F. Penalties Merged with Tax. Every penalty and fee imposed and such interest as accrues under provisions of this section shall be merged and become a part of the tax herein required to be paid. Payments shall first be applied to penalties and fees imposed, then to interest accrued, then taxes due.

G. Attorney Fees. In the event it becomes necessary for an enforcement of the provisions of this chapter for the city to incur attorney fees' expense and cost, the taxpayer shall be assessed that expense and/or cost. It shall be due and owing upon billing and shall bear interest at the rate of 1.5% per month.

H. Imposition of Civil Penalties. An imposition of any civil penalties, interest, fees or costs by this section shall not be a bar for any prosecution under § 3.24.240.

I. The Collector may waive or adjust penalties and fees imposed by divisions A., B., C. and E. above upon a finding that:

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this chapter in a timely manner;

2. The amount of the penalties or fees are greatly disproportionate to the amount of the tax;

3. The failure of a taxpayer to file a return and/or pay any tax by the due date was caused by any of the following circumstances:

a. The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

b. Erroneous or insufficient information was furnished the taxpayer by the Collector or their employee or agent.

c. Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

d. Unavoidable absence of the taxpayer immediately prior to the due date.

e. Destruction by fire or other casualty of the taxpayer's place of business or records.

processed like any late return, and shall establish the payroll tax liability of the taxpayer in place of the estimated tax prepared by the Collector. The Collector may, however, later determine that the amount shown on the return is insufficient, so there is a deficiency, in the same manner as in the case of other returns.

2. Contacting the Collector or Finance Director to set up a payment plan.

3. If the taxpayer fails to respond to the notification within 30 days a collection notice will be mailed informing said taxpayer of the estimated balance, interest and late charges being turned over to a collection agency.

B. If the Collector determines, by examining available evidence that the amount of payroll and self-employment tax paid by any taxpayer is less than the amount required by this chapter, the Collector shall notify the taxpayer of the deficiency. The Collector may use any of the methods authorized by §§ 3.24.010 *et seq.* of this chapter to determine whether a deficiency exists and to determine the amount of the deficiency. The Collector shall thereupon notify the taxpayer of the deficiency. The notice shall be in writing and shall state not only the amount of the deficiency, but also the methods and estimates used in arriving at the amount of deficiency. If the taxpayer does not object within 30 days of the date of receiving the notice, the taxpayer shall be deemed to have accepted the revised figures for payroll tax liability. If the taxpayer does file a written objection within the time specified, the taxpayer shall pay the tax, together with penalties and interest, under protest, and may thereupon, pursue administrative and judicial remedies as provided by ordinance and by state law, to seek a refund.

C. If the Collector finds that any taxpayer has overpaid, the Collector shall notify the taxpayer of the taxpayer's overpayment and shall refund the amount of the overpayment to the taxpayer in accordance with § 3.24.180.

D. When the Collector notifies any taxpayer of any estimated tax, alleged overpayment or refund, the Collector shall include in the notice clear instructions on how, when and where the taxpayer may protest or appeal the decision.

E. If a taxpayer or any person, firm, association or corporation required by this chapter to pay a tax or to file a return shall fail to file any return for any year, the failure to file shall constitute a continuing offense against the city and the Collector may proceed to estimate and collect the payroll and self-employment tax at any time. In all other cases, no increase shall be made in any taxpayer's payroll tax liability unless the first notice of the increase is received by the taxpayer within 3 years of the time the return was first due.

(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.150 Tax as debt; termination of taxable period and immediate assessment of tax.

A. Every tax imposed upon employers measured by wages paid to employees and upon self-employed persons measured by net earnings from self-employment, and all increases, interest and penalties thereon shall become, from the time the liability is incurred, a personal debt due the city from the person or persons liable therefor.

B. If the Collector finds that the taxpayer designs to depart quickly from the state or to remove his or her property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past quarter or the tax quarter then current, unless the proceedings be brought without delay, the Collector shall declare the current taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer. Simultaneously, the Collector, on the basis of the best information available to it, shall assess a tax for the terminated period and for the preceding tax quarter (if no return has been filed, whether or not the time otherwise allowed by law for filing the return and paying the tax has expired), and shall assess additional tax for any quarters open to assessment under provisions of the applicable law. The Collector shall give notice to the taxpayer of all taxes so assessed. The taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his or her last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of

the Collector determines that an overpayment has been made, the Collector shall make the refund whether a claim for the refund has been filed or not. Any taxpayer may make a claim for the refund by filing a statement signed by the taxpayer or by a person with actual knowledge of the facts, stating the reasons for the claim for refund. The Collector shall examine each claim, and may require additional information and evidence from the taxpayer. The Collector may make an investigation to determine the facts as to whether a refund is due. The investigation may include examining the books, records and information in computer storage of the taxpayer.

B. If any sum is due from the taxpayer to the city for any reason, the amount of the refund shall be applied first to offset the sum owed by the taxpayer to the city. Any sum not used for this offset shall be returned to the taxpayer as soon as practicable. The Collector shall notify the taxpayer in writing of the Collector's decision approving a claim for refund, denying the claim or approving a refund for a smaller amount than the taxpayer claimed. If the Collector shall deny all or part of the refund claim, the taxpayer may, within 30 days, file a written protest. If the taxpayer fails to file a written protest within 30 days, the taxpayer shall be deemed to have waived any objections to the action of the Collector. Any taxpayer who has filed a written protest in accordance with this section may pursue the administrative remedies and judicial remedies available under city ordinances and state law, to obtain review of the decision denying all or part of the refund. Any action by the Collector under this section, except an action fully approving a claim for refund, shall be accompanied by a set of clear instructions on how to file an administrative appeal or court action and shall make it clear that failure to file a timely administrative appeal or court action will cause the Collector's decision to stand.

(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.190 Sale or other transfer of business.

A. If any owner or group of owners acting together transfers a majority of ownership interest or controlling interest in any business entity that is subject to the payroll and self-employment tax, the seller or transferor must furnish to the buyer or transferee a complete record of payments, accompanied by receipts, showing past payments of the payroll expense tax for the past 3 years or the period of time since the business was subject to the tax, whichever period is shorter.

B. The buyer and seller, or transferor and transferee, must also furnish written evidence to the Collector that the steps described in at least 1 of the following paragraphs have been taken:

1. The seller has filed a payroll and self-employment tax return covering the period up to the date of sale of the business entity, accompanied by payment of all payroll and self-employment tax accrued to the date of sale. This is due not later than 10 days after the sale is closed by transfer of ownership, regardless of the payment schedule;

2. The buyer or transferee has filed a written agreement with the city, undertaking to pay all payroll taxes to become due, including those accrued during the part of the year before the sale or transfer;

3. The buyer has furnished evidence to the city that the funds of the business entity are sufficient and will be sufficient to pay all payroll and self-employment tax anticipated to be due when the next payment is due, that the business entity has acknowledged its responsibility to pay the taxes and that there are no past due payroll expense taxes, penalties or interest payments owed to the city by the business entity;

4. A cash deposit or bond with a corporate surety has been filed with the Collector, sufficient to cover the amount of payroll and self-employment tax anticipated to become due for the payroll expenses before the transfer; or

5. The buyer or seller has provided an alternative means of assuring that the payroll and self-employment tax for the period before the sale will be paid, and the alternative means is reasonably sufficient, in the judgment of the Collector, to ensure the payment of the tax when due.

(Ord. 1081, passed 11-21-2001; Am. Ord. 1391, passed 12-4-2013)

§ 3.24.200 Receivers, trustees, executors, administrators, guardians, conservators and others.

If control of any employer subject to the payroll and self-employment tax passes to any trustee,

§ 3.24.260 Record keeping requirements.

A. It shall be the duty of every person subject to the tax imposed by this chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation, or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Oregon Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Collector during any business day.

B. The Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

1. Only for future reporting periods and;
2. Only by express determination of the Collector that such specific record keeping is necessary due to the inability of the city to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books-records, or documentation maintained by the taxpayer.

(Ord. 1391, passed 12-4-2013)

CHAPTER 3.30: STREET MAINTENANCE PROGRAM

Section

§ 3.30.010 Definitions.

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

Community Development Director. The City of Canby Community Development Director or the Director's designee.

Developed Property. A parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping and outside storage.

Dwelling Unit. One or more rooms designed for occupancy by 1 family and not having more than 1 cooking facility.

Gross Square Footage. The area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

Multi-unit Residential Property. Residential property consisting of 2 or more dwelling units. For the purposes of this chapter, condominiums, attached single-family residences, and individual mobile home units are also classified as multi-unit residential properties.

Non-Residential Property. Any property that is not residential property.

Residential Property. A property that is primarily for personal, domestic accommodation, including single single-family, multi-unit residential property and group homes, but not including hotels and motels.

