

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**  
May 2, 2011, 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, April 27, 2011, and a study session was held on Thursday, April 28, 2011. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at [www.ontariooregon.org](http://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 04/18/2011 ..... 1-10  
B) Approval of Minutes of Study Session of 03/31/2011 ..... 11-20  
C) Proclamation: National Water Safety Month - May 2011 ..... 21  
D) 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: Waldo Insurance "Wellness"**

7) **Old Business:**

- A) Liquor License Application: New Outlet - Vegas Country (Full On Premises Sales) ..... 22  
B) Approval of Engineering Contract with Anderson-Perry for SE 2<sup>nd</sup> Street ..... 23-34

8) **New Business**

- A) MCOA Bus Shelter Agreement ..... 35-51  
B) Ordinance #2657-2011: Amend OMC 7-4-6, add (D) re: Graffiti Issues (1<sup>st</sup> reading) ..... 52-58  
C) Change Order #1 Contract Award for ConnectOregon 3 FAA Project #3-41-0044008/009/101:  
Runway, Taxiway, and Apron Rehabilitation and Runway Lighting ..... 59-75

9) **Public Hearing(s)**

- A) Ordinance #2655-2011: Annex/Rezone Nadine Drive (1<sup>st</sup> Reading) ..... 76-81  
B) Ordinance #2658-2011: Annex/Rezone Brown (Hunter Lane)(1<sup>st</sup> Reading) ..... 82-87

10) **Topics for Discussion (Thursday):**

- A) Presentation of Proposed 2011-2013 Budget to Council  
B) Council Rules and Procedures

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

12) **Adjourn**

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

**COUNCIL MEETING MINUTES**

**April 18, 2011**

The regular meeting of the Ontario City Council was called to order by Council President Norm Crume at 7:00 p.m. on Monday, April 18, 2011, in the Council Chambers of City Hall. Council members present were Norm Crume, Jackson Fox, Charlotte Fugate, Dan Jones, David Sullivan, and Ron Verini. Joe Dominick was excused.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mark Alexander, Bob Walker, and Dawn Eden. The meeting was recorded on tape, and the tapes are available at City Hall.

Charlotte Fugate led everyone in the Pledge of Allegiance.

**AGENDA**

David Sullivan moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones- yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

**CONSENT AGENDA**

Ron Verini moved, seconded by Dan Jones, to approve Consent Agenda Item A: Approval of Minutes of Regular Meeting of 04/04/2011; Item B: Proclamation: National Public Safety Telecommunicators Week; and Item C: Approval of the Bills. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

Councilor Crume read the Proclamation into the record:

*WHEREAS, Emergencies can occur at any time that require police, fire, or ambulance; and*

*WHEREAS, Professional telecommunicators perform a critical function when an emergency occurs requiring police, fire, or ambulance as well as those related to forestry and conservation operations, highway safety and maintenance activities; and*

*WHEREAS, Thousands of dedicated telecommunicators daily serve the citizens of the United States by answering their calls for police, fire and emergency medical services, and by dispatching the appropriate assistance as quickly as possible; and*

*WHEREAS, Professional telecommunicators are critical to our country's emergency response and homeland security services, dispatching law enforcement, firefighters, emergency medical services, and other emergency responders 24 hours a day, seven days a week; and*

*WHEREAS, Professional telecommunicators are not visible as are the men and women who arrive on the scene of emergencies, but provide the vital link to public safety services as part of the first responder team; and*

*WHEREAS, Professional telecommunicators exhibit compassion, understanding, and professionalism during the performance of their job throughout the year.*

*NOW, THEREFORE, I, Norm Crume, Council President of the City of Ontario, Oregon, do hereby proclaim the week of April 10-16, 2011, as NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK in honor and recognition of our telecommunicators and the vital contributions they make to the safety and well-being of our citizens. Telecommunicators for the City of Ontario are Liz Amason, Becky Carter, Michelle Mallea, Kathy Ross, Tauni Thode, Julie Walker, and Melody Weir. Dated this 18<sup>th</sup> day of April 2011.*

**PUBLIC COMMENT**

John Breidenbach, Chamber of Commerce, stated on May 17<sup>th</sup>, the Guts to Glory Motorcycle Rally would be starting. They planned to ride through 48 states in 11 days, with over 900 bikes participating. They would be raising money for various charities. The ride would be filmed for some type of reality show, or maybe aired on the Discovery Channel, spotlighting towns on their ride. Ontario had been selected as their first stop. On the 17<sup>th</sup>, they would be coming in from Los Angeles, after riding 850 miles, and checking in at the fairgrounds. The film crew would be flying in earlier to shoot some history on Ontario. The camera crews would be traveling with the riders, and there was also an opportunity to join in as a "leg" rider, riding one or two days of the event. A rider could start with them in LA and end in Ontario, or join in Ontario, riding to Jackson, Wyoming. On the 17<sup>th</sup>, the riders would be staying in local hotels, or spending the night at the fairgrounds. Their GPS tracking system would log time, and the riders could either choose "Guts" which meant staying at the fairgrounds, or "Glory", which meant they could stay in a hotel. The "Guts" riders would get more points. Winner of the race would receive \$100K and a new motorcycle. Locals could do a fundraiser for the fairgrounds by doing the cooking for the riders. Area cycle shops and tire shops were planning to stay open later, and a business from Boise was going to come over to help any riders as needed. As for the local hotels, the first reservation was for the 15<sup>th</sup>, and last one on the 18<sup>th</sup>, so the area was going to see some business. Even the runway project at the airport was going to be slightly delayed to allow use of the strip. This was a great opportunity to showcase Ontario and the surrounding area. They wanted to make this an annual event, but the course wouldn't always be the same.

The annual Easter Egg Hunt was scheduled for Ontario High School for zero to ten year olds. Over 5000 eggs would be spread out, with the help of the Origins Church and the OHS Leadership Class.

The annual America's Global Village was on tap for June 4<sup>th</sup>, again hosted at Lion's Park. There would be the usual Concert in the Park Friday evening (the 3<sup>rd</sup>), and the Village would be open all day Saturday.

On June 13<sup>th</sup> the Nevada Riders Car Club was heading to Ontario for an overnight stay. Last year they were hosted the week after the Global Village, and they hosted a BBQ. This year, they would be staying overnight. There was about 80 cars, plus the local ones. There would be a no-host dinner at the fairgrounds, with live music, food, and beverage.

He thanked the City for the much more user-friendly website, and he appreciated the link to the Chamber office. There was also a link to the City's site from the Chamber's webpage.

**NEW BUSINESS**

**Septage Receiving Facility Equipment Award**

Bob Walker, Deputy Public Works Director, presented new handouts to the Council. It was for the Septage Receiving Facility for local companies to discharge their loads. The problem was that the dumpsites operated on a 8-5 timeframe, which was not always the best hours for the haulers. The proposed new system would operate 24-7 with a card lock system. Staff was seeking approval from the City Council to authorize the City Manager to award the bid for the Septage Receiving Facility Equipment in the amount of \$149,900 to Franklin Miller.

