

AGENDA
CITY COUNCIL - CITY OF ONTARIO, OREGON
Monday, March 19, 2012, 7:00 p.m., M.T.

- 1) **Call to order**
Roll Call: Norm Crume _____ Jackson Fox _____ Charlotte Fugate _____ Dan Jones _____
David Sullivan _____ Ron Verini _____ Mayor Joe Dominick _____

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, March 14, 2012, and a study session was held on Thursday, March 15, 2012. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) **Motion to adopt the entire agenda**

4) **Consent Agenda: Motion Action Approving Consent Agenda Items**

- A) Approval of Minutes of Regular Meeting of 03/05/2012 1-8
B) Approval of Minutes of Study Session Minutes Excerpt of 03/01/2012 9
C) Approval of the Bills

- 5) **Public Comments:** Citizens may address the Council on items not on the Agenda. Council may not be able to provide an immediate answer or response, but will direct staff to follow up within three days on any question raised. Out of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

6) **Presentation: Snake River Transit Update**

7) **New Business:**

- A) Contract Award: Pierce Manufacturing Company 10-16
B) Contract Award: Skyline Reservoir Liner Repair to ACF Construction 17
C) Resolution #2012-104: ODOT 2012 Fund Exchange 18-26
D) Ordinance #2667-2012: Water & Sewer (First Reading) 27-46

8) **Discussion Items:**

- A) System Development Charge Ordinance update
B) System Development Charge - Resolution setting rates for Airport Hangers
C) PW Director Position
D) City Manager Company Recruitment Proposals
E) Council Goals

9) **Correspondence, Comments and Ex-Officio Reports**

10) **Executive Sessions:**

- A) **ORS 192.660(2)(e) - Real Property**
B) **ORS 192.660(2)(h) - Litigation**
C) **ORS 192.660(2)(a) - Consider Employment**

11) **Introduction of Upcoming Agenda Items:**

- A) Audit Review

12) **Adjourn**

MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

COUNCIL MEETING MINUTES

March 5, 2012

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, March 5, 2012, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ronald Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Al Higinbotham, Larry Sullivan, Lisa Hansen, Mark Alexander, Chuck Mickelson, Bob Walker, Yorick de Tassigny, Dan Shepard, Lonnie Justus, Justin Allison, Gary Gibbs, Todd Higinbotham, Mark Saito, Tauni Thode, and Lynsey Hanson. The meeting was recorded on tape, and the tapes are available at City Hall.

David Sullivan led everyone in the Pledge of Allegiance.

AGENDA

Mayor Dominick added item 8D to New Business – Acceptance of City Manager Resignation.

David Sullivan moved, seconded by Ron Verini, to adopt the Agenda as amended. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

CONSENT AGENDA

Charlotte Fugate moved, seconded by Ron Verini, to approve Consent Agenda Item A: Approval of the Regular Minutes of 02/21/2012; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

PUBLIC COMMENTS

Clayton Kramer, Ontario, rural fire board member, stated after 22 years, Carl Judy would be stepping down from the Rural Board, as he had moved to Vale. They would be hosting a party at Fire Station Two, on Wednesday, March 7, beginning at 6:30, and everyone was invited to attend the gathering.

Charlene Pellan, Ontario, stated she was there on behalf of Military Child Education Coalition, the Army National Guard, and the Veteran Advocates of Ore-Ida, to invite everyone to attend the public engagement in Ontario on Wednesday, April 18, from 9-4, at the John Brown Armory. Seven of them were privileged to attend a statewide engage in Salem last October, resulting in Ontario being selected to host the first of several regional engagements for the Coalition. The purpose was to bring together approximately 100 key leaders in order to develop community specific action plans that would enhance the support of the military children, many of who have parents on their second deployment, or who had experience grief or loss as a result of injury, death, or illness. The City Council had been identified as community leaders, who had a key interest in the well-being of this community's families and children. It was believed they had both the interest and ability to help the community create home front support for the military families. It was not their intent to add additional work to busy schedules, but to involve them in the collaborative planning and development of systems, policies and programs that could be integrated throughout this community. Save the date notices would be sent out, followed by a written invitation asking for an RSVP. It was a tremendous honor to be the first city to host this public engagement, and she encouraged them all to attend.

Kevin Good, New Plymouth, Idaho, stated he was there on behalf of the Ontario State Race scheduled for March 31 and April 1, 2012. A section of downtown Ontario would be blocked off for a portion of the race; however, they had been getting some opposition from some downtown merchants. He had read the permit, and didn't know if they needed 100% buy-in from the downtown merchants. That was why they were there before the Council that night.

Mayor Dominick received statements from two who could not make meeting.

First, from John Breidenbach, Chamber Director, wrote: Unfortunately, I will be unable to attend this evening. I'd like the Council to know that Ontario Chamber is in favor of the bicycle race and tour of Ontario, to be held March 31 and April 1. For your information, the Ontario V&C Grant Board has awarded a grant for this event to the local promoters.

Second, from Malheur County, Bill Lawrence, in summary, Malheur County supported the event, and based on the planning letter, the road department was concerned about available parking, but they would be using private ground off the roadway. They wished for a successful event, and indicated they would provide a sheriff.

Mayor Dominick stated he was in support of the event, but he hadn't spoken to the other Councilors. He had received a Petition from David Eldridge in opposition, and there were numerous signatures on it. A copy of the Petition would be incorporated into the record by this reference. In answer to Mr. Good's question about permitting, that would be processed through the Planning Department, and a response would be provided shortly.

Vickie Hienz, Ontario, after they were apprised of the Petition, they were surprised. It didn't make sense. Michael and Todd had spoken with many of the downtown merchants, and they all seemed to be on board, except for Mr. Eldridge. In trying to find out what had occurred between that talk and now, she spoke to one who had signed the petition, who indicated she was approached and had been given some definite misinformation about what was going on. She said she was aware of the race that would close the downtown area off. She said no. Mr. Eldridge told her how much money he would lose. She asked him if there were any local people involved. He told her no. Well, Jolts was in the bike business, it was natural that they would be spoken to, and her son-in-law was also an avid biker, and Jolts was a major sponsor. The truth was not presented accurately. It was an opportunity for people to come to Ontario, and for the downtown area to be showcased. It was an amazing opportunity. The process had to be taken, of course, but in light of the fact of who she spoke to, and another who had spoken, had been given false information on this issue. If there was something more they needed to do to make sure the Council realized that when the facts were presented, the outcome might be different.

Mayor Dominick stated both the Public Works Director and City Manager were in attendance at this meeting, and they could help make sure the correct permits were issued, and that the factual information was put out.

Mr. Lawrence stated he hadn't received the application yet, and it would need to include a specific route.

Councilor Sullivan asked which streets would be shut down.

Todd Heinz, Ontario, stated the course would begin on Depot Lane, head South to 4th Avenue, down 4th Avenue, right on 1st, then another right on 3rd, come back to Oregon, left on Oregon, down to 2nd, right on 2nd, back to Depot Lane.

Councilor Sullivan asked about traffic flow, if those areas were tied up.

Mr. Heinz stated they would be shut off, but monitored. Traffic would be accessible through there on a monitored basis. There would be breaks in the race every couple of minutes. The back parking lots would be controlled. This area was blocked off for Octoberfair every year; the biggest difference was blocking Depot Lane for this. Businesses shouldn't be hampered. And, there would be side-street parking available.

Councilor Sullivan stated he was concerned about traffic going through town.

Mr. Heinz stated they would be going an alternate route, maybe the truck route on 2nd.

Councilor Sullivan verified 2nd Avenue would be open. Would they submit a plan that showed all that? Did the people who signed the petition know all that?

Mrs. Heinz stated no, they were just told that the streets were going to be shut down. They didn't even know what the route was.

Councilor Verini stated this was brought before the V&C Board, and it was extremely well planned out. The Board thought the advantage of having it for Ontario would be tremendous, both to watch and participate. It was a boost for the community, and for the downtown businesses. Many who were coming for the race had probably never been to Ontario, let alone in the downtown area.

Mayor Dominick verified the sidewalks would remain open.

Mr. Heinz stated yes. It was a true community event. It would be great for kids, parents, cyclists.

Councilor Crume asked if this event was both Saturday and Sunday?

Mr. Heinz stated just downtown Saturday. They could also push back the time to 2:30, ending about 9pm. They could bring out large floodlights to put on major corners, if necessary.

Mayor Dominick stated they needed to get their application in ASAP, so Public Works and the City Manager could have plenty of time to review.

Gary Fugate, Ontario, stated he was saddened to learn the city would be losing Henry, because he felt he was one of the finest City Manager they'd had in a very long time. It was very difficult to get City Managers. He believed he knew the reasons, but without getting into a lot of details, it saddened him that they would be losing Henry. He thanked him for his service, but he wanted to go a step further than that. He didn't like what happened to cause Henry to leave, and it was going to cost this city a great deal of money to get somebody else. He thought it cost the city \$31K the last time this happened. And that was just the simple, direct costs. It was a lot more than that. So he'd like to see the city keep a totaling of every cost associated with getting a new City Manager, if and when they did, publish that in the paper, and send the bill to the ones who were the approximate cause for this loss of our City Manager.

Justin Alison, Fire Department, thanked the Council for their support at the 33rd Annual Fireman's Ball last Saturday night. It was the largest they've had in their history. They had probably doubled the amount of money they had ever raised. It had been overwhelming for him as the Chairman, to walk in the door and see the line from one corner to the other, and it stayed that way for an hour. A lot of the people in attendance at the Council meeting had been there, and he expressed his appreciation for their attendance.