Responsible Party. The person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the city, the person(s) paying the sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not

discretion. This prepayment does not guarantee annexation of the property at a particular time, or approval of a particular development.
(Am. Ord. 1005, passed 8-19-1998)

B. Rates.

1. Benefiting property owners shall pay advance financed reimbursement calculated as follows:

a. If the advance financed public improvement was completed by a private developer, the reimbursement shall be the total actual cost of the improvement, increased by 7% annual simple interest, or other interest rate as the Council may, from time to time, set by resolution, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners;

b. If the advance financed public improvement was completed by a public agency, the reimbursement to the public agency shall be the total cost of the improvement increased by the same interest rate, including costs, as the public agency pays to finance construction, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners; or

c. If the advance financed public improvement was completed without the issuance of debt by the public agency, the reimbursement to the public agency shall be to the total cost of the improvement increased by the current interest rate private developers receive, as set forth above, multiplied by the fraction of area owned by the benefiting property owner of the total area of all the benefiting property owners.

2. If inequities are created through the strict implementation of the above formulas, the Council may modify its impact on a case-by-case basis.

C. Collection.

1. The advance financed reimbursement is immediately due and payable by benefiting property owners upon their application for connection to an advance financed public improvement or any building permit, the result of which will utilize any advance financed public improvement. If connection is made or construction commenced without the above-mentioned permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that the permit was required. No permit for connection or construction shall be issued until the advance financed reimbursement is paid in full or otherwise processed in accordance with the terms of division C.2. of this section. Whenever the full and correct advance financed reimbursement is due and has not been paid and collected for any reason, the City Administrator shall report to the Council the amount of the uncollected reimbursement, the description of the real property to which the reimbursement is attributable, the date upon which the reimbursement was due and the name or names of the benefiting property owners. The City Council, by motion, shall then set a public hearing and shall direct the City Administrator to give notice of the hearing to each of those benefiting property owners, together with a copy of the City Administrator's report concerning the unpaid reimbursement, either in person or by certified mail. Upon public hearing, the Council may accept, reject or modify the City Administrator's report; and if it finds that any reimbursement is unpaid and uncollected, the Council, by motion, may direct the City Recorder to docket the unpaid and uncollected reimbursement in the city record of liens. Upon completion of the docketing, the city shall have a lien against the described land for the full amount of the unpaid advance financed reimbursement, interest and the city's actual cost of serving notice upon the benefiting property owners. The lien shall be enforced in the manner provided by O.R.S. Chapter 223.

2. Whenever an advance financed reimbursement is due and collectable, the benefiting property owner may apply, upon forms provided by the City Administrator, for the voluntary imposition of a lien upon a parcel for the full amount of the advance financed reimbursement and the payment of that lien in 20 equal semi-annual installments including interest at the current legal rate. The applicant must provide a certificate from a licensed title insurance company showing the identity and amount of all other liens already of record against the property and a certificate from the County Tax Assessor showing the assessed valuation of the property. The city shall not permit a lien greater than the assessed value less the combined total principal balance and accrued interest on all prior liens. Upon receipt of these certificates and

TITLE 5: BUSINESS LICENSES AND REGULATIONS

Chapter

B. In the event it is determined by the officers or their agents that any such place of business violates state or local codes or ordinances; is dangerous to public health, safety or welfare; or is likely to become or is at that time a menace or public nuisance and if the concerned business refuses to correct all violations within a reasonable time as determined by the officials or their agents, no business license shall be issued. If the concerned business requests, in writing, a public hearing before the City Council, a report of the determination of denial and reasons therefor shall be made in writing to the city.

C. The City Council, upon receipt of the determination of denial and reasons therefor, and written request by the concerned business for a public hearing, shall direct the City Recorder to send by certified mail to the concerned business notification of a public hearing to be held before the City Council.

D. The purpose of the hearing shall be to determine whether the concerned business shall be permitted to receive a city business license, or if the concerned business had previously been issued a city business license, should be suspended or revoked by the City Council.

E. The notification to the concerned business shall set forth the time and place of the public hearing and will cite specific incidents which constitute the basis for the determination by the Chief of Police, Chief of the Fire Department, Building Official or their subordinates, that the concerned business is in violation of state or local laws; is dangerous to either public health, safety or welfare; or is likely to become or is at the present time a public menace or nuisance.

§ 5.04.090 Public hearing.

A. Public hearing for the purpose of determining whether a business license should be issued, or if previously issued whether it should be suspended or revoked, shall be conducted as a quasi-judicial proceeding before the City Council.

B. Evidence or testimony shall be received and considered by the City Council only when the evidence or testimony is relevant to the cited incidents or offenses contained in the notification to the concerned business.

C. If the City Council determines that all or a portion of the incidents or offenses set out in the notification to the concerned business are supported by substantial evidence, the City Council may refuse to issue a business license to the concerned business or, if a business license has previously been issued, may suspend or revoke the license.

§ 5.04.100 Issuance.

Upon application being made, any investigation required by this chapter to be made having been satisfactorily completed without a determination by the city officials set out in § 5.04.080 that the business is dangerous to public health, safety, welfare or likely to become or is now a public menace or nuisance or, if the determination has been so made, and if the City Council finds that the determination is not supported by substantial evidence, and if the fee is paid as provided in § 5.04.220, a license shall be issued by the City Recorder.

§ 5.04.110 Effect of issuance.

A. The issuing of a license pursuant to this chapter or the collection of fee shall not permit any person to engage in any unlawful business.

B. The fees levied and fixed by this chapter shall be in addition to the general ad valorem taxes now or hereafter levied pursuant to law.

C. All ordinances of the city in force on the effective date of the ordinance codified in this chapter pertaining to or covering any business, pursuit or occupation shall remain in full force and effect and in the event of a conflict or duplication of a license fee, then the other ordinance shall take precedence over the provisions of this chapter to the end that there will be no duplication of license fees for the same business, occupation, profession or pursuit. Zoning ordinance fees are in addition to business license fees.

§ 5.04.120 Effect of suspension or revocation.

A. If a business license is suspended or revoked, the concerned business shall immediately cease conducting any and all businesses within the city.

B. Any business which continues to conduct business within the city subsequent to action by the City Council to suspend or revoke the city license for the business shall be subject to the same fine and penalties as if the business had never obtained a city

F. All non-profit businesses are exempt for the business license fee, but still required to complete an application.

G. Any person who carries on or engages in a business that is illegal under applicable city, state, or federal laws is prohibited from being issued a business license.

H. Any business which is exempt from a license by virtue of state or federal law.
(Ord. 1396, passed 3-5-2014)

§ 5.04.200 Display of license.

All licenses issued in accordance with this chapter shall be openly displayed in the place of business or kept on the person or on the vehicle of the person licensed and shall be immediately produced and delivered for inspection to the Chief of Police, Chief of the Fire Department and their agents or subordinates when requested by the individuals to do so. Failure to carry the license or produce the same on request shall be deemed a violation of this chapter.

§ 5.04.210 Transfer or assignment of license.

If any person licensed to do business within the city shall sell or transfer such business to another, the license for such business shall be transferred to such other person upon application being made and payment of a license transfer fee. The anniversary date of the business shall then be changed to the date of the new application. The license fee for this transfer or assignment shall be set forth by resolution.
(Am. Ord. 1327, passed 5-19-2010)

§ 5.04.220 Fee schedule.

The annual license fee and penalties for delinquency required in this chapter shall be set forth by resolution.

§ 5.04.230 Penalty.

A. Any person violating any of the provisions of this chapter shall, upon conviction thereof in the Municipal Court of the city, be punished by a fine not to exceed an amount set by resolution. Each day of the violation of this chapter shall constitute a separate violation.

B. A finding that a person has committed a violation of this chapter shall not act to relieve the person from payment of any unpaid business fee, including delinquent charges, for which the person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city.

C. If a provision of this chapter is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.
(Am. Ord. 1399, passed 6-4-2014)

§ 5.04.240 Delinquency charge.

The fee required by resolution shall be paid within 30 days after the anniversary date of the original issuance of a business license. A delinquency charge in an amount to be set by resolution will be charged on overdue licenses thereafter at 30-day intervals until the license fee and delinquency charges are paid in full. The total amount paid, including delinquency charges shall not exceed the license fee plus 5 months' delinquency charges.

CHAPTER 5.06: SECONDHAND DEALERS

Section

any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 calendar days in any calendar year.

F. Held Property means any regulated property that cannot be sold, dismantled, altered, or otherwise disposed of for a proscribed period of time as more specifically described in § 5.06.090.

G. Investment Purposes means the purchase of personal property by businesses and the retention of that property, in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.

H. Medication means any substances or preparation, prescription or over-the-counter, used in treating or caring for ailments and/or conditions in humans or animals.

I. New means anything conspicuously not used.

J. Pawnbroker has the meaning set forth in O.R.S. 726.010(2) and includes any business required by O.R.S. 726.040 to hold an Oregon Pawnbroker's license.