On September 16, 2010, during the Council Work Session, the Public Works Department requested an additional \$65,000 to increase the budgeted amount for the Ontario Septage Receiving Facility from \$240,000 to \$305,000.

Funding was to be provided from budgeted sewer projects which were complete and came in under budget. That request was approved.

Currently, the septic disposal business owners in the area did not have adequate facilities to dispose of their wastewater. They presently used the Clay Peak Landfill in Payette, Idaho or the City of Caldwell Wastewater Treatment Plant in Caldwell, Idaho. There were several issues with the current disposal sites, but the biggest one appeared to be the inability to utilize these facilities on weekends, during holidays, or after hours. As a large percentage of their business were emergencies which happened on weekends or after hours, the inability to dump their loads created problems for the septic business owners. The proposed City of Ontario Septage Receiving Facility would allow access by an electronic card reader system 24 hours per day, seven days per week. With this type of operation available, the septic business owners would make Ontario their primary disposal site.

In order to determine rates to be charged for use of the Ontario Septage Receiving Facility, a rate study of charges assessed by eight surrounding communities was completed. The average rate was 8¢ per gallon. Based upon that finding, staff was proposing to assess septic disposal business owners 8¢ per gallon. This rate was approved by the Public Works Committee at their December 16, 2010 meeting. If only three of the nine septic businesses in the surrounding area utilized the Ontario Septage Receiving Facility and had an average disposal rate of 25 loads/month at 8¢/gallon, the income to the City of Ontario would be approximately \$6,000 monthly, or \$72,000 annually. Based upon those numbers, it would require 4.24 years to pay back the investment. This was a conservative estimate as there were actually six septic businesses that would probably utilize the Ontario Facility.

Revised cost estimates for this project were \$147,000 for site work and equipment installation plus the \$149,900 for the equipment included in the Franklin Miller bid. The resulting total of \$296,900 remained below the \$305,000 budget.

Councilor Jones questioned the need for the 24-hour service system.

Brian Davidson, Anytime Septic, located in Ontario, stated he continually pushed the limits in getting to Clay Peak to dump in time. He was actually busy everyday, but the week-ends were the busiest. In the winter, it was really important to be able to dump in the evenings. It took an extra hour of down time to wait to dump. Overall, it was a time issue, but he really did push that limit daily. Probably held 40-50 gallons overnight to dump the next day, but that was not good. He had been in the business for almost six years, and while some might think this proposed project wouldn't hold interest, that just wasn't the case.

Councilor Fox asked how much Mr. Davidson's trucks held.

Mr. Davidson stated his truck would hold up to 2000 gallons. He had a lot of his calls in the afternoon and evenings, but a lot were on week-ends. The average truck would hold between 1600 and 2000 gallons.

Councilor Fox verified that the numbers proposed in the action were just ballpark; was that correct?

Mr. Davidson had spoken with others, to get their numbers on septage volume to use as a base. With the economy, it had slowed down somewhat, but Bud's Septic Tank Service was 300,000 gallons per year, AAA Rooter Man 205,000, A-Team 90,000, Anytime Septic 324,000, and Treasure Valley Septic 300,000. They all only needed an incentive to come to Ontario to dump, as cost was an issue. They would have to calculate out the added fuel to drive to other sites, and if Ontario couldn't keep the costs comparable to what was out there now, it wouldn't work.

Councilor Fugate asked his thoughts on the 8¢ per gallon charge.

Mr. Davidson replied that seemed pretty fair. Emmet charged 3¢, Nampa 3-4¢. The cost needed to be beneficial to both the city and the haulers. Most companies would have no issues with the charge. Most were used to paying 13¢ a gallon right now, mostly due to gas prices. Payette shipped their waste to Nampa. It would be an increase in

revenue for the city. Not all haulers did portable toilets, and not all haulers did septage. Some just did treated. However, the 24-hour use would certainly be a bonus. The Payette plant was more restrictive on both hours and days. They used an honor system over there, using estimates. It was not cost effective to take a load over if it wasn't a full tank.

Mr. Walker concurred that while the 24-hour use might not be necessary right now, the 7-days a week availability was.

Councilor Crume asked about staffing the facility on the week-ends.

Mr. Walker stated it would be limited, and it was usually only in the mornings.

Councilor Jones stated \$43,000 was a big investment on a piece of equipment – did staff have any idea on the cost for the card lock system?

Mr. Walker replied the box would monitor the Ph level, which was operated by the card lock that made the machinery work. To pull that piece out, or the gate...

Councilor Jones stated it was the difference between operating 8-5. They could pull out the paved road. What was the least cost system the city could get started with? Then they could look at the numbers. He wanted to know what they cost would be to get them started now.

Mr. Walker stated equipment-wise, there was not going to be a great deal of savings anywhere, because they needed all the pieces. The fencing and paving the road was an installation piece.

Councilor Crume asked about the necessity to pave the road, as compared to just the gravel.

Mr. Walker stated it would protect the road more, and it was a pretty steep road. With heavily loaded trucks traveling on it, it was going to take a fair amount to maintain the road. There was a gravel road there now.

Councilor Fox asked why they would keep the haulers from using the existing paved road – why send them around a different route? The fence was already there, and they could place the card lock on the existing gate. Big city rigs were every bit as heavy.

Mr. Walker stated the larger city trucks were sent around the back way, due to the weight of the rigs. Staff didn't want them tearing up the pavement.

Councilor Fox asked if there would be a bonding requirement of those with access.

Mr. Davidson stated that septage handling required a bond. He personally had a one million dollar bond. Government agencies also required bonding. His bond cost about \$100 per year. That would be a requirement of any Idaho haulers, too. He didn't know the details of Idaho haulers, but his own \$1M bond was more than sufficient. Most haulers who dumped in multiple states had bonds for each state.

Councilor Jones asked if Mr. Davidson ever dumped in Nampa.

Mr. Davidson replied that he did sometimes, depending on where he was picking up. He had to try to beat the time, as it took about 20 minutes to unload. Nampa charged by the pound, and it was about 13¢ per pound. He was sent a bill once a month.

Councilor Fox asked who would fix the new equipment at the site.

Mr. Walker stated it would be by the manufacturer. It had a 3-year warranty.

Councilor Fox asked if city crews would be trained to fix the equipment.

Mr. Walker stated they would be, but the manufacturer would continue to do some. The grinder was good for 7-10 year with Franklin Miller. Also the auger system was better, easier to maintain. Franklin Miller would have to maintain some, but for the most part, it would be city crews.

Councilor Fox confirmed with no major repairs, it would be a six year payoff.

Mr. Walker replied yes, with the 9000 gallons; with the 5-6000 gallons, it would take a bit longer.

Councilor Crume confirmed the money was coming out of the Public Works Sewer Fund, so would the money being made, the profit, go back into the fund?

Mr. Lawrence stated that it would.

Councilor Fox stated he was still unclear about having the haulers drive around, when the street was already there, and designed for equipment.

Mr. Walker stated the city trucks went around; however, it was something that could be looked into. They would definitely want to test the base and the asphalt.

Councilor Fox stated he really wanted to take a field trip to the area.

Mr. Walker stated the motion was for the equipment purchase only. He would have to appear back before Council again for the installation piece of the project.