Mayor Dominick stated he didn't have to reveal names, but he understood there was a blue fire helmet that went for a large amount.

Mr. Allison stated the Boise State University helmet was auctioned off for \$1,800.

NEW BUSINESS

Bid Award: Cleaning and Inspecting Water System Reservoirs

Bob Walker, Deputy Public Works Director, stated in 2011, the Council adopted the 2011-2013 biennial budget that included \$25,000 for CIP 13WAT-05 "Reservoir Cleaning". Construction bids were opened on January 31st, 2012 for the Cleaning and Inspection of Water System Reservoirs and Water Plant Clear Wells Project. H2O Solutions, LLC., of Bellevue, Washington, was the apparent lowest responsive and responsible bidder with a total project bid of \$14,950.00. The Public Works Department would like to award the contract to H2O Solutions LLC for that amount.

| CLEANING & INSPECTION OF WATER SYSTEM RESERVOIRS AND WTP CLEAR WELLS | |
|---|-----------|
| Contractor | Bid |
| H2O Solutions, LLC., Bellevue, WA | \$14,950 |
| Liquivision Technology Diving Services, Klamath Falls, OR | \$20,250 |
| Clear Water Robotics, LLC., Nampa ID | \$43,800 |
| Associated Underwater Services, Inc., Spokane, WA | \$92,840 |
| Idaho Extreme Dive Team, Kuna, ID | \$149,100 |

Councilor Fugate asked if this would cause a bad taste to the water.

Mr. Walker stated it would not.

Charlotte Fugate moved, seconded by Ron Verini, that the City Council authorize the City Manager to sign the Contract with H2O Solutions for the Reservoir Cleaning Project. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Resolution #2012-103: ADA Lift at Aquatic Center

Yorick de Tassigny, Facilities Manager, stated the revised 2010 Department of Justice Americans with Disabilities Act (ADA) regulated the means of entry and exit of public pools. Under the new requirements, the city was obligated to install a pool lift for the main swimming pool at the Ontario Aquatic Center (OAC) to render it accessible. The deadline for compliance was March 15, 2012. Compliance with this and all other applicable ADA regulations were to be part of the OAC renovation project.

The ADA required public accommodations to provide goods and services to people with disabilities on an equal basis with the rest of the general public. The goal was to afford every individual the opportunity to benefit from our country's businesses and services and to afford our businesses and services the opportunity to benefit from their patronage. As this related to public pool facilities, the goal was to provide access to every swimming pool so that people with disabilities would have a greater opportunity to enjoy water-based activities.

The main swimming pool at the OAC was the programming priority and fell under ADA requirements for smaller pools (those under 300 linear feet of pool wall). Only one primary means of access was required, and it had to be either a swimming pool lift or a sloped entry. The purchase and installation of the pool lift would meet the requirement.

As an added service, staff would also be ordering an additional anchor base to be installed at the training pool, as well as a caddie for transporting the lift between pools. This would provide access to the second pool in the facility. It was determined that access to the hot tub was not readily achievable due to its elevated deck. Providing access to the hot tub would create undue burden on the city at this time. This would be addressed in any future plans for the OAC.

Staff requested three informal bids for the purchase of a pool lift, additional anchor, arm rest assembly, caddie and cover. The results were as follows:

| Vendor | Bid Price |
|-------------------------|------------|
| Ontario Floors To Go | \$6,595.81 |
| Lincoln Equipment, Inc. | \$5,682.70 |
| Gem Gunitite Pools | \$5,836.00 |

The Council could elect to not move forward with the purchase of the ADA-compliant lift at this time, and decide to make other provisions to comply with the new regulations. The city would be subject to penalties for non-compliance after the March 15, 2012 deadline.

Councilor Verini verified this would not affect any modifications or remodeling of the pool in the future.

Mr. de Tassigny stated that was correct. All the ADA issues would have been noted in the proposed remodel.

Councilor Jones asked who would fine them if this was not in compliance by the 15th?

Mr. de Tassigny didn't know for sure who the enforcement agency was, but someone who wanted to use the facility could trigger a complaint.

Councilor Jones stated since there was a budget issue with the pool, maybe they could get an extension for 3-6 months. Was that possible? It didn't make sense to put in a lift, for even only \$5K. Had anyone even looked into getting an extension?

Mr. de Tassigny stated it was his understanding that to get a reprieve would be difficult. He hadn't approached the enforcement body about an extension. From what he had read, it didn't appear they were flexible.

Councilor Verini stated this was a great project, especially for the ADA.

Councilor Jones asked why they wouldn't even try for an extension. They were going to have to discuss the entire center in six months. They were going to be over-budget at the Aquatic Center very shortly, as they had anticipated it be closed for renovations. He would like to have the extension request at least tried for. Also, why had this only come forward on Thursday? He couldn't make an informed decision in 10 days.

Councilor Verini stated he didn't see a problem with it.

Councilor Fox stated he understood from the way it was explained at the study session, the city would be liable, opening the city up for a liability issue with the existing equipment. Was that it? He agreed with Councilor Jones on this issue.

Mr. Sullivan stated a liability claim was a possibility. More likely there would be an enforcement action, but it did create a liability issue, too.

Mr. de Tassigny stated the new lift offered other features, such as the person using the lift could operate it themselves, instead of needing assistance.

Councilor Sullivan stated they were stepping into a dangerous area. He hated to wait, especially on something like this. It would expose the city, even if they weren't fined for being non-ADA compliant. It would be wise to move forward.

Councilor Fox stated he still didn't get it. Was the city out of compliance?

Mr. de Tassigny stated as of March 15, 2012, the city would be out of compliance. Being out of compliance, opened them up for liability claims.

Councilor Crume asked when the lift would be delivered.

Mr. de Tassigny believed it was available – it didn't have to be built.

Ron Verini moved, seconded by Charlotte Fugate, that the City Council pass Resolution No. 2012-103, A RESOLUTION TO AUTHORIZE THE PURCHASE OF AN ADA COMPLIANT POOL LIFT FOR INSTALLATION AT THE ONTARIO AQUATIC CENTER, and to award the bid to Lincoln Equipment, Inc. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/1/0.

Accept Resignation of City Manager

Mayor Dominick stated they needed to formally accept the resignation of City Manager Henry Lawrence. On February 29th, he had received a letter, as well as a phone call, from Mr. Lawrence, announce his upcoming resignation. As a member of the community had commented about it, he was also not happy with it either, but things being as they were, the Council needed to accept it.

David Sullivan moved, seconded by Dan Jones, to accept the resignation of Henry Lawrence. Roll call vote: Crume-no; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-no; Dominick-no. Motion carried 4/3/0.

Mr. Lawrence stated it had been an honor and a privilege to serve the community, and he thanked them for the opportunity.

Councilor Sullivan thanked Mr. Lawrence for his service.

Councilor Fugate stated that Mr. Lawrence would be missed.

Councilor Verini stated Mr. Lawrence had made this town a better place to live. He thanked him and wished him the best.

Mayor Dominick stated it was with regret that the Council accepted Mr. Lawrence's resignation. He had worked hard and was very successful in improving the city's image. Under his direction, the Department Heads had city employees' working efficiently and harder than ever before. They were purchasing within or under their budgets. There had been a few mistakes, but everyone was human. Also, under Henry's management, the city of Ontario had the best balanced budget he had seen in his 15 years of political activity. It had all been down with teamwork, but it also took a good manager and leader.

CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS

- Al Higinbotham stated the benefit dance was last Saturday, and on behalf of the department, he expressed thanks to the entire business community who supported them through donations for both the live and silent auctions, as well as to the citizens for the support.
- Al Higinbotham stated on behalf of the entire Fire Department staff, Henry Lawrence would be missed, and they appreciated all his support. It had been an honor and a privilege to have worked with Henry Lawrence over the past 3+ years.
- Chuck Mickelson pointed out the East Idaho construction project had started. They would be coming from the bridge towards East Lane, taking out the sidewalk. There would be another turn lane from Idaho onto East Lane, and that would be re-signaled at East Lane and East Idaho. The schedule was posted on the city's website, and would be updated every two weeks. ODOT was managing the project, and the city

was partnering, putting in about \$899K in it, with ODOT putting about \$1.5M in. The pavement would be ground down between the Snake River Bridge and 4th Street, and a new inlay put in. They estimated completion in August. There would be some disruptions, but they were working with contactors to have them do the grinding and paving at night.

- Yorick de Tassigny stated there were still some issues with the new HVAC system, but there would be some people here next week to look into that. Overall, the project was complete.
- Councilor Verini stated reminded them again about the Military Child Education Coalition. It was important for the community and the children.
- Mayor Dominick stated the Sister City delegation from Osakasayama would be here Tuesday, March 13th, starting with a welcome reception at Four Rivers Cultural Center at 6:00 p.m. Five young ladies would be here, enjoying all-day events during the entire two weeks they were here. Also, will be a delegation from Ontario going to Osakasayama in July. Cost would be airfare, as they would be hosted in their city.
- Mayor Dominick voiced his congratulations to the Fire Department for an outstanding Fireman's Dance.

EXECUTIVE SESSIONS

Executive Session: ORS 192.660(2)(e)

An executive session was called at 8:00 p.m. under provisions of ORS 192.660(2)(e) to discuss real property. The Council convened into regular session at 8:03 p.m.

Executive Session: ORS 192.660(2)(a)

An executive session was called at 8:03 p.m. under provisions of ORS 192.660(2)(a) to consider employment of an officer, employee, staff member, or agent. The Council convened into regular session at 8:45 p.m.