K. Person means any natural person, or any partnership, association, company, organization or corporation.

L. Principal. means any person who will be directly engaged or employed in the management or operation of the secondhand dealer business, including any owners and any shareholders with a 5% or greater interest in the company.

M. Regulated Property means any property of a type that has been determined by the Chief of Police to be property that is frequently the subject of theft, including but not limited to the following property, unless excluded by division 3. below, and may be revised as necessary by the Chief of Police after giving appropriate advance notification.

1. Used items:

a. Precious metals;

b. Precious gems;

c. Watches of any type and jewelry containing precious metals or precious gems;

d. Sterling silver including, but not limited to, flatware, candleholders, salt and pepper shakers, coffee and tea sets or ornamental objects;

e. Audio equipment;

f. Video equipment;

g. Other electronic equipment including, but not limited to: global positioning systems (GPS), electronic navigation devices or radar detectors;

h. Photographic and optical equipment;

i. Electrical office equipment;

j. Power equipment and tools;

k. Automotive and hand tools;

l. Telephones or telephone equipment;

m. Power yard and garden tools;

n. Musical instrument and related equipment;

o. Firearms including, but not limited to, rifles, handguns, shotguns, pellet guns or BB guns;

p. Sporting equipment;

q. Outboard motors, and boating accessories;

r. Household appliances;

s. Cell phones, smart devices, smart phones, tablets, iPods, and all similar devices;

t. Property that is not purchased by a bona fide business for investment purposes, limited to:

i. Gold bullion bars (0.995 or better);

ii. Silver bullion bars (0.995 or better);

iii. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or

iv. Postage stamps, stamp collections and philatelic items whose intrinsic market or collector value is greater than the apparent legal or face value;

u. Computers and computer related software and equipment.

2. New items.

a. New items purchased from a licensed business shall be exempt from regulation under this chapter if the dealer has a bill of lading, receipt, invoice or the equivalent for the new items that specifies the seller's business name, physical and

7. 5.06.150 Nuisance.

D. The sale of regulated property at events known as "garage sales," "yard sales," "flea markets" or "estate sales," is exempt from these regulations if all of the following are present:

1. No sale exceeds a period of 72 consecutive hours; and

2. No more than 14 calendar days of sales are held in any 12-month period.

(Ord. 1386, passed 11-6-2013)

§ 5.06.035 Minimum Standards.

A. No person may operate as a secondhand dealer within the City of Canby unless the person maintains a fixed physical business location.

B. Any secondhand dealer who holds a valid permit may not change the business name of the premises without notifying the Chief of Police at least 30 days prior to the actual effective date of the name change.

C. Dealers shall comply with all federal, state and local regulations.

D. Dealers will also obtain and maintain a current business license with the City of Canby.

(Ord. 1386, passed 11-6-2013)

§ 5.06.040 Application for permit.

A. An application for secondhand dealer's permit shall set forth the following information:

1. The name, business and residential address, business and residential telephone number, birth date, driver's license information, including state of issue and license number and principal occupation of the applicant and any person who will be directly engaged or employed in the management or operation of the business or the proposed business;

2. The name, address, telephone number, and electronic mail address of the business or proposed business and a description of the exact nature of the business to be operated;

3. The web address of any and all web pages used to acquire or offer for sale regulated property on behalf of the dealer, and any and all internet auction account names used to acquire or offer for sale regulated property on behalf of the dealer;

4. Written proof that the applicant and all principals of the business are at least 18 years of age;

5. Each principal's business occupation or employment for the 5 years immediately preceding the date of application;

6. The business license and permit history of the applicant in operating a business identical to or similar to those regulated by this chapter;

7. A brief summary of the applicant's business history in the City of Canby or in any other city, county or state including:

a. The business license or permit history of the applicant; and

b. Whether the applicant has ever had any such license or permit denied, revoked, or suspended, the reasons behind it, and the business activity or occupation of the applicant subsequent to the suspension or revocation;

8. The form of the business or proposed business, whether a sole proprietorship, partnership or corporation, etc.;

a. If a partnership, the names, birth dates, addresses, telephone numbers, principal occupations, along with all other information required of any individual applicant, for each partner, whether general, limited, or silent, and the respective ownership shares owned by each; and

b. If a corporation, or limited liability company, the name, copies of the articles of incorporation and the corporate bylaws, and the names, addresses, birth dates, telephone numbers, and principal occupations, along with all other information required of any individual applicant, for every officer, director, and every shareholder owning more than 5% of the outstanding shares, and the number of shares held by each;

9. If the applicant does not own the business premises, a true and complete copy of the executed lease (and the legal description of the premises to be permitted) must be attached to the application; and

10. All arrests and criminal convictions relating to fraud, deception, dishonesty or theft, or citations for violation of secondhand dealer ordinance or statutes of any city, county, or state of each principal and all natural persons enumerated in divisions 1. through 7. of this section; and

B. New employees of dealers shall complete and submit the secondhand dealer personal history information as required in division A. of this section.

A. File an application as described in § 5.06.050 and pay a nonrefundable fee as required by the Chief of Police. This fee shall be set by resolution.

B. For renewal of a secondhand dealer's permit, file an application and pay a nonrefundable fee as required by the Chief of Police.

(Ord. 1386, passed 11-6-2013)

§ 5.06.070 Additional locations.

A. The holder of a valid secondhand dealer's permit shall file with the Chief an application for a permit for each additional location, and shall pay a nonrefundable fee as required by the Chief for each additional location.

B. Permits issued for additional locations shall be subject to all the requirements of this chapter, and the term of any permit issued for an additional location shall expire on the same date as the initial permit.

(Ord. 1386, passed 11-6-2013)

§ 5.06.080 Reporting of secondhand dealer regulated property transactions and seller identification.

A. Dealers shall provide to the Chief all required information listed for each regulated property transaction (not including sales). The Chief may designate the format of transfer of this information and may direct that it be communicated to the City of Canby Police Department by means of mail, the internet or other computer media.

1. In the event the Chief directs that the transaction information be transmitted via computer media, the Chief will specify the system that will be utilized in order to ensure conformity among all dealers.

2. If, after establishing the format and requirements for the transmission of computerized reports of transactions, the Chief alters the required format; dealers will be given at least 60 days to comply with the new format requirements. If unable to implement the reporting system before the deadline, a dealer must, prior to the deadline submit a written request to the Chief for additional time.

3. Pawnbrokers are required to report only new transactions. Loan renewals and redemptions by the original client do not need to be reported as long as the property involved in the transaction has not left the store for any period of time. If someone other than the original pawner attempts to redeem the pawned item(s), a photocopy of the redeemer's license or other valid ID is required.

B. In the event of legitimate technical difficulties, pre-approved paper forms can be provided to dealers with transaction report forms at cost. Any technical difficulties shall be remedied by dealer as soon as practicable. The chief may specify the format (size, shape and color) of the transaction report form. The Chief may require that the transaction report form include any information relating to the regulations of this chapter. Dealers may utilize their own forms, in lieu of those supplied by the Police Department, if the Chief has approved such forms. The declaration of proof of ownership is considered to be included in references in this chapter to the transaction reports, as appropriate. Declaration of proof of ownership will be retained by the business and made available to law enforcement.

C. When receiving regulated property, the dealer must do all of the following:

1. The dealer must obtain acceptable photo identification from the seller or pledger and verify that the person in the photograph is the individual participating in the transaction,

2. The dealer must record the seller's current residential address, telephone number and thumbprint on the transaction report.

3. The dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other. If an item is new, the dealer must include the word "new" in the property description.

a. The dealer must complete the transaction report in its entirety, and the individual completing the report must initial it.

b. Transaction reports must be completed in legible printed English.

4. The dealer must require the seller to legibly complete the declaration of proof of ownership except that no such declaration of proof of ownership is required for pawn loans made in compliance with state law by licensed pawnbrokers.

be held in a separate police hold area for a period not to exceed 30 days from the date of notification, and is subject to the 30 days upon notice provided to the dealer that additional time is needed to determine whether a specific item of regulated property is the subject of a crime. The dealer shall comply with the hold notice and notify the Chief of Police of the hold notice not later than 5 calendar days from the day the notice was received, either by telephone, fax, email or in person. A dealer must notify the Chief of its intent to dispose of any item of regulated property under police hold at least 10 days prior to doing so. A police hold area must meet the following criteria:

1. Located out of public view and access;
2. Marked "Police Hold"; and
3. Contains only items that have been put on police hold.

C. Any peace officer or Community Service Officer (unsworn peace officers employed by law enforcement agencies) who places a police hold on any property suspected of being the subject of a crime shall provide the dealer with a DPSST number and a valid incident number.