Councilor Fox asked if the motion was for just the grinder, or all the pieces.

Councilor Jones asked if the installation was a part of the \$300K.

Councilor Sullivan stated the \$149K that was on the table was for the purchase of the equipment only.

Mr. Lawrence explained that the \$300K would be split between the equipment and the installation.

Councilor Fox asked if there would be other bids to the Council for the installation piece.

Mr. Walker stated yes, part of that was the road, and that could all be reviewed. He wanted to do some material sampling. He also wanted to keep the users away from the shop.

Councilor Fox stated with regard to the card lock system, that might be a good thing for the city crews to use, too.

Mr. Davidson stated the card lock system would provide a history, and would track just about anything.

Councilor Fox stated it appeared it would be a good way for the Public Works Director to check on employees. It could be used for other things, besides just the haulers.

Mr. Walker reminded them that there were security cameras already in place, too.

Dan Jones moved, seconded by Charlotte Fugate, that the City Council authorize the City Manager to award the bid for the Septage Receiving Equipment to Franklin Miller for \$149,900. Roll call vote: Crume-yes; Fox- yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

**ODOT Intergovernmental Agreement #27208: 2012-2013 Pedestrian and Bicycle Program for Enhanced Pedestrian Crossings (\$207,680)**

Dawn Eden, Public Works Engineering Technician I, stated this agreement provided for funding Rapid Flash Beacons at three crosswalk locations. Funds were being provided by the State of Oregon in the amount of \$207,680 and the City's match would be \$32,300 in the form of removal and replacement of sidewalk, ADA detectable warning ramps, curb and gutter, center lane medians and asphalt.

Last summer, the Malheur County Traffic Safety Commission received a request to look into making crosswalks along SW 4<sup>th</sup> Avenue safer for pedestrians. The Ontario Police Department reported there had been two accidents involving pedestrians at SW 12<sup>th</sup> Street and SW 4<sup>th</sup> Avenue, in addition to numerous near misses at several other locations along SW 4<sup>th</sup> Avenue. After meeting with Ontario School District Transportation Department personnel, they agreed pedestrians needed help crossing SW 4<sup>th</sup> Avenue, along with one more location between Mallards Grocery Store and the Shady Elms trailer court on North Oregon Street.

After researching several pedestrian crossing systems, it was decided the Rapid Flashing Beacon was the easiest and most economical crossing system available. In July 2010, the City of Ontario applied for an Oregon Department of Transportation (ODOT) Pedestrian and Bicycle Program 2012-2013 Grant for three general areas: SW 4<sup>th</sup> Avenue and SW 12<sup>th</sup> Street, SW 4<sup>th</sup> Avenue and SW 7<sup>th</sup> Street, and Mallards Corner on North Oregon Street.

The Council could choose to not approve this agreement and the project would not go forward, or the City could install Rapid Flashing Beacons at crosswalks as the Public Works budget allowed. This proposed agreement authorized up to \$207,680 of grant funds for the specialized pedestrian crossings. The City's share was \$32,300 either in kind or funded from the Bike Path/Pedestrian Reserve Fund. If the project came in under budget, staff would like to put in a 4<sup>th</sup> crossing in the area of SW 4<sup>th</sup> Avenue and SW 24<sup>th</sup> Street. The Four Rivers Charter School recently requested a crossing near their school, next to the Boys and Girls Club, as children were trying to cross SW 4<sup>th</sup> Avenue from an apartment complex off SW 24<sup>th</sup> Street to the south.

Councilor Sullivan questioned the crossing at 12<sup>th</sup>.

Ms. Eden stated she had contacted the program manager for ODOT and was told that the city could abandon the location at 12<sup>th</sup> Avenue and put in a crossing down by 24<sup>th</sup> Street. They had reviewed Ms. Eden's drawing, and it was acceptable.

Councilor Fugate stated 12<sup>th</sup> led into the Ontario Middle School and Ontario High School areas. What if there was no island there – wasn't the purpose to make it safer for the kids?

Ms. Eden stated that during the discussion at the work session, concerns were voiced about 12<sup>th</sup> Street in that the 50 foot of stacking distance required by ODOT was not adequate in front of Chevron due to traffic heading to OHS. Alternatively, the city did have the option of installing a rapid flash beacon at an intersection without a median. As part of the grant, the state required a median. Anything beyond that would come out of city funds.

Mr. Lawrence stated his concerns were that they had agreed on the three locations, but there was concern on 12<sup>th</sup>, as the proposed design only had a stacking distance of 50'. In driving that today, in a large truck, and trying to imagine if there was a center median there, to swoop into and watch for pedestrians, and to take that turn by the chiropractor's office, maybe that 50' was questionable. He recommended looking at alternate designs.

Ms. Eden stated when looking at the other side of 12<sup>th</sup> Street, the problem was all the driveway cuts for the businesses, and trying to see where they could add in a pedestrian crossing. Businesses were not eager to close off their driveway cuts.

Councilor Sullivan stated if it was too far east, the kids wouldn't use it.

Councilor Fugate asked about the cost of the flashing beacons.

Ms. Eden stated for the installation of beacons on two corners, plus city crews doing the sidewalk to handicapped standards, plus curb, gutter, asphalt, and crosswalk paint, it would be \$17,382.

Councilor Fox asked what staff wanted for 12<sup>th</sup> Street, to move it to 24<sup>th</sup>?

Ms. Eden stated the city's intent would be that they still did something at 12<sup>th</sup> Street, and later some type of crossing for the Charter School. The state said if the city was under budget, they could use those extra funds at the Charter School.

Councilor Crume verified they couldn't use the grant funds without putting in an island.

Councilor Jones stated they had listened to this issue three times, and returned back to 12<sup>th</sup> Street, that made him nervous. There was too much traffic there on 12<sup>th</sup>.

Councilor Crume stated the issue was that there was a lot of pedestrian traffic there, and the intent was to make it safer. However, putting in an island would create a traffic problem.

Captain Alexander stated there had been two pedestrian crashes at that intersection, and he knew of many more near misses.

Mr. Lawrence stated that was what was driving this. He was not convinced the proposed design was good with the 50' of stacking distance. He suggested doing a test area, maybe with cones.

Councilor Fox stated on that corner, the chiropractor's office on 12<sup>th</sup> stuck way out. Anyone entering an east turn on SW 4<sup>th</sup> was blind. It just didn't seem logical placing it to the west. That was going to be ineffective, unless it was placed to the east of 12<sup>th</sup>.

Councilor Jones stated that would affect south of 12<sup>th</sup> then.

Councilor Sullivan stated the reality was the need for a traffic control device at that location.

Mr. Lawrence asked if they wanted the City to do it, or to take advantage of the grant.

Councilor Sullivan stated to use the grant, but to look for a grant for the device.

Councilor Fox stated he was okay with accepting money, but wanted verbiage in the motion to do a study.

Mr. Breidenbach mentioned that on 12<sup>th</sup> and 4<sup>th</sup>, there were several semis that utilized that intersection, and that might have an impact on having a median there.

Ms. Eden stated ODOT had been asking for a signed agreement since last December. ODOT would not pay for any work completed prior to signing the agreement.