AMEND AGENDA

Charlotte Fugate moved, seconded by Jackson Fox, to amend the Agenda to include the appointment of an Interim City Manager. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Appoint Interim City Manager

Mayor Dominick offered the position of Interim City Manager to Public Works Director Chuck Mickelson, through the date of August 1, 2012. The offer would be at an hourly rate of \$70 per hour, fully burdened total of \$86.76, which would include the Workers' Compensation Employee Taxes, 6% PERS, addition of health insurance, (dental coverage), the addition of the Deferred Compensation that all Department Heads received. There was no full health insurance because Mr. Mickelson was on a different insurance, so the city would not pay his full insurance. That was the hourly amount. The other part as the knowledge of the Council that vacation days of April 1-15 would not be cancelled, the ability to bring in additional part-time help for the Public Works Department, and with a last day of July 31, 2012, or when a new City Manager was on board, whichever came first.

Councilor Crume asked if the scheduled vacation be at the current rate, or the new rate?

Mr. Mickelson stated as an hourly employee, there would be no vacation or sick time pay.

David Sullivan moved, seconded by Charlotte Fugate, to appoint Chuck Mickelson as Interim City Manager, effective upon the departure of Henry Lawrence, through the appointment of a new City Manager or July 31, 2012, whichever came first, at the agreed upon rate as stipulated above. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

ADJOURN

David Sullivan moved, seconded by Jackson Fox, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

APPROVED:

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder

SPECIAL STUDY SESSION MINUTES EXERPT
Request for Special Permission to Connect to Sanitary Sewer
John and Carol Robertson, 45 North Dorian Drive
March 1, 2012

At the properly noticed, regularly scheduled Study Session of the Ontario City Council of March 1, 2012, Agenda item 7(A) was opened up for discussion and action. Council members present were Norm Crume, Joe Dominick, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan, and Ron Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Al Higinbotham, Lisa Hansen, Mark Alexander, Chuck Mickelson, Yorick de Tassigny, Todd Higinbotham, Jared Gammage, Dan Shepard, Julia Rodriguez, and Kenny Gather.

Also present: Larry Meyer, Argus Observer; Dan Cummings, CK3, LLC; Leif Elgethun, SBE; and Ruth Rolland, Teamsters' Secretary.

NEW BUSINESS

Request for Special Permission to Connect to Sanitary Sewer: John and Carol Robertson, 45 North Dorian Drive

Dan Shepard, Engineering Technician III, stated John W. Robertson and his wife Carol, 45 North Dorian Drive, were requesting special permission from the City Council to connect to the sanitary sewer main near their property. Their septic system was failing and Malheur County Environmental would not issue a permit to repair the system because they were located within 300 feet of a municipal sewer main.

The property on Dorian Drive was located within 300 feet of the City of Ontario's sanitary sewer main. Oregon Department of Environmental Quality regulations did not allow Malheur County Environmental to issue a permit to fix or construct a septic system if the lot was within 300 feet of a public sewer system. Ontario Municipal Code, Title 8, Chapter 7, Section 8-7-4(M) stated "No Sewer Connection Outside City. There shall be no properties outside the City connected to the City sewer lines, except by special permission of the Council." Previous requests to connect from properties outside the city limits had been required by City Council to annex if their property was contiguous to city limits. The subject property was contiguous to city limits and therefore able to annex.

David Sullivan moved, seconded by Norm Crume, that the City Council grant permission to John W. Robertson to connect to the City's municipal sewer system. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

APPROVED:

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

AGENDA REPORT
March 19, 2012

TO: Mayor and City Council

FROM: Al Higinbotham, Fire Chief

THROUGH: Henry Lawrence, City Manager

SUBJECT: **CONTRACT AWARD: PIERCE MANUFACTURING COMPANY**

DATE: March 6, 2012

SUMMARY:

Attached is the following document:

- Proposed Contract w/Pierce Manufacturing Company

PREVIOUS COUNCIL ACTION:

- 02/06/2012 Council approved Resolution #2012-102, a resolution authorizing the receipt and expenditure of the \$323,000.00 FEMA Assistance to Firefighter's Grant, and the 5% Grant Match of \$17,000.00.
- 03/01/2012 Council gave consensus to move forward with the Cooperative Procurement process, authorizing 100% funding for the new Pumper.

BACKGROUND:

The City was awarded a FEMA AFG grant in the amount of \$340,000.00 for the purchase of a replacement pumper. To stay within the grant funding, 100% down payment is needed. We are able to do a Cooperative Procurement purchase through Coburg Fire Protection District allowing us to proceed without going to competitive bid.

FINANCIAL IMPLICATIONS:

The base price for the Pierce apparatus is \$340,972.00. The Ontario Volunteer Fire Association agreed to contribute \$972.00, leaving a balance of \$340,000.00. FEMA will allow 25% down, or \$80,750.00; however, \$259,250.00 is needed for a 100% down payment. While this decrease in the city's contingency fund over a period of seven months will result in a loss of \$745.00 in interest, it will allow a gain of \$15,979.00 in truck value. At the conclusion of the seven month period, FEMA will reimburse the city \$247,250.00, leaving only the city cost of \$17,000.00, the agreed upon 5% grant match.

RECOMMENDATION:

Staff recommends approval of the Contract with Pierce Manufacturing Company.

PROPOSED MOTION:

I move the City Council approve the Contract with Pierce Manufacturing, and authorize the City Manager/Contracting Officer to sign the Contract on behalf of the City of Ontario.



PERFORM LIKE NO OTHERSM

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Pierce Manufacturing Inc., a Wisconsin corporation ("Pierce"), and City of Ontario, a City ("Customer") is effective as of the date specified in Section 3 hereof.

1. Definitions.

- a. "**Product**" means the fire apparatus and any associated equipment manufactured or furnished for the Customer by Pierce pursuant to the Specifications.
- b. "**Specifications**" means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Pierce Proposal for the Product prepared in response to the Customer's request for proposal.
- c. "**Pierce Proposal**" means the proposal provided by Pierce attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. "**Delivery**" means the date Pierce is prepared to make physical possession of the Product available to the Customer.
- e. "**Acceptance**" The Customer shall have fifteen (15) calendar days of Delivery to inspect the Product for substantial conformance with the material Specifications; unless Pierce receives a Notice of Defect within fifteen (15) calendar days of Delivery, the Product will be deemed to be in conformance with the Specifications and accepted by the Customer.

2. Purpose. This Agreement sets forth the terms and conditions of Pierce's sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by Pierce's authorized representative pursuant to Section 22 hereof ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$340972.00 ("Purchase Price"). Prices are in U.S. funds.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price to be paid by the Customer. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost. To the extent practicable, Pierce will document and itemize any such price increases for the Customer.

6. Agreement Changes. The Customer may request that Pierce incorporate a change to the Products or the Specifications for the Products by delivering a change order to Pierce; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit Pierce to evaluate the feasibility of such change ("Change Order"). Within [seven (7) business days] of receipt of a Change Order, Pierce will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. Pierce shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order. A Change Order is only effective when counter-signed by Pierce's authorized representative.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by the customer before completion, Pierce may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by Pierce; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Pierce endeavors to mitigate any such costs through the sale of such Product to another purchaser; however Customer shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by Pierce upon sale of the Product to another purchaser, plus any costs incurred by Pierce to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 6-7 months of the Effective Date of this Agreement, F.O.B. Pierce's plant, Appleton, Wisconsin. Risk of loss shall pass to Customer upon Delivery. (b) Inspection and Acceptance. Upon Delivery, Customer shall have fifteen (15) days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the

material Specifications to furnish Pierce with written notice sufficient to permit Pierce to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by Pierce within thirty (30) days from the Notice of Defect. In the event Pierce does not receive a Notice of Defect within fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and Accepted by Customer.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

Pierce Manufacturing, Inc.
Director of Order Management
2600 American Drive
Appleton WI 54912
Fax (920) 832-3080

Customer
City of Ontario
444 SW 4th Street
Ontario, OR 97914
541-881-3275 Phone

10. Standard Warranty. Any applicable Pierce warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by Pierce's authorized representative.

a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PIERCE, ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.

b. Exclusions of Incidental and Consequential Damages. In no event shall Pierce be liable for consequential, incidental or punitive damages incurred by Customer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery or from Pierce's own negligence, or otherwise.

11. Insurance. Pierce maintains the following limits of insurance with a carrier(s) rated A- or better by A.M. Best:

Commercial General Liability Insurance:

Products/Completed Operations Aggregate: \$1,000,000
Each Occurrence: \$1,000,000

Umbrella/Excess Liability Insurance:

Aggregate: \$25,000,000
Each Occurrence: \$25,000,000

The Customer may request: (x) Pierce to provide the Customer with a copy of a current Certificate of Insurance with the coverages listed above; (y) to be included as an additional insured for Commercial General Liability (subject to the terms and conditions of the applicable Pierce insurance policy); and (z) all policies to provide a 30 day notice of cancellation to the named insured

12. Indemnity. The Customer shall indemnify, defend and hold harmless Pierce, its officers, employees, dealers, agents or subcontractors, from any and all claims, costs, judgments, liability, loss, damage, attorneys' fees or expenses of any kind or nature whatsoever (including, but without limitation, personal injury and death) to all property and persons caused by, resulting from, arising out of or occurring in connection with the Customer's purchase, installation or use of goods sold or supplied by Pierce which are not caused by Pierce.