D. Upon probable cause that an item of regulated property is the subject of a crime, the Chief may take physical custody of the item or provide written notice to any dealer to hold such property for a period of time to be determined by the Chief, not to exceed the statute of limitations for the crime being investigated. Any property placed on hold pursuant to this division is subject to the requirements of division A.2. above, and will be maintained in the police hold area unless seized or released by the Chief. Seizure of property will be carried out in accordance with O.R.S.

E. If a dealer acquires regulated property with serial numbers, personalized inscriptions or initials, or other identifying marks which have been destroyed or are illegible due to obvious normal use, the dealer shall continue to hold the regulated property at the business location for a period of 90 full days after acquisition. The dealer must notify the Chief of Police by writing "90-day hold" next to the item on the transaction report or by an electronic means approved by the Chief. The held property must conform to all the requirements of this section.

F. If a peace officer seizes any property from a dealer, the dealer must notify the Chief of Police not later than 5 calendar days from the day the seizure occurs. The dealer must provide the name of police agency, the incident or case number, the name and DPSST number of the peace officer, the number of the receipt left for the seizure, and the seized property information. Notification to the Chief of Police may be given by telephone, fax, email or in person.
(Ord. 1386, passed 11-6-2013)

§ 5.06.092 Release of held or seized property.

Items held or seized under § 5.06.090D. may not be released to anyone other than the dealer unless the property is released to:

A. Another law enforcement agency that has provided documentation to the satisfaction of the Chief of Police of the stolen status of the property, or

B. A person who reported the property as stolen; and

1. A stolen property report has been filed with a law enforcement agency where making an untruthful report is a violation of the law, and

2. A notice has been delivered to the dealer holding the property or from whom the property was seized.

a. The notice required by this division will state that the property will be released to the person who has filed the stolen property report unless the dealer or pawner/seller files a motion for return of seized property within 10 days of the date of the notice and in the manner set forth in the notice.

b. The notice required by this division will be sent electronically with a request for acknowledgment, or delivered in person to the dealer at the email or physical address shown on the dealer's permit application or most recent permit renewal application, and to the pawner/seller at the address shown in the transaction report required by § 5.06.080.

c. The notice required by this division will provide the information necessary to submit a motion for return of seized property.

d. The failure of any person to receive the notice required in this subsection will not invalidate or otherwise affect the proceedings of this subsection.
(Ord. 1386, passed 11-6-2013)

4. The item is reported in a transaction record on the same day that it is abandoned or consigned; and

5. The item is held for 15 days after it is reported to the Chief.

D. A dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint if the dealer complies with the following requirements:

1. Conducts each and every acquisition of regulated property by either:

a. Not tendering payment to the seller for a minimum of 15 days after the regulated property is delivered to the dealer; or

b. Offering in-store credit that must be used for merchandise only and not redeemed for cash;

2. Holds each and every item of regulated property for a minimum of 15 days from the date of acquisition; and

3. Complies with the remaining requirements set forth in the § 5.06.080; and

4. Notifies the Chief in writing that each and every acquisition of regulated property will be conducted by not tendering payment to the seller for a minimum of 15 days after the regulated property is delivered to the dealer.

E. A dealer is not required to make a copy of the acceptable identification obtained from the seller, photograph the seller, or record the seller's thumbprint when the dealer acquires an item of regulated property on consignment if the dealer complies with the following requirements:

1. Does not tender payment to the consignor for a minimum of 15 days after the regulated property is delivered to the dealer;

2. Holds each and every item of consigned regulated property for a minimum of 15 days;

3. Complies with the remaining requirements in § 5.06.080.

F. The hold period for items may be reduced from 30 days to 20 days if the item either displays a complete legible serial number; or is an item of jewelry; or is precious metal scrap. The dealer must:

1. Report the acquisition in a transaction record on the same day the acquisition occurs;

2. Include a description in the transaction record of the degree of detail for the type of item as required § 5.06.080;

3. Include a digital photograph of sufficient size and focus to identify the item and distinguish it from similar items and that clearly shows any legible serial number on the item in the transaction record; and

4. Comply with all remaining requirements in § 5.06.080.

A dealer may be required to reinstate a 30 day hold period if an examination of RAPID entries reveals a pattern of insufficient item descriptions or insufficient photographs.

G. A dealer is not required to create a transaction record or hold the item if the acquired item is regulated property acquired from a registered business that has verifiably already entered the acquisition of that item in a transaction record in a jurisdiction approved by the Chief. The dealer must keep the receipt for the item from the registered business that includes the registered business' name and a description of the item. The receipt must be kept at the dealer's business location for 1 year or until the item is sold, whichever is longer.

H. A dealer is not required to create a transaction record or hold the item if a customer, who originally purchased the item from the dealer, returns it to the dealer with the original receipt.

(Ord. 1386, passed 11-6-2013)

§ 5.06.100 Tagging regulated property for identification, Chief's inspection.

A. Secondhand dealer acquiring any regulated property shall affix to such property a tag upon which shall be written a unique number, in legible characters, which shall correspond to the number on the transaction report forms required by § 5.06.080. After the holding period has expired, the transaction number must remain identifiable on the property until it is sold.

B. After the applicable holding period has expired, hand tools, or items that are sold with other like items and have no identifiable numbers or markings need not remain tagged.

C. After the applicable holding period has expired, items that are remanufactured need not remain tagged.

dealer a citation. Such citation shall be delivered at the address listed on the permit application during regular business hours to a person who appears to be in charge.

B. The citation shall list the nature of the violation, whether it is a non-criminal or criminal, and the time and date of the citation. The citation shall also indicate the fine assessed for said violation, which is to be paid to the city, or appealed within 10 days from the date of delivery. Appeal of non-criminal violations must be in writing, state the grounds for appeal, and must be delivered to the Canby Municipal Court within 10 days of the citation date. Criminal citations are handled through the Canby Municipal Court.

C. Nothing in this section shall affect the ability of the Chief to take any and all actions otherwise authorized to abate any violation.

D. Any principal of a dealer that has been assessed civil penalties under this chapter in excess of $2,000 in the previous 365 days who knowingly violates this chapter may be punished, upon conviction, by a fine of not more than $6,250 and a jail sentence of not more than 12 months.

E. Any principal of a dealer that has been denied a permit or whose secondhand dealer permit has been revoked who knowingly violates this chapter may be punished, upon conviction, by a fine of not more than $6,250 and a jail sentence of not more than 12 months.

(Ord. 1386, passed 11-6-2013)

§ 5.06.130 Revocation or suspension of permit.

A. The Chief may revoke or suspend any permit issued pursuant to this chapter:

1. For any cause which would be grounds for denial of a permit;

2. Upon a finding that any violation of the provisions of this chapter, federal, state or other local law has been committed and the violation is connected with the operation of the permitted business location so that the person in charge of the business location knew, or should reasonably have known, that such violations or offenses were permitted to occur at the location by the dealer or any principal or employee engaged or employed in the management or operation of the business location;

3. If lawful inspection has been refused;

4. If the secondhand dealer's activities cause significant litter, noise, vandalism, vehicular or pedestrian traffic congestion or other locational problems in the area around the dealer's premises;

5. If a fine assessed under this chapter has not been paid to the City of Canby or appealed within 10 days after the date of delivery of a citation;

6. If any statement contained in the application for the permit is found to have been false; or

7. If any secondhand dealer fails to meet federal or state licensing requirements.

B. The Chief shall give the permittee written notice of proposed revocation or suspension of any permit issued pursuant to this chapter by causing notice to be served upon the permit holder at the address listed on the permit application. Service of the notice shall be accomplished by personal service, mailing the notice by certified mail, return receipt requested, or by service in the same manner as a summons served in an action at law. Refusal of the service by the person whose permit is revoked or suspended shall be prima facie evidence of receipt of the notice. Service of the notice upon the person in charge of a business, during its hours of operation shall constitute prima facie evidence of notice to the person holding the permit to operate the business.

C. Revocation or suspension shall be effective and final 10 days after the giving of such notice unless such revocation or suspension is appealed in accordance with § 5.06.140.

(Ord. 1386, passed 11-6-2013)

§ 5.06.140 Appeals.

A. Appeals of revocations or suspensions of permits shall be made to the hearings officer, to be designated by the City Administrator. A hearings officer may be an officer, official of the city or other employee of the appropriate authority, but shall not have participated in any determination or investigation related to the incident that is subject of the hearing. Hearings under this section may be informal in nature, but the presentation of evidence shall be consistent with that required for contested cases under O.R.S. § 183.450. The determination of a hearings officer at the hearing for non-criminal violations under this section is final and is not subject to appeal.

and sidewalk areas within a specifically defined area, for a period of time not exceeding 10 days, to a community-based organization.

§ 5.12.020 Permit required; fee.