Mr. Sullivan was concerned about the reference to the exhibit. Maybe it could indicate approximate locations.

David Sullivan moved, seconded by Ron Verini, that the City Council approve Intergovernmental Walkway/Bikeway Project Agreement #27208, the 2012-2013 Pedestrian and Bicycle Program Grant for Ontario Enhanced Pedestrian Crossings between the City of Ontario and the State of Oregon, acting by and through its Department of Transportation, and authorize the Mayor to sign the agreement on behalf of the City of Ontario, subject to further negotiations with ODOT as to the specific location of the project. Roll call vote: Crume-yes; Fox- yes; Fugate-yes; Jones-no; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 5/1/1.

**Liquor License Application: New Outlet – Vegas Country (Full On-Premises Sales)**

Councilor Sullivan asked if he should recuse himself from discussion and action on this item due to a conflict of interest.

Mr. Sullivan indicated Councilor Sullivan was okay to participate in the action.

Mark Alexander, Police Chief, stated Stefan Schachtell purchased the business Saddles & Spurs, and was opening the business under the new name of Vegas Country. Vegas Country LLC, owner of Vegas Country, completed the "New Outlet" application process for "Full On-Premises Sales" liquor license privileges through the Oregon Liquor Control Commission for their new business located at 117 SE 2<sup>nd</sup> Street, Ontario, Oregon. All necessary paperwork had been approved through OLCC office and was awaiting approval through the Ontario City Council.

The Criminal Record process was completed on Vegas Country LLC owner/manager Stefan Schachtell, and all records returned clear. The application forms were filled out appropriately and required fees were paid. All permit requirements had been met. A review of the application had been completed by the Ontario Police Department, in accordance with the City of Ontario's ordinance regulating this license, and staff was recommending approval of the application.

Councilor Fox asked what the City's ordinances were on strip joints. This owner had some in Boise. Where there any current ordinances which would prohibit that?

Captain Alexander stated there were none in Ontario, but there were some at the state level.

Councilor Fox asked if they voted yes, and the owner received his liquor license, would that allow him to do "whatever"?

Captain Alexander stated the owner had given no indication that he would be doing that type of business. It was indicated it would be a bar, with drinks, lottery, and dancing – no adult entertainment.

Mr. Sullivan stated the Oregon Liquor Control Commission did put restrictions on the type of dancing allowed. Most nude dancing places in the state did not have a liquor license. Oregon, under the Constitution, had been targeted to allow nude dancing as long as there were some fairly firm restrictions. However, that did not have anything to do with granting a liquor license. The approval or disapproval of the liquor license would have no bearing on exotic dancing.

Captain Alexander stated he thought no alcohol could be with nude dancing.

Councilor Verini stated he didn't believe one thing had anything to do with the other.

Mr. Sullivan stated he had never looked at the restrictions OLCC put on businesses that had exotic dancers.

Councilor Crume stated they needed to address what the owner was requesting now, not what might happen down the road.

Councilor Fox stated that was exactly why he was asking Mr. Sullivan.

Mr. Sullivan asked if there would be a problem with deferring this action to the next meeting.

Captain Alexander did not believe so.

Councilor Sullivan stated the issues wasn't about what he hadn't applied for.

Councilor Fox wanted Mr. Sullivan to research it.

Councilor Fugate reminded them that every time they asked Mr. Sullivan to do some research on something, it cost the city some money.

Mr. Sullivan stated the OLCC website did not have authority to address the issue of nude dancing, nor did it impose any restrictions on that.

Councilor Jones asked if anyone had asked the Applicant's intent, if he truly did operate that type of business.

Councilor Crume asked if the Council had asked any other liquor license applicant those questions.

Mr. Sullivan stated it was his understanding that nude dancing was a form of expression, and protected under the Constitution, but he could do more research. Also, the OLCC's position with regard to local recommendations, could grant a city an additional 45 days before making a motion; however, the city must have a legitimate reason for denying the application.

Councilor Crume stated the city could develop an ordinance which would place limitation on locations or alcohol and the like. This was new business coming in, and his opinion was to move forward.

Councilor Jones asked if the Council had the right to ask the applicant to appear before them.

Councilor Crume stated they might be stepping on the applicant's rights.

Councilor Verini stated if the Applicant indicated he would have a nudey bar, and the Council denied his liquor license, that would be an infringement on the Applicant's rights.

Councilor Sullivan disagreed; bottom line, get it out in the open. He didn't want to see the public coming and slamming the Council for allowing a strip club. He wanted to give the Applicant every right to do what he wanted, but the Council did have the right to speak with him to ask what his intentions were.

Councilor Fox asked why Captain Alexander was not on board with that.

Captain Alexander asked what he was not on board with.

Councilor Fox stated he expected this to raise some concern with the Police.

Captain Alexander stated he hadn't even considered the adult entertainment issue. He was not aware of any other businesses the Applicant had.

Councilor Sullivan reiterated his interest in inviting the Applicant to a meeting so the Council could ask questions.

Ms. Eden stated no PDAC had been done.

Mr. Sullivan stated he had been looking on the web, and saw that the Applicant owned a business called New West Spirits, and was the co-founder of Black Rock Spirits out of the Washington area.

Captain Alexander stated he would also do further research.

Councilor Verini was concerned about the nudity issues, but one doesn't have anything to do with the other. If they couldn't restrict the strip clubs in Ontario due to Oregon laws...

Councilor Sullivan stated they could restrict the liquor license application.

Mr. Sullivan stated if the Council wanted to table the issue, he would do further research on regulating nude dancing and the issuance of a liquor license, based upon the types of actions that might occur.

Councilor Verini asked if delaying the issue would raise issues with the Applicant.

Captain Alexander did not know.

Councilor Sullivan stated they had a 30-day response period through OLCC, and the sign has been up about a week.

Mr. Sullivan stated the city had 45-days to respond from receipt of application. The city could also ask for a 45-day extension.

Councilor Fox wanted to postpone the action to allow for further review and research.

Jackson Fox moved, seconded by David Sullivan, to table the issue to the next Council meeting. Roll call vote: Crume-yes; Fox- yes; Fugate-no; Jones-yes; Sullivan-yes; Verini-no; Dominick-out. Motion carried 4/2/1.

**CORRESPONDENCE, COMMENTS, AND EX-OFFICIO REPORTS**

- Larry Sullivan stated at the previous work session, he had given an update on the issue before Lane County on the charges of violating the Public Meetings Laws. He had informed the Council, via email, that the case had now settled and there would be no appeal. There were \$350K in fines levied. Unfortunately, there was still no clarification on the issues.
- Ron Verini stated the National Guard Troops of the 116<sup>th</sup> would be returning home in 6-9 months, many needing jobs, and many facing family problems in the community. He hoped the job situation improved, and more importantly, that people started thinking about helping their neighbors.
- Jack Fox stated Payette had cut enough out of their budget that they were able to refund \$180K to their taxpayers. Henry had scoffed at that, and said Ontario was going to do better.
- David Sullivan stated the restaurant at the golf course was up and running, and encouraged everyone to give it a try.
- Norm Crume thanked those who had attended the gang awareness seminar conducted by Detective Victor Castro, of Hillsboro. He wanted to give special thanks to the Ontario Police Department for bringing Detective Castro to our area, and to Malheur Council on Families and Children for helping out.