13. Force Majeure. Pierce shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Pierce's control which make Pierce's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation

regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

14. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) Pierce fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with Pierce.

15. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of Pierce until the entire Purchase Price has been paid. If more than one Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of Pierce until the Purchase Price for that Product has been paid in full. In case of any default in payment, Pierce may take full possession of the Product, and any payments that have been made shall be applied as payment for the use of the Product up to the date of taking possession.

16. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venturer of or with the other.

17. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

18. Governing Law; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of Wisconsin.

19. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

20. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by Pierce's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by Pierce's authorized representative.

21. Conflict. In the event of a conflict between the Customer Specifications and the Pierce Proposal, the Pierce Proposal shall control. In the event there is a conflict between the Pierce Proposal and this Agreement, the Pierce Proposal shall control.

22. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by Pierce Manufacturing, Inc.'s authorized representative.

Accepted and agreed to:

PIERCE MANUFACTURING, INC.

CUSTOMER: City of Ontario

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

PURCHASE DETAIL FORM

Pierce Manufacturing, Inc.
 Director of Order Management
 2600 American Drive
 Appleton WI 54912
 Fax (920) 832-3080

Date: _____

Customer Name: City of Ontario

| Quantity | Chassis Type | Body Type | Price per Unit |
|----------------|-----------------------------|------------|----------------|
| One (1) | Saber SLT | PUC Pumper | \$361,451.00 |
| Less | Chassis payment discount | | (5,917.00) |
| Less | Payment @ factory discount | | (4,033.00) |
| Less | 100% pre-payment discount | | (6,029.00) |
| Less | Customer drive-out discount | | (4,500.00) |
| Contract Price | | | \$340,972.00 |

Warranty Period: Basic One Year Warranty and additional standard warranties per proposal GG288.

Training Requirements: Standard per proposal GG288.

Other Matters: A 100% performance bond will be provided within thirty (30) days of contract execution. The unit will be ready for delivery from the factory within 6-7 months from contract execution. If the unit is not ready for delivery within this timeframe, a delivery penalty in the amount of \$100/day will apply.

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any Pierce available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: A 100% pre-payment will be due upon receipt of the performance bond and invoice, and within thirty (30) days of contract execution. If payment is not made at this time, \$15,979.00 or a portion thereof will be added to the final invoice. Final payment when the unit is completed at the factory and prior to the City transporting the unit from the factory.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Pierce.] All taxes, excises and levies that Pierce may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by Pierce to the Customer shall be for the account of the Customer and shall be added to the Purchase Price. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. Pierce will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a substantial nonconformance with material Specifications (other than freight), the Customer may withhold up to five percent (5%) of the Purchase Price until such time that Pierce substantially remedies the nonconformance with material Specifications, but no longer than sixty (60) days after Delivery. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled, but no longer than sixty (60) days after Delivery. Pierce shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by Pierce or any of its affiliated companies to secure payment of the Purchase Price for all such goods and products. In the event of nonpayment by the Customer of any debt, obligation or liability now or hereafter incurred or owing by the Customer to Pierce, Pierce shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the state of Wisconsin.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF _____, 20__ BETWEEN PIERCE MANUFACTURING INC. AND City of Ontario WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED BY PIERCE MANUFACTURING INC. HEREIN.

EXHIBIT B

WARRANTY

BASIC ONE YEAR WARRANTY AND ADDITIONAL STANDARD WARRANTIES PER PROPOSAL GG288.

EXHIBIT C

PIERCE PROPOSAL

PROPOSAL PER GG288.

AGENDA REPORT
March 19th, 2012

TO: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director

THROUGH: Henry Lawrence, City Manager

CC: Chuck Mickelson, Interim City Manager

SUBJECT: Award Contract for Skyline Reservoir Liner Repair to ACF Construction.

DATE: March 19, 2012

SUMMARY:

Request for quotes to repair the Skyline Reservoir Liner which was damaged during modifications to the reservoir intake structure were sent out in early February. The service requested was to replace a large area of the 60 mil PS HDPE liner (25 x 325 ft.) and repair additional tears outside of main 25 x 325 ft. area. ACF Construction also dba, ACF West of Portland OR., is the apparent lowest responsive vendor who provided the City with a quote of \$10,776.

| Contractor | Bid |
|---|-----------------|
| ACF Construction also dba; ACF West, Portland OR | \$10,776 |
| Layfield, El Cajon CA | \$18,784 |
| BTL Liners, Prineville OR | NA |

FINANCIAL:

This project will be paid for from funds available in project 11SEW-13, Parallel Force Main, which is complete and has an unexpended balance of \$145,932.80.

BACKGROUND:

Due to winter weather conditions during the project to modify the intake structure as suggested by the City Council, the reservoir liner was damaged in several locations. The best alternative for repair is to replace a 25 ft. by 325 ft. section of the 60 mil PS HDPE liner and repair a few tears outside this area. The intake structure modifications are complete and with repair of the liner the reservoir will be available for service prior to irrigation season if this contract is awarded and the liner repairs are made in a timely fashion.

RECOMMENDATION:

Staff recommends the City Council authorize the City enter into Contract with ACF Construction also dba ACF West for the Skyline Reservoir Liner Repair Project.

PROPOSED MOTION:

I move the City Council authorize the City enter into Contract with ACF Construction also dba ACF West for the Skyline Reservoir Liner Repair Project.

AGENDA REPORT

March 19, 2012

TO: Mayor and City Council

FROM: Chuck Mickelson, Public Works Director

THROUGH: Henry Lawrence, City Manager

SUBJECT: RESOLUTION #2012-104 A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28370 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING, DESIGN OF SE 2ND STREET, RECONSTRUCTION OF NE 4TH STREET AND PURCHASE OF CERTAIN EQUIPMENT FOR ROAD MAINTENANCE PURPOSES

DATE: March 12, 2012

SUMMARY:

Attached are the following document(s):

- Resolution #2012-104
- 2012 Fund Exchange Agreement #28370

PREVIOUS COUNCIL ACTION:

April 4, 2005 City Council authorized the Mayor to sign Fund Exchange Agreement #22388, which allowed staff to construct and complete the southwest 4th Avenue and southwest 4th street signal project.

March 16, 2009 City Council adopted Resolution #2009-108: a Resolution approving Fund Exchange #25415, which authorized the Mayor to sign the agreement for the design and construction of North Oregon Street and rehabilitation between Idaho Street and Northwest 1st Street.

August 16, 2010 City Council adopted Resolution #2010-131: a Resolution approving Fund Exchange #27023, which authorized the Mayor to sign the agreement for chip sealing and landscaping

January 17, 2012 City Council adopted Resolution #2012-101: a Resolution approving Fund Exchange #28277, which authorized the Mayor to sign the agreement for chip sealing and equipment purchases

BACKGROUND:

The State of Oregon offers Fund Exchange programs acting by and through its Department of Transportation, in which Federal funds are exchanged for State funds at a ratio of \$94 State dollars for \$100 Federal dollars. This gives the City the ability to build projects under local control instead of federal control. The process will grant the City \$117,951.20 for \$125,480 federal funds.

RECOMMENDATION:

Staff recommends the Council authorize the Mayor to sign the 2012 Fund Exchange Agreement # 28370.

PROPOSED MOTION:

I move the City Council adopt Resolution #2012-104: A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28370 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING, DESIGN OF SE 2ND STREET, RECONSTRUCTION OF NE 4TH STREET AND PURCHASE OF CERTAIN EQUIPMENT FOR ROAD MAINTENANCE PURPOSES.

RESOLUTION #2012-104

A RESOLUTION APPROVING FUND EXCHANGE AGREEMENT #28370 BETWEEN THE CITY OF ONTARIO AND THE STATE OF OREGON, ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR FUND DISTRIBUTION FOR CHIP SEALING, DESIGN OF SE 2ND STREET, RECONSTRUCTION OF NE 4TH STREET AND PURCHASE OF EQUIPMENT FOR ROAD MAINTENANCE PURPOSES

WHEREAS, the State of Oregon offers Fund Exchange programs acting by and through its Department of Transportation; and

WHEREAS, Federal funds are exchanged for State funds at a ratio of \$94 State dollars for \$100 Federal dollars; and

WHEREAS, the City of Ontario has been given the opportunity to receive \$117,951.20 State dollars for \$125,480.00 Federal dollars.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Ontario City Council, to approve Fund Exchange Agreement #28370 between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation for fund distribution for chip sealing, design, reconstruction and purchase of equipment for road maintenance purposes

EFFECTIVE DATE: Effective immediately upon passage.

PASSED AND ADOPTED by the City Council of the City of Ontario this ____ day of _____ 2012, by the following vote:

AYES:

NAYES:

ABSENT:

APPROVED by the Mayor this ____ day of _____, 2012

Joe Dominick, Mayor

ATTEST:

Tori Barnett, MMC, City Recorder

2012 FUND EXCHANGE AGREEMENT
2012 Street Program
City of Ontario

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and CITY OF ONTARIO, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. SE 2nd Street and NE 4th Street are part of the city street system under the jurisdiction and control of the Agency.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the chip sealing program, design of SE 2nd Street, reconstruction of NE 4th Street, and equipment purchases, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2012 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

4. Based on this ratio, Agency wishes to trade \$125,480.00 federal funds for \$117,951.20 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) years on the same day and month, unless extended by an executed amendment.