No person shall conduct business as defined in this chapter on any city sidewalk without first obtaining a business license, a sidewalk vending permit, and paying the required sidewalk vending permit fee to the office of the City Recorder. Fees are annual and shall be payable upon the business license renewal date. It is unlawful for any person to sell any goods on any sidewalk within the city except as provided by this chapter.
(Am. Ord. 1333, passed 7-21-2010)

§ 5.12.030 Permit application.

A. Application for a permit to conduct business on a sidewalk shall be made at the office of the City Recorder on a form deemed appropriate by the City Recorder. This application shall include but not be limited to the following information:

1. Name and address of the applicant;

2. Type of items sold. Individual applications shall be accepted for one type of product;

3. A valid copy of all necessary licenses or permits required by state or local health authorities;

4. A signed Indemnity Agreement stating that the permittee shall hold harmless the city, its officers and employees, and shall indemnify the city, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit;

5. The permittee shall furnish and maintain this public liability, food products liability and property damage insurance as will protect permittee, property owners and the city from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection there with. This insurance shall provide coverage of not less than $1,000,000.00 for bodily injury and property damage for each occurrence and not less than $1,000,000.00 in the aggregate. This permittee shall provide the city with a certificate of liability insurance. This insurance shall be without prejudice to coverage otherwise existing therein; shall name as additional insured the city, its officers and employees; and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days' written notice to the City Recorder of the city;

6. Means to be used in conducting business, including but not limited to a description of any mobile container or device, to be used for transport or to display approved items or services; and

7. The proposed location for conducting business, along with a signed statement that the permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the permit. No application shall apply to more than one location. Location must be approved by the City Administrator.

B. A separate sidewalk vending permit application and fee shall be required for each mobile container or device to be used for transportation or display.

C. No food vendor application will be accepted for a location where a restaurant or fruit and vegetable market, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. No application will be accepted for a flower vendor for a location where a flower shop, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. The above requirement may be waived if the application is submitted with the written consent of the proprietor of the restaurant, fruit and vegetable market or flower shop. The consent must be submitted on a form deemed appropriate by the City Recorder.
(Am. Ord. 1333, passed 7-21-2010)

§ 5.12.040 Fire Marshal inspection.

Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any mobile device or pushcart to assure the conformance of any cooking or heating apparatus with the provisions of the city fire code. Only propane will be authorized for heat source.

§ 5.12.050 Restrictions.

A. Any person conducting business on the sidewalks of the city with a valid license issued under this chapter may transport and/or display approved items upon any mobile device or pushcart, under or subject to the following conditions:

CHAPTER 8.04: GARBAGE COLLECTION AND DISPOSAL

Section

§ 8.04.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Business means any entity or 1 or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational or other activity that is non-residential in nature, including public bodies. This definition does not apply to home based businesses.

Contractor means a person or persons, corporation, partnership or other entity who is a party to a garbage collection contract with the city.

Garbage means all refuse and solid wastes, including ashes, rubbish, tin cans, debris generally, dead animals, street cleanings and industrial wastes, and things ordinarily and customarily discarded and dumped for the purpose of promoting the cleanliness and health of the city and its residents, but not including sewage and body waste.

Premises means land, buildings or other structures, vehicles, watercraft or parts thereof upon or in which garbage is stored.

Source-separated or source-separate means that the person who last uses recyclable material separates the recyclable material from other solid waste.
(Am. Ord. 1319, passed 11-18-2009)

§ 8.04.020 Business recycling required.

All businesses within the city shall comply with waste prevention, recycling and composting requirements as set forth in this chapter.

A. Businesses will source-separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling.

B. Businesses will ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored or both.

C. Businesses will post accurate signs:

1. Describing the location where recyclable materials are collected, stored or both;

2. Identifying the materials the business must source-separate for reuse or recycling; and

3. Providing recycling instructions.

D. Persons and entities that own, manage or operate premises with business tenants and that provide garbage collection service to those business tenants, shall provide recycling collection systems adequate to enable the business tenants to comply with the requirements of divisions A., B. and C. of this section.
(Ord. 1319, passed 11-18-2009)

§ 8.04.030 Garbage containers required.

It shall be unlawful for any person in possession, charge or in control of any dwelling, apartment house, trailer camp, restaurant, place of business or manufacturing establishment where garbage is created or accumulated to fail at all times to keep portable cans or containers of standard type and construction and to deposit the garbage therein; provided, however, that stiff paper products and wooden or metal waste matter may remain outside of cans or containers, if neatly and orderly stored. The cans or containers shall be strong, water-tight, rodent-proof, insect-proof and comply with the current garbage franchise. The cans or containers shall be kept tightly closed at all times except when being emptied or filled

any time the revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the city arising from a revocation.
(Ord. 1054, passed 9-6-2000)

§ 12.20.050 Removal of encroachment.

A. Upon revocation, the permittee or any successor permittee shall, at the permittee's own cost, remove the permitted encroachment within 30 days after written notice has been provided by the city, unless a shorter period is specified in the notice of revocation due to an emergency situation.

B. If the permittee does not remove the encroachment and return the right-of-way, easement or public property area to a condition satisfactory to the Director, the city may do so and the costs of returning the right-of-way, easement or public property to a satisfactory condition, shall be imposed as a lien upon the property on the city lien docket.
(Ord. 1054, passed 9-6-2000)

§ 12.20.060 Liability.

The permittee, and owner of the benefited property if different than the permittee, shall be liable to indemnify and defend any claim or legal action brought against the city by reason of the existence of any approved right-of-way, easement or public property encroachment.
(Ord. 1054, passed 9-6-2000)

§ 12.20.070 Penalty.

Any person found in violation of any provision of this chapter shall, upon conviction thereof, be subject to a fine up to $500.
(Ord. 1054, passed 9-6-2000)

CHAPTER 12.24: CITY PARKS

Section

§ 12.24.010 Regulations designated.

A. The city adopts O.R.S. 390.005 through 390.124 and Administrative Rules Chapter 736, Divisions 10 and 15, as now constituted, to be followed by the city.

B. Wherever in state law reference is made to state parks, that shall mean city parks.

§ 12.24.020 Penalty provision for § 12.24.010.

Any person found to be violating the provision of § 12.24.010 shall be guilty of a violation and upon conviction thereof shall be punished by a fine not to exceed $500.

§ 12.24.030 Posting of rules.

The City Superintendent shall cause to be printed and posted in convenient places within all city parks the foregoing rules and regulations.

§ 12.24.040 Possession or consumption of alcoholic beverages prohibited in parks.

A. No person shall possess or consume alcoholic beverages in the municipal parks.

B. Violation of this section is a Class C misdemeanor.

§ 12.24.050 Parks employees authorized to regulate parks.

The city parks employees have jurisdiction of and may enforce park and recreation infractions established under this section in the manner provided under O.R.S. 8.665 and Ch. 153 for the enforcement of infractions.

§ 12.28.020 Duties of Cemetery Sexton and City Recorder.

The Cemetery Sexton shall receive, issue proper receipts for all monies due the city from the sale of lots, services furnished and all other sources. Said funds will be placed in appropriate cemetery funds by the Finance Department. The City Recorder shall issue in the name of the city all titles required and shall keep complete records of all matters pertaining to the cemetery as required by the State of Oregon Mortuary and Cemetery Board.
(Am. Ord. 1395, passed 3-5-2014)

§ 12.28.030 Operation and maintenance.

The operation and maintenance of the cemetery shall be the responsibility of the Cemetery Sexton, subject to the general supervision of the City Administrator. The Cemetery Sexton shall keep on the cemetery premises a record of all interments as required by the State of Oregon Mortuary and Cemetery Board. The records to be kept at the cemetery shall be duplicates of the original records to be kept by the City Recorder at the City Hall. The Cemetery Sexton shall provide the City Recorder with all records required for permanent retention.
(Am. Ord. 1395, passed 3-5-2014)

§ 12.28.040 Permits for interment, removal and transfer of bodies.

A. No person shall be allowed to have their dead interred in the cemetery without first obtaining verification of ownership from the Cemetery Sexton or producing a certificate of title to the grave in which they desire to inter the remains.

B. Upon receiving proper documentation for interment, as required by the State of Oregon Mortuary and Cemetery Board, the Cemetery Sexton shall issue an invoice which shall also act as a permit.

C. In case of interment of a deceased owner of a lot, the invoice shall state the informant's name.

D. A permit from a funeral home must also be secured prior to the removal of any body from the cemetery or the transfer of any body from one part of the cemetery to another.

E. No cremains may be scattered on top of burial sites.
(Am. Ord. 1395, passed 3-5-2014)

§ 12.28.050 Prices and charges.

The City Council shall, by resolution, establish the schedules of prices to be charged for lots, graves, grave openings and other services and privileges; provided, however, that the charges now being made shall be continued until changed by resolution of the Council.

§ 12.28.060 Conveying title to lots.