**ADJOURN**

David Sullivan moved, seconded by Ron Verini, that the meeting be adjourned. Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-out. Motion carried 6/0/1.

ATTEST:

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Joe Dominick, Mayor

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Tori Barnett, MMC, City Recorder

**SPECIAL COUNCIL MEETING/STUDY SESSION MINUTES  
March 31, 2011**

At the properly noticed Study Session of the Ontario City council, the Council elected to move the Nadine Drive Annexation from "Discussion" to "Old Business". Following are the minutes from that meeting.

Members present were Norm Crume, Joe Dominick, Jack Fox, Charlotte Fugate, Dan Jones, David Sullivan and Ron Verini.

Members of staff present were Henry Lawrence, Larry Sullivan, Chuck Mickelson, Al Higinbotham, Mark Alexander, Bob Walker, Suzanne Skerjanec, Dawn Eden, David Richey, and Alan Daniels.

Also present: Sean Maloney, Malheur County, and Don Fine, ODOT.

**OLD BUSINESS**

**Nadine Drive Annexation**

Mayor Dominick stated the Council held a long meeting earlier on this issue, and a lot of new ideas were bounced around. Five members of the Council told city residents two or three meetings back, that they would not be required to install curb, gutters or sidewalks, based on the interpretation of the code. It was his understanding that new information was provided by the Public Works Committee wherein there was an interpretation of the code different by different people. The City's Attorney explained the diverse ownership section of the code. The code section being referred to was 8-12-2(b) that allowed the Council to move forward with an annexation without requiring additional improvements. Five of the Councilors were at those meetings, two or three different times, telling them they didn't have to put them in. The interpretation of the code of the diverse ownership area said they could move forward and set the public hearing to continue with the project as stated to the public, without curbs, gutters, and sidewalks.

Councilor Fox disagreed. He wanted Mr. Sullivan to weigh in it because the 8-12-3 code read "...sewer line costs, as a condition of annexation of either a diverse ownership area or a development area, the entire cost of constructing and installing sanitary trunk sewer lines, lateral sewer lines, storm sewers, and all necessary appurtenances, serving the area annexed to the City, shall be paid for the property benefited by said improvements and the cost thereof shall be assessed against said property". That was law. It said annexation or a diverse ownership, it didn't care which. He asked to be straightened out if he was incorrect. This specifically stated storm sewers and all necessary appurtenances. Appurtenances were everything to make it work, how to make a storm sewer work. It took a curb to direct it to a catch basin, it took a catch basin, it took the whole deal. That was why he was so vocal on this project. To him, it was absurd to think that they only used water and sewer assessments for annexations. Those were just definitions to him. At one point, it did say specifically a development area. Later, in 8-12-3, he believed, that showed intent in the law to do all that. The absurd part to him was to think that anyone would do an ordinance requiring water and sewer, but no streets to service it. Every one of the street specifications, he had not found one yet, that didn't show some type of curb protection along the side. There was one that was not using storm drain catch basins, but it was using the swale method, what they allowed to be used at Crest Way and Horning Way.

Mr. Sullivan stated if the City did do a sewer and water extension without developing curbs, gutters and sidewalks at that time, then it was possible to do an extension of those things. If the question was whether they couldn't have a sewer and ~~were~~ water extension or a storm sewer extension without curb, gutter and sidewalk, if the answer was yes, that things were absolutely required, and were required here as necessary appurtenances, to the

installation of water, sewer, and storm sewer, then under those circumstances the City would be justified in saying those had to be installed under the code. If it was an engineering matter, and they could put in those things on Nadine Drive without requiring curbs, gutters, and sidewalks, than it was not an appurtenance. It was really an engineering decision. If the plan was to install those things without curbs, gutters, and sidewalks, then obviously it was not an appurtenance, because you could do it without installing those things. It was a question of whether it was necessary as part of the operation of the extension of the water and sewer.

Councilor Fox asked who was pushing this. There had been a public meeting last Monday, and he didn't see anyone except the County health person speak about it. Where the failure happened, where was that person? The rest were saying, "See ya later". They didn't care. Where was the person with the failure, saying, "Wait a minute guys". The Council was offering a great deal, but they wanted the City of Ontario to pay for the street, pay for everything.

Mayor Dominick disagreed. They were willing to pay their assessment.

Councilor Fox asked if they had all signed a Deferred Agreement about bringing this to current City codes.

Mayor Dominick stated no, they stated they would not do that.

Councilor Fox asked where the City code was that says they could just put paving down with no protection for the sides. He wanted to see it.

Mayor Dominick stated he couldn't answer that.

Councilor Fox stated it was because the City didn't have one.

Mayor Dominick stated that some of the information that had come out of those meetings and the information from the Public Works Committee, showed them that the code and what the Council wanted as a policy, was not clear. All the information received from the Public Works Committee, and learned from Councilor Fox's research, was that the Council needed to address the Code situation, and state what the policies were. But, because they had the issue in front of them now, that was being handled prior to any code changes, they had told those citizens they would be moving forward. The City had their signatures on Agreements, they had been told how it would be addressed to make the deal work for them; each one was willing to put \$15K forward, and that's where they were currently at. He believed the Council was at a point where they needed to honor what had been said before, and then seriously address the policies of the code.

Councilor Sullivan stated at the time the vote was taken on the issue, he had no idea about the risks associated with putting a road down without curb and gutter. What concerned him was that it hadn't been brought to his attention by the Public Works Committee. That indicates that these residents would also be liable for the \$28K extension to the pipe coming off of 16<sup>th</sup>.

Councilor Fox stated that was correct. It was a trunk line, and it specifically stated that.

Councilor Sullivan stated all these issues should have been brought to the Council through the Public Works Committee, or at least represented that the Public Works Committee had not weighed in on it. He agreed that they had all agreed to move forward with this, but the Council was not given the proper information. Without proper information, the Council put the City at a difficult position. As he had driven up some of the other areas that had to meet the changes, such as Crest Way and Horning Way, but had not driven out to Russ Hursh's property, but if the Council were to move forward with this action without those provisions, what would stop those folks from suing the City?

Councilor Fox stated the citizens on Horning Way and Crest Way had valid points. That was exactly the same circumstance.

Mr. Sullivan stated they never annexed in. That was one issue.

Councilor Fox stated they did pay their money for curbs, gutters, and sidewalks, which the City required.

Mr. Sullivan stated they received the benefit of it. The theory was that when you put those in, it equitably improved the value of the property. So, they wouldn't have any damages. Plus, they never annexed in. It might be a different story if they'd annexed in.

Councilor Fox stated the deal was in place, as soon as a few criteria were met. He didn't see the current issue worded that way. He didn't think they should approve an annexation without the criteria being met.