6. The Parties agree that the exchange is subject to the following conditions:
 - a. The federal funds transferred to State may be used by State at its discretion.
 - b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
 - c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
 - d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$117,951.20. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
 - e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
 - f. Agency and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
 - g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established

pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- i. Agency shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$117,951.20, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
 - A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
 - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 - m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No

waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 16, 2010, as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on February 9, 2012.

CITY OF ONTARIO, by and through

By _____
Mayor (or other assigned designee)

Date _____

By _____
City Recorder (or other assigned designee)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

Agency Contact:

Chuck Mickelson, Public Works Director
City of Ontario
444 SW 4th Street
Ontario, Oregon 97914
(541) 881-3231
Chuck.mickelson@ontariooregon.org

State Contact:

Laura Slater, Local Agency Liaison
3012 Island Avenue
La Grande, Oregon 97850
(541) 963-1353
Laura.l.slater@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By _____
Active Transportation Section Manager

Date _____

APPROVAL RECOMMENDED

By _____
Local Government Section

Date _____

By _____
Region 5 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

AGENDA REPORT

March 19, 2012

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

SUBJECT: **ORDINANCE 2667-2012: AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY, AND MAKING OTHER CHANGES (First Reading)**

DATE: March 12, 2012

SUMMARY:

Attached is the following document:

- Ordinance No. 2667-2012

This is for a first reading of Ordinance No. 2667-2012.

PRIOR COUNCIL ACTION:

None. The Council reviewed a draft of this ordinance at the March 8, 2012, work session. No substantial changes have been made in this version.

PUBLIC WORKS COMMITTEE REVIEW AND ACTION:

The Public Works Committee reviewed these proposed ordinance revisions at several meetings and recommended that the City Council approve the changes at their February 16th, 2012 meeting.

DISCUSSION:

Ordinance 2667-2012 revises various Code sections in Title 8, Chapters 7 (Sewer Use Regulations), 11 (Water Service Regulation) and 12 (Water and Sewer Service Assessments; Annexations). The primary purpose of the revisions is to increase the water and sewer connection fees to reimburse the City for system improvements for unassessed properties.

A) New Connection Charges

Over the years the City has extended water or sewer lines to the City limits and beyond for various projects to serve properties with failing drain fields or to stay ahead of roadway projects such as the Yturri Beltline. These projects came at a time when property owners outside the City limits were not willing to annex into the City and were not included in a local improvement district (LID). When the

owners of those properties now request to connect to the City utility system, the current City Code does not fully compensate the City for prior system improvements.

Ordinance 2667-2012 corrects this through Sections 8-7-3(F) (for sewer connections) and 8-11-10(2) (for water connections). These sections allow the City to impose new sewer and water connection charges on those properties as well as parcels already in the City limits that may be acquiring new water or sewer connections.

The new connection charges may be summarized as follows:

1) The new charges would apply only to the extent that a parcel of property is specially benefitted by the improvements. For instance, if the City extended the sewer line to the City limits, and a number of parcels outside the City limits would benefit from that extension if they ever connect to the City sewer system, the City would not impose the entire cost of the extension on the first parcel that connected; it would be imposed only on a pro rata basis with other parcels that connected in the past or that might connect in the future.

2) The new charges would apply only to “unassessed properties” as defined in 8-7-1 (for sewer connections) and 8-11-1 (for water connections), which means properties that were not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district. In many cases when the City has planned water or sewer extensions, it has required local property owners to pay for those improvements by including the properties in local improvement districts and putting liens against the properties to pay for the improvements. The ordinance does not impose a new charge on those properties, only on properties that were not previously assessed.

3) The new charges would be based on a new construction cost (within the past year) for constructing a similar water or sewer line extension. Staff considered and rejected imposing the new charge based on the historic cost of constructing a particular water or sewer line extension, because this may be impossible to determine if the extension was paid for many years in the past. If it was based on such a historic charge, the City would also be able to charge interest on that cost, which might make the charge prohibitive.

4) The charges would not apply to City improvements that were fifty years old or more.

5) Property owners could apply to pay the connection charge in installments. If they did so and the City agreed, any City lien would be subject to current mortgages and other liens on the property. This is different from LID liens, which are superior to other mortgages and liens other than real property taxes. The terms of the City lien (interest rate, etc.) would be set by the City Council by resolution.

6) Currently there is no Code section in Chapter 12, the annexation chapter that allows for a reimbursement of water line extensions, only sewer line extensions when the City does an annexation. The new charges would apply instead of the sewer line charges for annexations under

Code Sections 8-12-3, 8-12-4 and 8-12-5. Those Code sections would be repealed. The ordinance preserves the additional \$0.02 per square foot charge for annexations in Section 8-12-9, but allows the Council to change that by resolution.

B) Other Housekeeping Changes

The other changes in the ordinance are mainly housekeeping changes, including new and revised definitions and formatting changes. A new sentence was added to the end of Section 8-12-2(B) allowing the City to require that annexed properties in diverse ownership (multiple owners) pay for various infrastructure improvements as a condition for annexing into the City. This arose as an issue in the Nadine Drive annexation and was one reason why the City had to establish a local improvement district as part of the annexation.

STAFF RECOMMENDATION:

Staff recommends the Council approve a first reading of Ordinance No. 2667-2012.

PROPOSED MOTION:

“I move that the Mayor and City Council approve **ORDINANCE 2667-2012, AN ORDINANCE MODIFYING SEWER AND WATER CONNECTION CHARGES FOR UNASSESSED PROPERTIES, INCLUDING PROPERTIES TO BE ANNEXED INTO THE CITY, AND MAKING OTHER CHANGES**, on First Reading by Title Only.”

ORDINANCE NO. 2667-2012

AN ORDINANCE MODIFYING
SEWER AND WATER CONNECTION CHARGES
FOR UNASSESSED PROPERTIES, INCLUDING
PROPERTIES TO BE ANNEXED INTO THE CITY,
AND MAKING OTHER CHANGES

- WHEREAS, Over the years, the City has spent large sums of money for sewer and water improvements that ultimately benefit properties for which the owners never paid their fair share of the improvements through an assessment district, reimbursement district or local improvement district; and
- WHEREAS, Chapters 7 and 11 of Title VIII of the City Code should be amended to allow the City to obtain reimbursement for the cost of those improvements when unassessed properties connect to the City sewer or water system; and
- WHEREAS, Chapter 12 of Title VIII, which regulates the annexation of properties into the City, includes sections which conflict with amended Chapters 7 and 11 unless they are amended or deleted; and
- WHEREAS, City staff has completed a comprehensive review of Chapters 7 and 11 of Title VIII of the City Code to correct typographical errors, modernize terminology and bring them into conformance with current law.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows:

Section 1. Sections 8-7-1, 8-7-2, 8-7-3, 8-7-3.5 and 8-7-4 of Chapter 7 of Title 8 and 8-11-10, 8-11-21.1, 8-12-2 and 8-12-9 are hereby amended by deleting those portions that are stricken and by adding those portions that are underlined.

8-7-1 Definitions

Unless the context specifically indicates otherwise, the meanings of the terms used in this Chapter shall be as follows:

AVERAGE HOUSEHOLD BOD DISCHARGE, means ~~said discharge shall be~~ A calculation based on the most recent Portland State University Center for Population Research and Census data data for the City, relating to population divided by households. This average ~~will be~~ is multiplied by two-tenths (0.2) pounds BOD per person per day multiplied by three hundred sixty five (365) days divided by twelve (12) months.

BOD (Denoting Biochemical Oxygen Demand), means ~~€~~ The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) C, expressed in milligrams per liter.

BUILDING DRAIN, ~~means €~~ The part of the lowest horizontal piping of a drainage system

which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewers, beginning five feet (5') (1.5 meters) outside the inner face of the building walls.

~~BUILDING SEWER. means t~~The extension from the building drain, to the public sewer or other place of disposal.

~~COLLECTION SYSTEM. means t~~The system of public sewer to be operated by the City designated for the collection of sanitary sewage.

~~COMBINED SEWER. means a~~A sewer receiving both surface runoff and sewage.

~~COMMERCIAL USER. means a~~Any premises used for commercial or business purposes, which are not an industry as defined in this Chapter.

~~COMBINED SEWER. means a~~A sewer receiving both surface runoff and sewage.

~~CONNECTION. means t~~Two (2) pipes, generally service pipes, that are connected by means of a flexible coupling or other approved fitting.

~~DEQ. means~~ Department of Environmental Quality, State of Oregon.

~~DIRECTOR. means t~~The Public Works Director and/or Environmental Officer of the City or his authorized deputy, agent or representative.

~~DOMESTIC USER. Any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit.~~

~~DOMESTIC WASTE. means a~~Any wastewater emanating from dwellings.

~~EQUIVALENT RESIDENTIAL UNIT (ERU). means a~~ A volume of domestic waste discharged from an average residential dwelling unit in the treatment works service area. For purposes of this determination, the City shall utilize the metered water user records of the City of Ontario Water Department. Where a user believes his wastewater discharge to the treatment works is substantially different than his water consumption, an appropriate adjustment shall be made, providing the user demonstrates to the satisfaction of the City the actual wastewater discharge. The volume attributed to an ERU where the BOD, suspended solids or other characteristic of the wastewater discharged by a user is significantly greater than a domestic waste shall be adjusted to account for the difference in the costs of treatment.

~~EPA. means t~~The United States Environmental Protection Agency.