Every conveyance of a lot in the cemetery shall be by certificate of title, executed by the City Recorder, but the conveyance shall only have the effect of giving the perpetual use of a lot for burial purposes, subject to the laws of the state and the ordinances of the city. No grave or lot which has been conveyed by the city can be sold, transferred, assigned or exchanged for other graves except with the consent of the Cemetery Sexton and upon those terms and conditions as the Cemetery Sexton may provide. The City Recorder shall issue a new certificate of title after the conveyance has been approved.
(Am. Ord. 1395, passed 3-5-2014)

§ 12.28.070 Privileges and restrictions on owners of lots and graves.

The owner of a grave in any improved portion of the cemetery will be allowed to remove the body from the grave and reinter it in any other grave in the cemetery which he or she may own and will be allowed the price paid for the relinquished grave, provided it is not more than the price of the grave selected for reinterment. The original certificate of title must be returned to the city for the relinquished grave. The owner of a lot may, with the approval of the Cemetery Sexton, allow the burial of a friend or any other person in the lot, but to allow the burial for any compensation is strictly forbidden. The price of all graves includes the perpetual care of the same and is payable in advance before interment is permitted. Subdivisions of graves or lots by owners is not allowed; however, the burial of cremains within the graves of immediate family members shall be permitted, provided that not more than 1 marker or headstone is installed per grave. Planting of trees or shrubs shall be prohibited in locations other than areas designated for such landscaping.
(Am. Ord. 1395, passed 3-5-2014)

Public Improvement means a change made with public money or by public employees. It can also happen with private money or private employees then be dedicated for public ownership or use.

Public Places means a location owned by the public, a dedicated right-of-way or public way and easement generally dedicated for utilities.

Public trees are defined as those trees which are located within the public right-of-way or on land under the jurisdiction of the city.

Removal means cutting or removing the crown, trunk and root system of a plant.

Shrub means a low-growing, usually several-stemmed woody plant.

Street Tree means a tree that is located within the public right-of-way for vehicular access, or associated public utility easement.

Top or Topped means cutting or removing the terminal leaders in the crown of an ornamental shade or flowering tree or conifer to an extent that removes the normal canopy and disfigures the tree.

Tree means a woody perennial plant having a single elongated main stem from which the brances extend.

Utility means a service such as sewer, electricity, water, storm drainage, gas, telephone or television provided by either a publicly owned company or privately owned company. If publicly owned, it is a Public Utility and if privately owned, it is a Private Utility.

(Am. Ord. 1385, passed 10-16-2013)

§ 12.32.020 Purpose and scope.

The purpose of Chapter 12.32 is to preserve trees in the public right-of-way or on public property as an important natural resource, to enhance the appearance of the city and private property values, to clearly define responsibility for the maintenance of trees in the public right-of-way and city property and to adopt professional standards for planting and maintenance for use by the city and by private property owners alike, all for purposes of the general public welfare.
(Ord. 1385, passed 10-16-2013)

§ 12.32.030 City Forester.

A. Established. There is established in the Department of Public Works of the city the Office of City Forester. The Director of Public Works, or his or her authorized agent, shall serve as City Forester in the administration and enforcement of this chapter.

B. Scope. The City Forester shall have exclusive jurisdiction and supervision over all trees and other plants planted or growing in public places and authority over all trees and other plants planted or growing in private places as hereinafter set forth.

C. Preserve or Remove. The City Forester shall have the authority to oversee the planting, trimming, spraying with general notice, preservation and removal of trees and other plants in public places to ensure safety or preserve the symmetry and beauty of the public places.

D. Order to Preserve or Remove. The City Forester shall have the authority to order the spraying with general notice, trimming, preservation or removal of trees or other plants upon private property when it is found that that action is necessary to protect the public safety or to prevent the spread of disease or insects to public trees and places.

E. Supervision. The City Forester shall have the authority to supervise all work done under the terms of this chapter.

§ 12.32.040 Creation of a Tree Committee.

A. Established. There is hereby established a Tree Committee and it is the same as the Site and Design Review Board established by Ord. 848.

B. Scope. The Committee shall study, investigate and develop, and/or update annually and administer a written plan for the care, preservation, pruning, replanting, removal or disposition of street trees and park trees. The plan shall be presented to the City Council, and upon its acceptance and approval, shall constitute the official comprehensive city tree program of the city. The Committee, when requested by the City Council or the City Forester shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

C. Tree List. The official Canby Tree List of acceptable species of trees, shrubs and bushes shall be maintained by the Committee and made available to the public as set forth by resolution. No person, without the written permission of the city, shall plant

such removal was necessary as an emergency measure to avoid an imminent public or private injury; and the threatened injury was of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweighed the desirability of protecting the public's interest in the tree.

E. Except as provided by division D. of this section, no person shall remove or destroy a tree within the public right-of-way without a permit issued by the city upon the person's application, on a form prescribed by the city, and payment of the required fee. Such permits shall obligate the person to replace the removed tree with a species approved by the City Forester and to plant and maintain same according to the city Tree Planting and Maintenance Policy, unless the City Forester upon request by the permittee determines it would not be in the public interest to do so. The city may require a person seeking a permit to remove or destroy a tree within the public right-of-way to give security for the cost of replacement and establishment

F. No person shall excavate, place fill or compact the soil within the drip line of any tree in the public right-of-way except as expressly allowed by the City Forester.

G. No person or firm shall engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring permission from the city. Before permission is granted, an arborculturist shall file evidence of possession of liability insurance in the minimum amounts of $100,000 for bodily injury and $300,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of city employees or utility employees in pursuit of similar services requested of them as employees of the city or the utility.

H. Arborist. No person or firm shall engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring permission from the city. Before permission is granted, an arborculturist shall file evidence of possession of liability insurance in the minimum amounts of $100,000 for bodily injury and $300,000 property damage indemnifying the city or any person injured or damaged resulting from the pursuit of the endeavors as described in this section. Bonding and insurance are not required of city employees or utility employees in pursuit of similar services requested of them as employees of the city or the utility.
(Ord. 1385, passed 10-16-2013)

§ 12.32.070 City may act on notice.

A. Upon notice to the City Forester that any tree within the public right-of-way or on city property is infected with disease or infested with damaging insects or otherwise presents an imminent risk of personal injury or property damage or threatens the health of other trees, the city shall inform the abutting property owner responsible for maintenance of the tree(s), if any, of the person's obligation to take appropriate measures under the city's Tree Planting and Maintenance Policy to limit or remove the risk, including but not limited to destruction or removal of the tree under the terms of a permit to be issued by the city upon the measures under the same Policy with regards to trees that it maintains as provided by this chapter.

B. Public or private trees that present a risk of personal injury or property damage or that threaten the health of other trees, as described in division A. of this section, and that are not maintained, or the risk or threat is not remedied, according to the Tree Planting and Maintenance Policy are declared to be a public nuisance and are subject to the provisions of §§ 12.32.080 through 12.32.140. Trees that present an unreasonable risk of such injury or damage or an immediate threat to the health of other trees may be summarily abated without prior notice to the abutting property owner.

C. No permit fee shall be charged for permits to remove trees as required by division A. of this section.

D. The city in its discretion may, from time to time, cause the maintenance, destruction, removal or replanting of trees within the public right-of-way that are a nuisance partially or wholly at the city's, not the abutting property owner's, initiative and expense when it deems that the public interest so requires.
(Ord. 1385, passed 10-16-2013)

§ 12.36.010 Jurisdiction and management of the public rights-of-way.

A. The city has jurisdiction and exercises regulatory management over all public rights-of-way within the city under authority of the City Charter and state law.

B. Public rights-of-way include but are not limited to streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and airspace over these areas.

C. The city has jurisdiction and exercises regulatory management over each public right-of-way whether the city has a fee, easement or other legal interest in the right-of-way. The city has jurisdiction and regulatory management of each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

D. No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises and permits.

E. The exercise of jurisdiction and regulatory management of a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way.

F. The city retains the right and privilege to cut or move any telecommunications facilities located within the public rights-of-way of the city, as the city may determine to be necessary, appropriate or useful in response to a public health or safety emergency.
(Ord. 1036, passed 11-3-1999)

§ 12.36.020 Regulatory fees and compensation not a tax.

A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from and in addition to any and all federal, state, local and city charges as may be levied, imposed or due from a telecommunications provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

B. The city has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.
(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.030 Definitions.

A. For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein.

1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

2. The words "shall" and "will" are mandatory and "may" is permissive.

B. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, being 47 USC §§ 201 and 521 *et seq.* as amended, the Cable Communications Policy Act of 1984, being 47 USC § 521 *et seq.*, the Cable Television Consumer Protection and Competition Act of 1992, being 47 USC §§ 201 and 521 *et seq.*, and the Telecommunications Act of 1996, being 47 USC § 151 et seq. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities, see overhead facilities.