Councilor Sullivan stated if they put the curb in to protect the asphalt, and had storm drainage, he was okay with waiting on the sidewalk, just like they had done all over town. He would even allow them to incorporate under the same provisions that they didn't have to put the sidewalk in until they changed the footprint, which was also allowed under the code. The Council even gave them the opportunity to pay for the road repairs themselves, and they didn't even want to take that. He was at the point of that he was sorry if the Council had to go back on what they had talked about in previous meetings, but they were simply not given the proper information. For the Council to move forward when they hadn't had that information was not fair to the citizens of Ontario, who had followed the ordinances and rules.

Councilor Fox asked again who was pushing this issue. Following the meeting, the county health official said yes, there were above ground septic systems, and people with failure could put those in.

Chuck Mickelson, Public Works Director, stated (pointing to map) that property was a duplex. They had trouble out there, the one with orange fence in their front yard. Half of the duplex was vacant. The owner had died about two months ago, and her daughter resided in the Ti-Cities. That was why she had not been at the meeting last week. She had wanted to attend, so she could discuss the problem there. It was a real problem and it is in the City's urban growth area, and that was why the City got involved. The county and the neighbors approached the City, and asked for sewer.

Councilor Fox stated it was property #5 that was failing.

Councilor Verini stated, because it was a health issue, that could not only contaminate the rest of that area, but could contaminate into the city area. Because it was, important, the Council needed to move forward.

Councilor Crume stated when the issue was brought before the Council, they knew, for whatever reasons, curbs, gutters, and sidewalks were not being considered. They couldn't afford it, didn't want to do it, whatever, and the Council moved forward. When new information was presented, they had to listen to it and weigh it out. If they didn't, they weren't doing their job. But the other part was, the Council had agreed to move forward with things they way they were. He knew that they had all heard the horror stories of someone pulling a permit to do something, being told to do "x, y, z" , so a person did those things, came back and was told to do more. That didn't make anybody happy. He didn't know if that was something that had to be done when new information was presented, or to just let it go. That was something that everyone had to determine on their own. It was very uncomfortable to be in this position, but he was also glad it happened because it brought to light that these problems that needed to be address in the code. However, every time someone said something on this issue, everyone had a legitimate right to say it, and everything made sense, but they were still at an impasse on what to do. The problem was that the Public Works Director, who had been in this business for years, said the code said it didn't have to be enforced, and the City's attorney said the same thing. On the other side, the Public Works Committee's interpretation was that it better be collected. One thing that stood out to him, in listening to the arguments on the issue, PWC member Bernie Babcock said all the PWC was asking the Council to do was follow the code. Obviously, that wasn't going to be easy to do. Many of them agreed the code was not correct, and it had many holes and problems, creating the very conditions they were dealing with now. He didn't see any way to

force these people to do something they obviously didn't want to do. It was going to create a headache; they were going to be paying for asphalt to be new, and it had been there for 50 years, with maybe some patchwork. It was going to last a fair amount of time before it broke down. Obviously, the tax payers would have to take care of it. They couldn't fix everything today, but maybe most things tomorrow. My recommendation is to let the action occur as presented and recommended earlier to have done, and tomorrow line out what needed to be fixed in the code, get it to the City Attorney, or the Public Works Director, along with the wants and comments of the Council, so this didn't happen again. If the Council said no on this project, they were going to be the bad guys in the community. It was going to be the same way, if they did the action. If they fixed it tomorrow to make sure it didn't happen again, he could live with that. He didn't like it, it should have never happened, but he didn't want to go back on what had been agreed on already.

Councilor Sullivan asked if there was a pending situation similar to this on Hunter Lane. That maybe they were in the process of trying to establish rules and regulations as to how that was being handled?

Mr. Mickelson replied that people had brought that up to him, but he had not heard any specifics. A single family lot on Hunter Lane had a drain field failure. They had a DIA approved with him, and the annexation was proceeding. He had not heard anything about a development occurring.

Councilor Sullivan asked what Mr. Brown had been asked to do.

Mr. Mickelson stated the sewer was down at the bottom of the hill, and Mr. Brown extended a 4-inch service line up the middle of Hunter Lane, to his home, connected it, signed a DIA that read that when that street developed he would pay his share of all the improvements that went with it, along with the sewer and water line.

Councilor Sullivan stated given that, how could the Council justify not requiring the Nadine Drive folks to sign a DIA.

Mayor Dominick stated in OMC 8-12-1, it talked about the definitions of a Diverse Ownership in a development area, and on the Diverse Ownership Area, it read "*any general area of land considered for annexation which title was not less than 50%*". Then, going into OMC 8-12-2(b) that read "*diverse ownership area shall be considered for annexation regardless of the existing improvements*". So, where they also saying that they had to lay OMC 8-12-3 on top of that?

Councilor Fox stated absolutely!

Mr. Sullivan stated he didn't think there was any conflict between those two provisions. There was a question, raised by Councilor Fox at the Monday meeting, which had to do with the \$28K expense for the sewer line. That was a very close question as to whether or not the City could take on that cost without requiring that to be borne by the people in the Nadine Drive area. What was read was "*the entire cost of constructing and installing sanitary trunk sewer lines...serving the area to annex to the City*". The question was if one extension was going to serve anyone else except the people in the Nadine Drive area. In other words, that portion that was going to be extended up to the boundary of the LID, was that going to serve others, potentially?

Mr. Mickelson stated it would be the responsibility of the developer of the vacant ground (pointing to a map) when it developed, that would be providing service. As he had pointed out many times, the developer here (pointing) should have had to extend the water and wastewater to this boundary here (pointing) on his frontage, and enter into a latecomers agreement. So, when this person (pointing) developed over here (pointing), the first developer could recapture some of his money. To answer the question of if the proposed extension would serve that property, yes. This guy (pointing) was already hooked up off 16<sup>th</sup>.

Councilor Sullivan stated the guy on the left wasn't in the city.

Mr. Mickelson stated that was correct.

Councilor Sullivan stated that would go outside of the provision, then. It would not serve anybody except the people that were attempting to incorporate under the City. That it might serve somebody else was not tied to this.

Mayor Dominick stated that the rules read that if he wanted to hook up, he would have to annex in.

Councilor Sullivan stated they would deal with that at that time. They couldn't move on that provision based on the fact that someone outside the City might hook up later. That wasn't covered. The question was, would anybody else, anybody besides the people inside the boundary being discussed, would they benefit from it, and the answer currently was no.

Mr. Mickelson stated today, to provide service to those folks, the city had to build that piece of pipe. From a global perspective, this piece of property (pointing) was benefitting if the sewer was put in. Councilor Sullivan stated they weren't in the City, so that was not within the Council's jurisdiction.

Councilor Fox stated it didn't say globally. It read, "*The City Council of the City of Ontario SHALL ascertain the property that would directly benefit by such improvements*". It would be hard for anyone to argue that those houses in that subdivision weren't the direct benefactors.

Mr. Sullivan stated they weren't. If there was an LID created, and there were improvements in, and were construction improvements that would benefit properties that could not be in the LID because they were not in the city limits, those properties were still benefiting. You could not assess the cost of that benefit against the properties in the LID. The portion that should be paid by the portion that was outside the city limits that was not in the LID, could not be charged to those people, as a general rule.

Councilor Sullivan asked if that property would necessitate adding a sewer line for them to develop that property.