~~GARBAGE. means s~~Solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

~~INDUSTRIAL USER. means a~~Any nongovernmental, nonresidential user of the public treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following division:

- ~~Division A – Agriculture, Forestry and Fishing~~
- ~~Division B – Mining~~
- ~~Division D – Manufacturing~~
- ~~Division E – Transportation, Communications, Electric, Gas and Sanitary Services.~~
- ~~Division I – Services~~

~~A user in the division listed may be excluded if it is determined that it will introduce primary segregated domestic wastes or wastes from sanitary conveniences. A source of indirect discharge of effluent into the POTW by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto. This tem include federal, state, and local facilities as part of the regulated community, and shall not include "domestic user" as defined herein.~~

INDUSTRIAL WASTE means ~~t~~That portion of the wastewater emanating from an ~~i~~Industrial ~~u~~User which is not domestic waste or waste from sanitary convenience.

INDUSTRIAL WASTE WATER MONITORING STATION means ~~t~~The monitoring station that may be required by the City determining the contribution of the industry to the public sewer system. Monitoring equipment shall include composite refrigerated sampler, recording pH meter and recording flow meter. The City shall provide plans and specifications for the construction of the station. Cost of the construction of the station shall be at the industry's expense. Maintenance and upkeep of the station shall be at the industry's expense.

INDUSTRIAL WASTES means ~~t~~The liquid wastes from any Industrial User as defined herein. ~~nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under the following divisions:~~

- ~~Division A – Agriculture, Forestry and Fishing~~
- ~~Division B – Mining~~
- ~~Division D – Manufacturing~~
- ~~Division E – Transportation, Communications, Electric, Gas and Sanitary Services.~~
- ~~Division I – Services~~

~~A user in the division listed may be excluded if it is determined that it will introduce primary segregated domestic wastes or wastes from sanitary conveniences.~~

NATURAL OUTLET means ~~a~~Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

OPERATION AND MAINTENANCE means ~~a~~Activities required to ensure the dependable and economical function of collection and treatment work.

(A) Maintenance: Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) Operation: Control of the unit processes and equipment that make up the collection and treatment works. This includes keeping financial and personal personnel management records, laboratory control, process control, safety and emergency operation planning, employment of attorneys and consultants, payment of court costs; and payment of any

costs or fees reasonably associated with any of the above.

PERSON, ~~means a~~ Any individual, firm, company, association, society, corporation or group.

PpH, ~~means t~~ The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDED GARBAGE, ~~means t~~ The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1/2") (1.27 centimeters) in any dimension.

PUBLIC SEWER, ~~means a~~ A sewer that is available for public use and is controlled by public authority.

PUBLICLY OWNED TREATMENT WORKS (POTW), ~~means a~~ A treatment works owned and operated by a public authority.

REPLACEMENT, ~~means o~~ Obtaining and installing equipment, accessories or appurtenances that are necessary during the design or useful life, whichever is longer, of the collection and treatment works to maintain the capacity and performance for which such works were designed and constructed.

RESIDENTIAL USER, ~~means t~~ The user(s) of a single family dwelling, duplex, multi-family dwelling, apartment, townhouse, non-commercial condominium or mobile home.

SANITARY SEWER, ~~means a~~ A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.

SEPTAGE, Any wastewater from holding tanks such as vessels, chemical toilets, campers, trailers, recreation vehicles, septic tanks, sealed vaults and vacuum-pump trucks.

SEPTIC TANK, ~~means a~~ A holding tank which receives either human excreta, liquid or solid waste from one or more premises. Included within the scope of this definition are privies or chemical type toilets.

SERVICE AREA, ~~means a~~ All the area served by the treatment works and for which there is one uniform user charge system.

SEWAGE, ~~means a~~ A combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm water as may be present. The term "sewage" means wastewater.

SEWAGE TREATMENT PLANT, ~~means a~~ Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS, ~~means a~~ All facilities for collecting, pumping, treating and disposing of sewage.

SEWERLINE, ~~means a~~ A pipe or conduit for carrying sewage.

~~SHALL.~~ ~~means~~ ~~s~~ Shall is mandatory, may is permissive.

~~SINGLE FAMILY HOUSING.~~ ~~means~~ ~~a~~ A single family dwelling that does not share a wall with any other building.

~~SLUG.~~ ~~means~~ ~~a~~ Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quality of flow exceeds for any period of duration longer than fifteen (15) minutes more than four (4) times the average twenty-four (24) hour concentration of flows during normal operation.

~~STORM DRAIN (also called storm sewer).~~ ~~means~~ ~~a~~ A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

~~SUSPENDED SOLIDS.~~ ~~means~~ ~~s~~ Solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

~~TAPPED.~~ ~~means~~ ~~when~~ ~~a~~ A sewer service pipe is tapped when it is connected by the use of a inserta-Tee or "Y" to an existing collection pipe, usually located within a public right of way.

~~TREATMENT WORKS.~~ ~~means~~ ~~a~~ All facilities for collecting, pumping, treating and disposal of sewage. "Treatment System" and "sewerage system" shall be the equivalent terms for "treatment works."

~~UNASSESSED PROPERTY.~~ Real property that was beneficially benefitted by water or sewer improvements and was not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district.

~~USER.~~ ~~means~~ ~~e~~ Every person using any part of the public treatment works of the City of Ontario, Oregon.

~~USER CHARGE.~~ ~~means~~ ~~t~~ The monthly charges levied on all users of the public treatment works, and shall, at a minimum, cover each user's proportionate share of the cost of operation and as provided under Section 204 (b)(1)(A) of the Clean Water Act.

~~WATERCOURSE.~~ ~~means~~ ~~a~~ A channel in which a flow of water occurs, either continuously or intermittently.

8-7-2 Use of public sewers required.

(A) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage or other objectionable waste.

(B) It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

(C) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy,

privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage where a public sanitary sewer is available for use. In any property where septic tanks presently exist, septic tanks shall not be hooked into the City sewer system and no septic tank waste will be discharged into the City sewer system, except as provided for in Title 8, Chapter 10.

(D) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley or right of way in which there is located a sanitary ~~or combined~~ sewer of the City, is hereby required at ~~his~~ the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter, and keep such facilities in proper repair at all times, provided that said public sewer is within two hundred feet (200') of the property line, ~~unless special conditions exist, and at the discretion of the Public Works Director, he may temporarily grant a waiver of this requirement, and time limits may be made. The owner may apply to the Public Works Director for a temporary waiver of this connection requirement, and the Public Works Director may grant a temporary waiver under special circumstances, but shall set time limits for compliance.~~

8-7-3 Building Sewers and connections.

(A) Compliance With Regulations, Standards: No sewer main within the City or owned by the City will be tapped and/or connection ~~will be~~ made to any such sewer except in the manner set forth and subject to the terms of this Chapter.

(B) Fee for Constructing Sewer Tap: When a sewer is tapped by any City employee or employees, the person for whom or which such sewer is tapped will pay a charge or fee to be set by fee resolution in advance of the tap being made.

(C) Sewer Connection Permit Required, Conditions: Any person desiring a connection to be made to any sewer will first obtain from the Public Works Director a permit to connect or hook up to such sewer. The Public Works Director will impose a fee to be set by fee resolution for the issuance of such permit to connect to a sewer. Such permit from the Public Works Director will be first had and obtained whether such connection to a sewer be performed by the City or by a licensed plumber as provided below.

No connecting sewer service line from any building or other facility shall be constructed on or under any street or alley rights of way unless the sewer pipe to be so connected is of the type and quality used and approved in the City sewer system.

(D) Work Done by Authorized Persons: No hookup or connection will be made to any sewer unless the same be done and performed by an employee or employees of the City or unless the same be done by a plumber duly and regularly licensed under the laws of the State of Oregon and ordinances of the City. All hookups or connections shall be inspected and approved by the Public Works Director or his duly appointed representative.

No sewer will be opened or tapped unless the same be done and performed by an employee or employees of the City in ~~performance~~ conformance with standards and specifications established by the Public Works Director. The Public Works Director may authorize other person or persons to perform said sewer tap if ~~he feels~~ the situation ~~may warrant~~ warrants it.

(E) Specifications for Sanitary Sewer Taps: After fee, set by fee resolution, has been paid to the City, the person or persons constructing the connection shall schedule the tap to be made by the City personnel at least twenty four (24) hours in advance of when they desire the tap to be made.

The trench shall be excavated and the sewer main exposed in accordance with Oregon Occupational Safety & Health Division (Or-OSHA) and State of Oregon requirements and guidelines for trenching and excavation. If the trench or excavation appears unsafe, no City employee will enter that area until the unsafe or hazardous condition is corrected.

The City personnel will tap the sewer main with a cutter that is approved by the Public Works Director and attach an approved tapping saddle or inserta tee fitting. The plumber installs the pipe into the tapping saddle or inserta tee fitting insert pipe into the saddle.

~~(F) Connection Requirements Outside Sewer or Local Improvement District For Unassessed Properties. Any person desiring to extend or connect to a City sewer main property which is outside the boundaries of a sewer or local improvement district that established sewer assessments will make application for such permission with the City Manager. If the City Manager shall grant said application for connection or extension, said person will pay to the City Recorder as a connection charge, a sum of money equal to the proportionate share of the cost of construction of said original sewer main. The charge shall be based on the square footage of each lot or area to be serviced by such extension or connection limited to a depth of one hundred fifty feet (150'). The total cost of said original improvement will be determined as well as the area originally benefited therefrom in order to determine the pro-rata expense attributed to such original area on a square-foot basis. The connection charge will then be determined based on the square footage of such lot or area sought to be served which will be in an amount per square foot based on the original cost of said sewer main as set forth herein, any extension or lateral sanitary sewer line constructed upon private property will be at the sole expense of the owner or owners of said property.~~

1. An applicant for City sewer service desiring to connect unassessed property is required to pay the connection charge specified herein. The City imposes a connection charge for the prior construction of sewer main improvements specially benefitting property that has not been assessed for that benefit. The connection charge shall be paid prior to the time that property connects to the City sewer system, except as provided in subsection (N) of this section.