Telecommunications Facilities means the plant and equipment, other than customer premises equipment, used by a telecommunications provider to provide telecommunications services.

Telecommunications Provider means any provider of telecommunications services and includes, but is not limited to, every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the city.

Telecommunications Service means any service provided for the purpose of the transmission of information, including, but not limited to voice, video or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Telecommunication service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act; and (6) commercial mobile radio services as defined in 47 C.F.R. 20.

Telecommunications System, see telecommunications facilities above.

Telecommunications Utility has the same meaning as O.R.S. 759.005(1).

Underground Facilities means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

Usable Space means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that 6 feet of a pole is buried below ground level.

Utility Easement means any easement granted to or owned by the city and acquired, established, dedicated or devoted for public utility purposes.

Utility Facilities means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on or above the surface of the ground within the public right-of-way of the city and used or to be used for the purpose of providing utility or telecommunications services.
(Ord. 1036, passed 11-3-1999; Am. Ord. 1336, passed 11-3-2010; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.040 Registration of providers.

A. Purpose. The purpose of registration is:

1. To assure that all telecommunications providers who have facilities and/or provide services within the city comply with the ordinances, rules and regulations of the city;

2. To provide the city with accurate and current information concerning the telecommunications providers who offer to provide telecommunications services within the city, or that own or operate telecommunications facilities within the city; and

3. To assist the city in the enforcement of this code and the collection of any city franchise fees or charges that may be due the city.

B. Registration Required.

1. Except as provided in division D. of this section, all telecommunications providers having telecommunications facilities within the corporate limits of the city, and all telecommunications providers that offer or provide telecommunications services to any customer within the city, shall register within 45 days of the effective date of this section. Any telecommunications provider that desires to have telecommunications facilities within the corporate limits of the city or to provide telecommunications services to any customer within the city after the effective date of this section shall register prior to such installation or provision of service.

2. After registering with the city pursuant to the above section B.1., the registrant shall, by December 31st of each subsequent year, file with the city a new registration form if it intends to provide telecommunications services at any time in the following calendar year. Registrants that file an initial registration after September 30th shall not be required to file an annual registration until December 31st of the following year.

C. Construction Permits. No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit and paying the construction permit fee. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

1. Unless the telecommunications provider has first filed a registration statement with the city pursuant to § 12.36.040B. of this code; and, if applicable,

2. Unless the telecommunications provider has first applied for and been granted a franchise pursuant to § 12.36.070 of this code.

(Ord. 1036, passed 11-3-1999; Am. Ord. 1387, passed 11-20-2013)

§ 12.36.060 Location of facilities.

A. Location of Facilities. All facilities located within the public right-of-way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right-of-way of the city, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.

2. Whenever all new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right-of-way of the city, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the city and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with city codes, ordinances and regulations.

C. Relocation or Removal of Facilities. Except in the case of an emergency, within 90 days following written notice from the city a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights-of-way whenever the city shall have determined that the removal, relocation, change or alteration is reasonably necessary for:

1. The construction, repairs, maintenance or installation of any city or other public improvement in or upon the public rights-of-way;

2. The operations of the city or other governmental entity in or upon the public rights-of-way; and/or

3. The public interest.

D. Removal of Unauthorized Facilities. Within 30 days following written notice from the city, any grantee, telecommunications provider or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights-of-way of the city shall, at its own expense, remove the facilities or appurtenances from the public rights-of-way of the city. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

1. One year after the expiration or termination of the grantee's telecommunications franchise;

2. Upon abandonment of a facility within the public rights-of-way of the city. A facility will be considered abandoned when it is deactivated, out of service or not used for its intended and authorized purpose for a period of 90 days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced;

3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation; or

4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

E. Coordination of Construction Activities. All grantees are required to make a good-faith effort to cooperate with the city.

information set forth in this chapter shall apply to information of telecommunications providers subject to the right-of-way use fee in this division sufficient to demonstrate compliance with this division.

3. Unless otherwise agreed to in writing by the city, the fee shall be paid within 30 days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues and a calculation of the amount payable. The communications provider shall pay interest at the rate of 9% per year for any payment made after the due date.

4. The franchise fee and/or the right-of-way use fee required by this section shall be subject to all applicable limitations imposed by federal or state law.

I. Amendment of Grant. Conditions for amending a franchise:

1. A new application and grant shall be required of any telecommunications provider that desires to extend or locate its telecommunications facilities in public rights-of-way of the city which are not included in a franchise previously granted under this chapter.

2. If ordered by the city to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the city shall grant an amendment without further application.

3. A new application and grant shall be required of any telecommunications provider that desires to provide a service which was not included in a franchise previously granted under this chapter.

J. Renewal Applications. A grantee that desires to renew its franchise under this chapter shall, not less than 180 days before expiration of the current agreement, file an application with the city for renewal of its franchise which shall include the following information:

1. The information required pursuant to § 12.36.040.B of this code; and

2. Any information required pursuant to the franchise agreement between the city and the grantee.

K. Renewal Determinations. Within 90 days after receiving a complete application, the city shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal:

1. The financial and technical ability of the applicant;

2. The legal ability of the applicant;

3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities;

4. The applicant's compliance with the requirements of this code and the franchise agreement;

5. Applicable federal, state and local telecommunications laws, rules and policies; and

6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.

L. Obligation to Cure As a Condition of Renewal. No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this code, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the city.

M. Assignments or Transfers of System or Franchise. Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the city, which consent shall not be unreasonably withheld or delayed, and then only on reasonable conditions as may be prescribed in the consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.

2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the telecommunications system pursuant to this code.

3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the city for all direct and indirect fees, costs and expenses reasonably incurred by the city in considering a

public works, public improvements, construction, excavation, grading, filling or work of any kind in the public rights-of-way by or on behalf of the city, or for any consequential losses resulting directly or indirectly therefrom.

C. Duty to Provide Information. Within 10 business days of a written request from the city, each grantee shall furnish the city with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this code; and

2. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way, shall be made available for inspection by the city at reasonable times and intervals.

D. Service to the City. If the city contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the city the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the city's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of the services may be specified in a separate agreement between the city and grantee.

E. Compensation for City Property. If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for the right and use shall be fixed by the city.

F. Cable Franchise. Telecommunication providers providing cable service shall be subject to the separate cable franchise requirements of the city and other applicable authority.

G. Leased Capacity. A grantee shall have the right, without prior city approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the city that the lease or agreement has been granted to a customer or lessee.

H. Grantee Insurance. Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the city, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:

a. Three million dollars for bodily injury or death to each person;

b. Three million dollars for property damage resulting from any 1 accident; and

c. Three million dollars for all other types of liability.

2. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident;

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000;

4. Comprehensive form premises; operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than $3,000,000;

5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each insurance policy shall contain the following endorsement:

> "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the city, by registered mail, of a written notice addressed to the city of the intent to cancel or not to renew."

6. Within 60 days after receipt by the city of the notice, and in no event later than 30 days prior to the cancellation, the grantee shall obtain and furnish to the city evidence that the grantee otherwise meets the requirements of this section; and

7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the city.

I. General Indemnification. Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the city and its officers,

code, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

I. Consent. Wherever the consent of either the city or of the grantee is specifically required by this code or in a franchise granted, the consent will not be unreasonably withheld.

J. Application to Existing Agreements. To the extent that this code is not in conflict with and can be implemented with existing franchise agreements, this code shall apply to all existing franchise agreements for use of the public right-of-way for telecommunications.

K. Confidentiality. The city agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law.
(Ord. 1036, passed 11-3-1999)

CHAPTER 12.40: BICYCLES, SKATEBOARDS, SCOOTERS AND ROLLER BLADES

Section

§ 12.40.010 Regulated riding activity.

This chapter regulates the riding of bicycles, skateboards and other similar devices defined below.
(Ord. 1082, passed 11-21-2001)

§ 12.40.020 Definitions.

A. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Bicycles means any wheeled bicycle, unicycle or tricycle.

Riding means propelling bicycles, skateboards or similar devices by having 1 or more feet on any part of the device.

Skateboards includes roller skates, in-line skates, blades, scooters, coasters, roller-skis or any similar device.

B. Wheelchairs and similar devices used by persons with physical disabilities are excepted from this chapter.
(Ord. 1082, passed 11-21-2001)

§ 12.40.030 Prohibited riding areas.

A. Riding as described in § 12.40.010 is prohibited on any sidewalk or other city property in the area within the following boundaries:

1. North side of 3rd Street between N.W. Elm and N. Ivy;
2. South side of 1st Street between N.W. Elm and N. Ivy;
3. N. 2nd Street east of N. Ivy through to its terminus in the 300 block;
4. East side of N. Elm between 1st and 3rd Streets N.W.; and
5. East side of N. Ivy between 1st and 3rd Streets N.W.