Mr. Mickelson stated what would probably happen, they would probably come off the end of 16<sup>th</sup>, put a cul-de-sac in or do a loop street, bring the sewer in this way, and while he hadn't designed the system, there was probably a sewer coming off 15<sup>th</sup>. Regardless, the developer was responsible for the frontage of the utility on his abutting streets. He would be responsible for the utilities on this (pointing) street.

Councilor Sullivan if these guys didn't come in, and he developed that property up there, you would require him to build a sewer along that street?

Mr. Mickelson stated he would start out that way.

Councilor Sullivan stated that was not what they were doing with the church. The city was letting them pull in half their property.

Mr. Mickelson stated if Councilor Sullivan would remember, they started out having the Derrick property in there also.

Councilor Sullivan stated they kept cutting corners for people.

Councilor Fox stated they were saying they were not willing to cut corners for the guy up there on the left, but they were willing to cut corners for the church.

Mayor Dominick reminded the Council that Mr. Mickelson had said they were paying the entire cost from the top to the bottom (pointing), and not splitting it with Derrick's. When the Derrick's developed, they would have to pay the entire cost of the bottom half. The church was paying for their full frontage by paying for that entire piece. They were being assessed properly. Instead of pulling the pipe all the way down and only charging them for half the work, it'll be pulled half way and charge them for all of it.

Councilor Sullivan stated he thought they were on a latecomer's agreement where they paid a share of what came down from all the way.

Mr. Mickelson stated when they developed, assuming they were annexed in, they would have to develop the street along here (pointing), and extend the utilities down to here (pointing), as new development.

Councilor Fox asked what type of street the Planner recommended.

Mr. Richey stated in order to provide the water and sewer, they needed to abandon the idea of the city maintaining that street, and simply put back in over the excavation for the utilities, road mix and oil. That wasn't recommended, but that could be done if money was an issue.

Councilor Fox stated that Mr. Richey was saying that the property owners would continue ownership of Nadine Drive, or that the City would take ownership?

Mr. Sullivan stated they had received information from the county that Nadine Drive was a county road.

Councilor Jones asked if the turnaround allowed enough room for fire apparatus.

Chief Higinbotham stated there was room, yes.

Councilor Fox did the code say about the distance from a fire hydrant?

Chief Higinbotham stated it was 500 foot between two.

Mr. Mickelson stated the distance between house #17 and the hydrant was over 250', so there would be new hydrants installed if the project moved forward.

Councilor Fox stated this whole thing was a train wreck. When did they go off the tracks?

Councilor Fugate replied that County Fox was exaggerating. He hadn't been around for the past year and half dealing with this.

Councilor Fox asked Mr. Lawrence for a recommendation on this issue.

Mr. Lawrence stated he believed they should move forward as promised, and do what they said they were going to do. And, if they believed the policy was wrong as written in the code, they needed to change it, through the Public Works Committee, and through the formal process for doing that. But the folks on Nadine Drive were told it would move forward without curbs and gutters, and he didn't think it was a disaster to do that.

Councilor Sullivan asked if the citizens should have to pay for the upkeep of that road, when it wasn't built to city specs?

Mr. Lawrence stated it was a public road now, so it was going to come into the city as just another public road.

Councilor Sullivan stated it was a county road, and the county paid for repair work on it. The neighborhood residents had already said they weren't interested in keeping the road maintained, and they weren't interested in putting in curbs, gutters, sidewalks, or storm drainage, so who was going to pay for that road if it was annexed?

Mr. Lawrence stated it would become a city road.

Councilor Sullivan stated the city would have to pay extra for the road, because the residents of Nadine Drive didn't want to pay for the curbs and gutters that would protect the road.

Mr. Lawrence stated he didn't know if it would cost extra, but the city would maintain it.

Mayor Dominick stated when Mr. Mickelson did the assessments on the properties, roughly \$15K per property, did not include digging the hole to connect to the sewer, his assessment was relatively high, so in the bid packet could include an addendum to the bidders for the concrete strip on the side of the road. It would still drain off onto the property, but it would have that concrete on the side. In the bidding climate, it might still come in under that \$15K.

Councilor Sullivan stated he was okay with that, if there was something to protect the street, and it satisfied the storm drain requirements. But, what happened when the city wanted to develop Alameda? How did they get those folks to put curb, gutter and sidewalk along Alameda? They would be part of the agreement which read that they didn't have to sign an agreement in the future, so when Alameda was developed, how would those folks be involved?

Mr. Sullivan stated they would not be signing anything that said they didn't have to put in curbs, gutters, or sidewalks at some point in the future. They were not going to get any commitment from the city that at some point they wouldn't have to do that. If, in the future, someone proposed an LID that included the entire area and people that were opposed to the idea of installation of curbs, gutters, and sidewalks, couldn't generate enough remonstrances to prevent that from happening, because nothing with the would prevent the city from requiring the installation of curbs, gutters, and sidewalks as part of a true LID. It was much harder for a majority of landowners to defeat an LID. They were looking at front footage there, and you had to have 2/3 of the people opposing the LID to defeat it.

Councilor Sullivan stated if Derrick developed his property, which would normally trigger that entire area being done – Alameda, clear back to Frost Way – what if the other people came in and said they didn't want it?

Mr. Sullivan stated it would be if there were enough remonstrance to defeat the LID.

Mr. Mickelson stated the property way to do Alameda in the future, was an LID for the entire thing, from 18<sup>th</sup> all the way up.

Councilor Crume recommended getting this project done.

Councilor Sullivan asked about the people who had done what they were told to do by staff, like the man on Hunter, who had signed the agreement.

Mr. Sullivan stated staff had made an interpretation of the City Code that was never brought before the Council, so the Council never had an opportunity to make a policy decision about that interpretation. The Council shouldn't be bound by staff's interpretation on a different piece of property. The recommendation was that they should avoid that in the future by making a clear statement of the policy in the ordinances so staff wouldn't be making those interpretations.

Councilor Sullivan confirmed that Mr. Sullivan was saying that the proposed annexation would satisfy all the requirements of OMC 8-12-3.

Mr. Sullivan replied yes, subject to that one issue – the \$28K. That phrase in the code did say entire cost.

Councilor Sullivan asked about the drainage issue. That was included in 8-12-3. There was nothing in the plans that addressed storm drainage. Wasn't that violating the ordinance?

Mr. Sullivan stated if storm drainage was being addressed as part of the annexation, then yes. The city couldn't foot the bill for storm drainage within the area to be annexed without imposing that cost onto the adjoining land owners.

Councilor Jones stated using Horning and Crest Way as an example, how that rolled off onto the property, what would that increase the bottom dollar amount to?

Mr. Mickelson stated if they did the entire thing, all the way up Alameda, it was estimated up to \$500K.