2. The connection charge shall be calculated by: a) determining the cost of the improvement using a rate based on the average cost of constructing a sewer main for the previous year, regardless of the year in which the improvement was constructed; b) determining the total square footage of the entire area specially benefited by the improvement, including all assessed and unassessed properties; and c) determining the pro rata share of the improvement's cost for the unassessed property connecting to the City sewer system. The pro rata share of that unassessed property shall be based on the square footage of that property limited to a depth of one hundred fifty feet (150'). If the property is irregular in shape, less than 150 feet in depth or abuts the end of a main, the front-footage shall be considered as the area of the lot or parcel within 150 feet of the property line divided by 150.

3. Any unassessed property making a new connection to a main where sewer service was available for fifty years or more before shall be exempt from the unassessed property charge in subsection (F)(2).

(G) Construction of Sewers: Sewers shall be constructed according to ~~the provisions contained in Section 10C-6-3(C) of this City Code,~~ the standard specification for the City, and the requirements of the Oregon Department of Environmental Quality.

(H) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(I) A separate and independent building sewer shall be provided for every building, residential and commercial, except where one building stands at the rear of another on an interior lot are under common ownership and no public sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole shall be as two (2) building sewers. Industrial wastes may enter the public sewer at as many points as are required by the industrial facility. Each point of entry may have an industrial monitoring station at that point.

(J) Old building sewers (i.e., more than 50 years old) may be used in conjunction with new buildings only when they are found, on examination or test by the City, to meet all requirements of this Chapter. If an old building sewer is used, the City will be held harmless from any liability arising from the use. It will be the responsibility of the seller of any structure using an old building sewer to disclose this information to any purchaser of the property. If the old sewer tap is not used, it must shall be capped within one foot of the sewer main line ~~or removed~~ and inspected by the City.

(K) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the City and/or State of Oregon. ~~In the absence of Code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM (American Society for Testing and Materials) and WPCF (Water Pollution Control Federation) Manual of Practice No. 9 shall apply.~~

(L) No person shall make connection of roof downspouts, exterior fountain drains, areaway drains or other sources of surface runoff, ground water, or other uncontaminated water to the building sewer or building drain, which in turn is connected directly or indirectly to a public sanitary sewer.

(M) The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Codes or other applicable rules and regulations of the City, or the procedures set forth in appropriate specifications. ~~of the ASTM and WPCF Manual of Practice No. 9.~~ All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the City before installation.

(N) In lieu of paying the sewer connection charge provided in subsection (F) of this section in a single payment, the owner may make application to pay the charge in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to Article XI, Section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the director of finance shall enter such assessment in the docket of city liens. The City Council shall set the installment terms, including interest rates, by

resolution.

8-7-3.5 Sewer Service Rates.

Meters will be read ~~twice annually~~ monthly for all users including, but not limited to, residential, motels/hotels, manufactured home parks, businesses, multi-family residential dwellings and apartment complexes.

A Users' user's wastewater charge shall be established based upon the average water consumption during the months of November, December, January, February and March of each fiscal year.

The consumption will then be divided by five (5) months to determine the average sewer usage per month.

New accounts will be based on an average of similar accounts.

The City shall establish a surcharge on users discharging wastes into the sewerage system which exceed either the BOD and/or TSS for the ERU. Said surcharge shall be in accordance with the formulas proposed in the City of Ontario Sewer Rate Study dated October 1994.

8-7-4 Use of public sewer restricted.

(A) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer, unless specifically approved by the Public Works Director.

(B) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as ~~combined-sewers or storm sewers~~, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process waters may be discharged on approval of the City to a storm sewer, ~~combined-sewer~~, or natural outlet.

(C) No person shall discharge or cause to be discharged any of the following described waters and wastes to any public sewers:

1. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
2. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quality or quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard in the receiving waters of the sewage treatment plant, including, but not limited to, cyanides in excess of two (2) mg/L or CN in the wastes as discharged to the public sewer.
3. Any water or wastes having a pH lower than five and five-tenths (5.5) or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.
4. Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, whole blood, paunch manure, hair and fleshings, metal, glass, rags, diapers, feathers, tar, plastics, wood, ground garbage, entrails and paper dishes, cups, milk containers, etc. either whole

or ground by garbage grinders.

(D) No person shall discharge or cause to be discharged the following substances, materials, waters or wastes if it appears likely in the opinion of the City that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property or constitute a nuisance. In forming its opinion as to the acceptability of these wastes, the City will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors.

The substances described are:

1. Any liquid or vapor having a temperature higher than one hundred fifty degrees (150°) F (0° and 65° C).
2. Any water or waste containing fats, gas, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/L or containing substances which may solidify or become viscous at a temperature between thirty two degrees (32°) F and one hundred fifty degrees (150°) F (0° and 65° C).
3. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths (3/4) horsepower or greater shall be subject to the review and approval of the City.
4. Any waters or wastes containing strong acid iron pickling wastes, or concentrated solutions whether neutralized or not.
5. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the City for such materials.
6. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the City as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal or other public agencies of jurisdiction of such discharge to the receiving waters.
7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.
8. Any waters or wastes having a pH in excess of nine and five-tenths (9.5).
9. Materials which exert or cause:
 - (a) Unusual concentrations of inert suspended solids, such as, but not limited to, Fuller's earth, lime slurries, and lime residues or of dissolved solids, such as, but not limited to, sodium chloride and sodium sulfate.
 - (b) Excessive discoloration such as, but not limited to, dye wastes and vegetable tanning solutions.
 - (c) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.
 - (d) Unusual volume of flow or concentration of wastes constituting "slugs" as herein defined.
10. Water or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(E) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsection (D) of this Section, and which in the judgment of the City may have a deleterious effect upon the sewage works, process, equipment, or receiving water, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

1. Reject the wastes,
2. Require pretreatment to an acceptable condition for discharge to the public sewers,
3. Require control over the quantities and rates of discharge, and/or
4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 8-9-2 of the City Code. If the City permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City and subject to the requirements of the applicable codes, ordinances and laws.

(F) Grease, oil and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.

Clean grease traps and interceptors routinely as noted in the Oregon Association of Clean Water Agencies. Cleaning must be done by licensed septic hauler or recycler and the Oregon Department of Environmental Quality must be notified when hauling grease and waste to a recycling plant. Compliance on inspection and cleaning must be turned into the City at least once a year and more often depending on the size of the tank. Inspection and cleaning shall be performed by certified and licensed septic haulers or recyclers in conformance with information established by the Oregon Association of Clean Water Agencies.

(G) Where preliminary treatment or flowing-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his the owner's expense.

(H) When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install an industrial waste water monitoring station together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such stations, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The station shall be installed by the owner at his the owner's expense, and shall be maintained by him the owner so as to be safe and accessible at all times.

(I) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the station provided. Sampling shall be carried out by an approved composite sampling device. The composite sample shall be used to determine BOD and suspended solids values. The pH values shall be taken from a continuous recording pH meter. Total organic carbon values may be substituted for BOD values if the City so desires. A continuous recording flow meter shall be provided to monitor the flow.

(J) No statement contained in this Chapter shall be construed as preventing any special agreement or arrangement between the City and an industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefore, by the industrial concern. All industrial users shall be under contract with the City.

(K) Connection Required: The owner of each and every parcel of real estate abutting upon any street, avenue or alley in the City shall connect their premises, whether vacant or not, to the sanitary sewer in such street, avenue or alley, whenever said street, avenue or alley is to be paved, and when notified to do so by the Public Works Director, which notice shall be sent by registered mail to the last known address of the owner. If said owner shall fail, neglect or refuse, within the time indicated in such notice, to comply, the City may make the aforesaid connections and the whole costs of such connections shall be assessed against said property as a lien which shall be placed on the lien docket of the City and shall be collectible through one or more of the following collection procedures at the option of the City:

- (a) By foreclosure and sale of the property in the same manner and with the same force and effect as is or may be provided with respect to property within the City or a proceeding in Court to foreclose such liens in accordance with ORS 224.110;
- (b) In the manner provided by ORS 454.225 by certification and presentation to the Malheur County Tax Assessor for assessment on the general tax roll;
- (c) By an action at law;
- (d) By foreclosure in the manner that is or may be provided for in the collection of other City liens;
- (e) In the manner provided by ORS 223.505 through 223.650 describing methods of enforcing liens and collecting assessment.

In any suit, action at law, or other nonjudicial action, the City shall be entitled to recover its reasonable attorney fees at trial and on appeal and such sums shall be a lien upon the property.

(L) Supervision: The construction, repair and maintenance of all sewer drains, whether public or private, shall be under the supervision and control of the City. It shall be unlawful for any person to tap or connect any sewer line of the City except in the presence and with the approval of the City.

(M) No Sewer Connection Outside City: There shall be no properties outside the City connected to the City sewer lines, except by special permission of the Council.

(N) Backfilling: All trenches and backfills shall be accomplished in accordance with specifications provided by the City.