B. The Traffic Safety Commission may designate additional prohibited riding areas.
(Ord. 1082, passed 11-21-2001)

§ 12.40.040 Prohibited riding.

No person shall ride a bicycle, skateboard or similar device as defined in § 12.40.020, in any area designated as a prohibited riding area, as described in § 12.40.030A.
(Ord. 1082, passed 11-21-2001)

§ 12.40.050 Duty to yield.

Any person riding on a sidewalk shall at all times yield the right-of-way to pedestrians using the sidewalks and shall give an audible warning before overtaking and passing a pedestrian.
(Ord. 1082, passed 11-21-2001)

§ 13.12.030 Deferral of sewer connection charges.

Requirements and procedures for the deferral of sewer connection and collection sewer charges shall be in accordance with the following:

A. Eligibility. The developer of any property whose connection charge, if any, exceeds the sum of $5,000 shall be eligible to apply to pay the charges for that property in installments on a schedule appended to this section as Table I, below; provided, however, that if the collection sewer charge is payable by the city to someone other than the city, pursuant to an agreement between the city and that person to reimburse the person for all or a portion of the cost of constructing a sewer line extension, the collection sewer charge shall not be eligible to be paid in installments, nor shall it be considered in determining whether the connection charge is eligible to be paid in installments. The city reserves the right to reject any application for deferral of the connection charge.

B. Application. Any eligible developer of property desiring deferral of the payment of the connection charge shall, at the time of application for connection, submit to the city an application requesting deferral on a form provided by the city.

C. Title Report. Upon receipt of an application, the applicant shall order a preliminary title report from a title insurance company doing business in Clackamas County, Oregon.

D. Lienholders. The applicant, at his or her expense, shall furnish the city with a current statement of amounts due to each lienholder disclosed by the preliminary title report of the title insurance company, and for property proposed for improvement, an MAI appraisal certified by the appraiser as to the estimated fair market value upon completion of the proposed improvement. The applicant shall answer questions as the city deems proper regarding the applicant's ability to pay the deferred connection charge and any other lienholder regarding applicant's payment history.

E. Appraisal. If, upon examination of the title to the property and the appraisal report, the city is satisfied as set out in the following divisions 1. and 2., the applicant shall execute a mortgage in the form appended to this chapter as Appendix A and the city shall issue a connection permit. This lien shall be enforced in the manner provided by O.R.S. Chapter 223:

1. That the total unpaid amount of all liens disclosed, together with the amount of connection charge sought to be deferred, does not exceed the appraised value of the property as determined by the current appraisal of the County Assessor; or if the city elects, based upon the appraisal or other evidence of value acceptable to the city, the total unpaid amount of all liens disclosed, together with the amount of the connection charge sought to be deferred, does not exceed the estimated fair market value of the property when the proposed improvement is completed; and

2. That the applicant can execute a mortgage covering the property which will be a valid lien on the fee thereof.

F. Evaluation of Value. If the city determines that the amount of connection charge, together with all other unpaid liens, exceeds the appraised value or anticipated appraised value of the property, or that the applicant cannot execute a mortgage which will be a valid lien, or that the applicant cannot make the required payments, it shall so advise the applicant.

G. Due and Payable. The deferred connection charge shall be due and payable January 1 and July 1 of each year together with interest on deferred principal balances at the rate of 10% per annum, which interest shall be the full and only compensation to the city for its administrative costs. Interest shall be paid in addition to each principal payment on the dates the principal payments are made. If the applicant is approved for a deferred payment schedule, a minimum of $1,200 shall be paid immediately upon connection to the sewer. The remaining balance of the initial assessment shall then be computed into equal semiannual payments, per schedule set forth in Table I, with the first payment due 6 months after the initial connection.

H. Table I. The following schedule shall apply to deferred payment for sewer connection charges:

Ord. No.	*Date*	*Description*
1342	5-18-2011	Granting a non-exclusive franchise to Canby Telephone Association to provide telecommunication services within the city, for a period of 5 years retroactively effective from June 7, 2010
1347	10-19-2011	Amending the cable television franchise agreement with WaveDivision VII, LLC, and extending its term to March 4, 2017
1349	10-19-2011	Amending the cable television franchise agreement with Canby Telephone Association to maintain competitive equity
1370	3-6-2013	Granting a nonexclusive franchise to Lightspeed Networks, Inc to construct, operate, and maintain a telecommunications network
1388	11-20-2013	Granting to Clackamas County a nonexclusive franchise to construct, operate and maintain a telecommunications network and provide telecommunications services with the city
1389	11-20-2013	Granting to TW Telecom of Oregon LLC, a nonexclusive franchise to construct, operate and maintain a telecommunications network and provide telecommunications services with the city

REFERENCES TO OREGON REVISED STATUTES

O.R.S. Section	*Code Section*
8.665	12.24.050
Ch. 10	1.16.030
10.050	1.16.070
30.315	8.20.110
Ch. 34	13.16.077
34.010 to 34.100	4.04.100, 5.06.050, 5.06.140, 12.24.060
Ch. 88	2.40.090
Ch. 131 through 133	9.04.020
133.005(1)	9.50.020
133.005(3)	12.24.060
133.455	9.50.040
Ch. 135 through 138	9.04.020
Ch. 153	9.04.020, 9.32.070, 10.04.010, 12.13.120, 12.24.050
Ch. 156 through 157	9.04.020
Ch. 162 through 167	9.04.010
162.015 - 162.121	5.06.020
162.265 - 162.385	5.06.020
Ch. 163	5.16.060
Ch. 164	5.16.060
164.005 - 164.235	5.06.020
164.377	5.06.020
164.395 - 164.415	5.06.020
164.805(2)	6.08.040
Ch. 165	5.06.020, 5.16.060
Ch. 166	5.16.060
Ch. 174	1.04.080
183.450	5.06.140
190.240	12.36.030
Ch. 197	4.32.010
197.015	3.30.060
199.430	2.40.010
199.460 to 199.534	2.40.010
Ch. 223	4.12.080, 4.20.110, 4.24.220, 13.12.030
223.205 through 223.300	4.04.120
223.297 to 223.314	4.20.150
223.405 through 223.490	4.04.180
223.505 through 223.595	12.16.05
223.510 through 223.595	15.16.090
267.380	3.24.010, 3.24.080

Ord. No.	*Date Passed*	*Code Section*
1292 § 5.8	9-3-2008	13.16.082
1292 § 6.1	9-3-2008	13.16.090
1292 § 6.2	9-3-2008	13.16.091
1292 § 6.3	9-3-2008	13.16.092
1292 § 6.4	9-3-2008	13.16.093
1292 § 6.5	9-3-2008	13.16.094
1292 § 6.6	9-3-2008	13.16.095
1292 § 6.7	9-3-2008	13.16.096
1292 § 6.8	9-3-2008	13.16.097
1292 § 6.9	9-3-2008	13.16.098
1292 § 6.10	9-3-2008	13.16.099
1292 § 6.11	9-3-2008	13.16.100
1292 § 6.12	9-3-2008	13.16.101
1292 § 6.13	9-3-2008	13.16.102
1292 § 6.14	9-3-2008	13.16.103
1292 § 6.15	9-3-2008	13.16.104
1292 § 7.1	9-3-2008	13.16.115
1292 § 7.2	9-3-2008	13.16.116
1292 § 8	9-3-2008	13.16.130
1292 § 9	9-3-2008	13.16.140
1292 § 10	9-3-2008	13.16.150
1292 § 10.1	9-3-2008	13.16.151
1292 § 10.2	9-3-2008	13.16.152
1292 § 10.3	9-3-2008	13.16.153
1292 § 10.4	9-3-2008	13.16.154
1292 § 10.5	9-3-2008	13.16.155
1292 § 10.6	9-3-2008	13.16.156
1292 § 10.7	9-3-2008	13.16.157
1292 § 10.8	9-3-2008	13.16.158
1292 § 10.9	9-3-2008	13.16.159
1292 § 10.10	9-3-2008	13.16.160
1292 § 10.11	9-3-2008	13.16.161
1292 § 10.12	9-3-2008	13.16.162
1292 § 11.1	9-3-2008	13.16.175
1292 § 11.2	9-3-2008	13.16.176
1292 § 11.3	9-3-2008	13.16.177
1292 § 11.4	9-3-2008	13.16.178
1292 § 12.1	9-3-2008	13.16.190
1292 § 12.2	9-3-2008	13.16.191
1292 § 12.3	9-3-2008	13.16.192
1292 § 12.4	9-3-2008	13.16.193
1292 § 12.5	9-3-2008	13.16.194
1292 § 13.1	9-3-2008	13.16.210
1292 § 13.2	9-3-2008	13.16.211

References to Ordinances

Ord. No.	*Date Passed*	*Code Section*
1399	6-4-2014	5.04.150, 5.04.230, 8.04.100, Repeals Ch. 3.16
1402	6-18-2014	13.12.065