(O) Valves and ~~Size Drains~~ Sewer Laterals: No drain and sewer pipe within a street or alley right of way shall be less than four inches (4") internal diameter, and all sewers ~~and drains~~ shall be of sufficient size to accommodate any property they are intended to drain in accordance with the State of Oregon Plumbing Code. The City shall ~~recommend~~ require a Sewer Back Check device on all new construction or the rehabilitation of an old service connection. ~~Back check device shall be required~~ when there is any living occupied space below the elevation of the street.

(P) Inspection: The City may adopt such rules as it may deem necessary to provide for proper inspection of the work, and no work shall be covered until it shall have been approved by the City, who will endorse a certificate of final inspection upon the permit issued for that particular work or connection.

SECTION 2. Sections 8-11-1, 8-11-10 and 8-11-21.1 of Chapter 11 of Title 8 of the Ontario City Code are amended by deleting those portions that are stricken and by adding those portions that are underlined:

8-11-1 Definition of terms.

UNASSESSED PROPERTY means property that was beneficially benefitted by water or sewer improvements and was not assessed for those particular improvements through a local improvement district, reimbursement district or other special assessment district.

8-11-10 Connection charges for assessed properties; additional charge for unassessed properties.

(A) The City shall impose a charge the following charges for making the aforesaid connections:

(1) and said charges shall be The applicant shall pay a water connection charge based on the actual cost of affecting said connection, including but not limited to labor, materials, equipment and overhead, as set by fee resolution prior to work being done. If the applicant chooses the accelerated premium installation (overtime) option, charges will be based on actual cost of affecting said connection, including but not limited to premium labor rates (overtime rates vary from time and a half Monday through Saturday to double time on Sundays), materials, equipment, and overhead, as set by fee resolution. All connections require a Applicants must request a forty-eight (48) hour utility line locate call request must occur before any excavations can occur. Such charges shall be paid to the City Finance Department within thirty (30) days of completion of work, to the satisfaction of the City. If not paid within forty-five (45) days of the completion of work, the City may proceed with discontinuance of water service in accordance with Code Section 8-11-26. Before connection, all other applicable charges such as, but not limited to building permits, system development fees, and storm sewer connection fees shall be paid in full, and any applicable local improvement district assessments shall be brought current. The charges shall be the same for connections both within and without the boundaries of the City.

(2) In addition to paying the water connection charge in subsection (A)(1), an applicant desiring to connect unassessed property is required to pay the unassessed property connection charge specified herein. The City imposes an unassessed property connection charge for the prior construction of water main improvements specially benefitting property that has not been assessed for that benefit. The unassessed property connection charge shall be paid prior to the time that property connects to the City water system, except as provided in subsection (C) of this section. The unassessed property connection charge shall be calculated by: a) determining the cost of the improvement using a rate based on the average cost of constructing an eight-inch water main for the previous year, regardless of the year in which the improvement was constructed; b) determining the total front footage of the area specially benefitted by the improvement, including all assessed and unassessed properties; and c) determining the pro rata share of

the improvement's cost for the unassessed property connecting to the City water system. The charge shall be based on front footage served by the water main. Property will be considered as being specially benefitted to a depth of 400 150 feet from the property line being served or from the main itself if the main is not in a public right-of-way. If the property is irregular in shape, less than 400 150 feet in depth or abuts the end of a main, the front-footage shall be considered as the area of the lot or parcel within 400 150 feet of the property line divided by 400 150.

(B) Any unassessed property making a new connection to a main where water service was available for fifty years or more before shall be exempt from the unassessed property charge in subsection (A)(2).

(C) In lieu of paying the unassessed property connection charge provided in subsection (A)(2) in a single payment, the owner may make application to pay the charge in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to Article XI, Section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the director of finance shall enter such assessment in the docket of city liens.

8-11-21.1 - Potential contamination of City water supply.

(A)

Backflow prevention devices for protecting the City's water system shall be installed on all service connections to the premises where:

1.

There is an auxiliary water supply which is, or can be, connected to the potable water piping;

2.

There is piping for conveying or containing liquids other than potable water, and where that piping is under pressure and is installed and operated in a manner which could cause a cross connection;

3.

There is intricate plumbing which makes it impractical to ascertain whether or not cross connections exist;

4.

There is back-siphonage potential.

(B)

Backflow prevention devices for protecting the City's water supply shall be installed at or near the points where the water service enters the premises.

(C)

The type of backflow prevention device required under subsections (A) and (B) of this provision shall be commensurate with the degree of hazard which exists:

1.

An approved air gap of at least twice the inside diameter, but not less than one inch (1"), of the incoming supply line measured vertically above the top rim of the vessel, or an approved Reduced Pressure (RP) device shall be installed where the substance which could backflow is hazardous to health; e.g., sewage

treatment plants, sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, mortuaries, car washes, medical clinics, etc.;

2. An approved double check valve assembly shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health;

3. An approved pressure vacuum breaker or an atmospheric vacuum breaker shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health and where there is no possibility of back pressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker but shall not be installed downstream of an atmospheric vacuum breaker.

(D) All backflow prevention devices required under these provisions shall be of a type and model approved by the Oregon State Health Division.

(E) The water user or the owner of a premises where one or more backflow prevention devices have been installed shall have the device tested at least once per year. Devices shall be tested immediately after installation and after they are removed. Reports on the tests shall be prepared by the tester and copies of the report shall be provided to the City. Tests shall be performed by certified testers in conformance with procedures established by the Foundation for Cross Connection Control and Hydraulic Research. All testers shall possess a valid certification issued by the Oregon State Health Division.

(F) Backflow prevention devices installed before the effective date of these provisions, which were approved at the time they were installed but are not on the current list of approved devices maintained by the Health Division, shall be permitted to remain in service provided they are properly maintained, are commensurate with the degree of hazard, are tested at least annually, and perform satisfactorily. When devices of this type are moved or require more than minimum maintenance, they shall be placed replaced by devices which are on the Health Division list of approved devices.

(G) Tests shall be performed within the time allotted by notice of the City. In the event the customer elects to have the City perform the backflow testing at the customer's address where City water services are supplied, the fee for the testing, set according to fee resolution, will be applied to the utility bill.

(H) In the event the customer does not respond in the time allotted by the City in the third and final notice, ~~the City will perform the backflow testing and the cost, set by fee resolution, will be applied to the utility bill for the City address receiving City water services.~~ the City will terminate water service to said property. The property owner will have to comply with required backflow installation before the water will be turned back on. All costs for water turn off and on will be paid by the property owner per fee resolution. All costs for backflow assembly installation will be borne by the property owner.

(I) Payments not received in City Hall in a timely manner shall be subject to the same late fees, interest and shut-off fees as set by Fee Resolution for Section 8-11-25

(Ord. 2521 § 12, 2003; Ord. 2233, 12-21-87)

SECTION 3. Sections 8-12-3, 8-12-4 and 8-12-5 of Chapter 12 of Title 8 of the Ontario City Code are hereby repealed.

SECTION 4. Sections 8-12-2 and 8-12-9 of Chapter 12 of Title 8 of the Ontario City Code are hereby amended by deleting those portions that are stricken and by adding those portion that are underlined:

8-12-2 Consideration for ~~annex-ation~~ annexation, improvements.

(A) Development Area. A development area shall be considered for annexation only if the following minimum improvements are existing in such area, as follows:

1. Master street plan on file and approved by the Planning Commission for the entire area.
2. Area to be completely platted or, if in the opinion of the Planning Commission, the area lends itself to stage development, partial ~~planing~~ platting will be acceptable.
3. All streets be graded, ballasted to the full roadway width, and provision be made for the handling of storm water run-off or in the event such development area is suitable for stage development, then such streets to be so graded, ballasted, and provision for storm sewers to be made, after annexation in conjunction with such stage development.
4. All streets be improved to the full roadway width, brought to grade with a gravel base and paved comparable to minimum standards of other paved streets in the City, which improvements may be made after annexation in conjunction with stage development as may be approved by the City Council.
5. Concrete curbs and gutters shall be constructed along both sides of all roadways but the same may be constructed after annexation in conjunction with stage development.
6. Sanitary sewers constructed serving the area together with lateral lines, including sewage pumps and lift stations. In the event no sanitary trunk sewers are available or to be made available to serve the area prior to annexation, the City Council may waive this requirement, and the same may be constructed after annexation in conjunction with stage development.
7. The property owners of the lands sought to be annexed and the developer shall enter into an agreement and contract with the City prior to annexation to provide for such stage development and for construction of said improvements subsequent to annexation.
8. Improvements as required herein that by their nature are to be operated and/or maintained by the City, shall be approved and accepted in all respects by the Public Works Director before construction.
9. All of such improvements shall be made in accordance with plans and specifications approved by the Public Works Director.

(B) Diverse Ownership Area. A diverse ownership area shall be considered for annexation regardless of the existing improvements therein. This shall not prevent the City from rejecting an annexation request or from imposing conditions on the annexation, including conditions relating to the construction of future improvements and the imposition of assessments for those improvements.

8-12-9 Charge imposed.

Annexation Charge. On any parcel of land annexed to the City ~~after the effective date of this Chapter~~, a two cent (\$0.02) per square foot charge shall be imposed on the

gross land area annexed at the time of annexation. The City Council may amend the annexation charge from time to time by resolution. In addition to the annexation charge, any annexed properties connecting to City utilities shall also be subject any other fees, charges and assessments imposed by the City for connecting to the City utility system.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _____, 2012, by the following vote:

AYES:
NAYS:
ABSENT:

APPROVED by the Mayor this ____ day of _____, 2012.

ATTEST:

Joe Dominick, Mayor

Tori Barnett, MMC, City Recorder