Councilor Jones asked about Nadine Drive only. Alameda would be developed later. How could they fix Nadine Drive? In his opinion, the city was sticking its neck out. It was their money, their liability, and their responsibility to make sure the figure was right. Yes, there was going to be an LID, and yes there would be a payment over 15 years on that, but his concern was taking the \$250K, add another \$150K to that, so \$400K, the people that were at the meeting last Monday, had no desire to even negotiate with the city, or to even work things out, so it was like the city was taking the risk of borrowing the money, the liability went on the city's books, and there were only two houses that had failed systems, they had to think about the development of Alameda at a future time, so he couldn't support this project. It didn't make any sense. With the Horning Way and Crest Way situation, that made sense, in an established neighborhood to fix the streets. The water ran off, and it looked good. To him, the situation on Nadine was that the city was willing to borrow the money, the city was willing to fund it, the city was willing to install the water and sewer lines, but there were requirements for the Nadine Drive residents. If the folks on Nadine Drive didn't want to do it, then put the project on the shelf. Wait until four houses failed.

Mayor Dominick asked what would happen to Lot #10 if the project did not move forward. Could the city be sued for not addressing an emergency situation?

Mr. Sullivan stated that would fall on the county.

Councilor Fox stated he still didn't understand why no one addressed that there were other septic systems that did not inject the water back into the ground. They were more expensive, but they were an approved system.

Councilor Sullivan referred back to 8-12-3, where it required storm sewer be put in. It wasn't an option.

Mr. Sullivan stated it also addressed doing an assessment for those storm sewers, and levying that assessment against the properties, which was impossible if the storm sewer wasn't going to be installed at the time.

Councilor Sullivan stated there wasn't any provision that would allow the delay.

Mayor Dominick asked if there were any other properties, such as the Brown property, that when he put in a sewer line, did he have to have put in a storm drain?

Councilor Sullivan stated Brown did an agreement to improve the road, including curb and gutter, when the road went in, a deferred agreement. The residents of Nadine Drive were asked to sign a similar agreement, and the said no. To him, that was not working with the city.

Councilor Fugate asked about some issue between the city and the residents of Nadine Drive, back in the 90's, which resulted in mistrust of the Council. While she did not know any details, there was that history.

Councilor Sullivan stated he thought that was when the fields were being put in, they tried to tie in everyone for the project, and the people on the other side of the road said no. He wanted to help the people on Nadine Drive, but they needed to come a little more the way of the Council. The Council was supposed to protect all the citizens of Ontario, so the city wasn't paying for maintenance on a street that the Council allowed to be put in on a substandard level. They were already paying \$28K, and when he read OMC 8-12-3, he didn't believe that should happen. The Council had put together a good proposal for Nadine Drive, but they needed to understand that if

they wanted it to happen, they either had to step up and take care of Nadine Drive, or put something down that would protect the road.

Councilor Fox asked what the Planning Commission recommended.

Mr. Richey stated they recommended that the annexation proceed, and that the zone by single family residential.

Councilor Sullivan asked why they would change the zone to something that was not correct based on the homes already there.

Mr. Richey stated they tried to recommend a zone that was friendly to the neighboring areas, and it was legal to have a non-conforming area, such as a duplex in a single family zone.

Mayor Dominick stated the residents of Nadine Drive made it clear they weren't willing to do a Deferred Improvement Agreement. What if they were all formally sent a letter outlining that the process would move forward with that? Would that satisfy all the code problems?

Councilor Sullivan stated he didn't see any appetite for the Agreement.

Councilor Fox asked Mr. Mickelson when this process first came in, did he say they should do a street or not.

Mr. Mickelson said he didn't say they should do a street. He said this project would be recommended with no curb, gutter, or sidewalk. He did not view this as new development, but the Council does.

Councilor Fox stated the fundamental thing was to define new development.

Mr. Sullivan stated there needed to be something that flat out said that annexation required bringing in streets, curbs, gutters, and sidewalks. That needed to be stated clearly in the code, and it wasn't. The previous staff, when Crest Way was brought in, staff interpreted the new development language the same way the Council was. But there was nothing clear in that. It was open to interpretation, leading to disagreements, meaning it needed to be clarified. It shouldn't be a staff decision. There should be questions about it.

Mayor Dominick stated there was no clear policy that told staff the definition of new development.

Councilor Jones asked if Mr. Mickelson had arrived at a number for the question he asked 30 minute ago.

Mr. Mickelson stated the city's estimate, with curbs, gutters, and sidewalks on Alameda and Nadine Drive, was \$445K. As contrasted with the number before on the piece before was \$193K or around there. This is the share of the city's cost (pointing) for that northern portion running from 16th to the boundary; this portion (pointing) was that which was in the Nadine Drive, within the residences; and the last one was the church's assessment.

Councilor Sullivan stated the Alameda piece was irrelevant. What was the Nadine portion?

Mr. Mickelson stated he had not calculated that. The \$445K was assuming curbs, gutters, and sidewalks on Alameda and the curb and sidewalk on Nadine Drive. He could guess it would be around \$350K. Square footage cost for curb was about \$20 per lineal foot, and the sidewalk was about \$5 per square foot.

Mayor Dominick asked if the \$445K included the storm drainage.

Mr. Mickelson stated it did. It included about 1200 feet of storm drain because they had to get it across some property.

Councilor Jones suggested two options for voting on. One would be what had presented; the other would be the cost of doing exactly what had been done on Crest Way. Let the water run onto the property, with an edge on the property with a street that fit within the city's standards. Vote on them, and present it to the residents.

Mayor Dominick agreed with Mr. Lawrence and Councilor Crume that they needed to move forward on the one presented to the public. So many times they spoke to the public, but then went a different direction. With all respect to Councilor Fox and Councilor Sullivan, about the code, each person in the room would have a different interpretation of the code. To move forward, the secondary piece was for the Council to define their policy, addressing what they expected from this point forward.

Councilor Fox stated he did not want to cost the current city residents money in the future. Some of those residents were only 12 years old, and they would be paying for it for the rest of their lives.

Joe Dominick moved, seconded by Ron Verini, to direct staff to reset the public hearing for annexation and rezone and continue on with the sewer and water project and add a concrete ribbon on Nadine Drive with a width of 4'6" if it can be accomplished without increasing the assessments to the LID property owners beyond the amounts currently budgeted. There would not be a concrete ribbon on Alameda. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/1/0.

**ADJOURN**

Meeting adjourned back into the regular study session.

ATTEST:

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Joe Dominick, Mayor

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Tori Barnett, MMC, City Recorder

## PROCLAMATION

**WHEREAS,** Citizens of Ontario recognize the vital role that swimming and aquatic-related activities relate to good physical and mental health and enhance the quality of life for all people; and

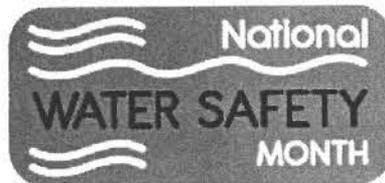
**WHEREAS,** Citizens of Ontario understand the essential role that education regarding the topic of Water Safety plays in preventing drowning and recreational water-related injuries; and

**WHEREAS,** Ontario is aware of the contributions made by the recreational water industry, as represented by the Association of Pool & Spa Professionals, the National Recreation & Park Association and the World Waterpark Association in developing safe swimming facilities, aquatic programs, home pools and spas, and related activities providing healthy places to recreate, learn and grow, build self-esteem, confidence and sense of self-worth which contributes to the quality of life in our community; and

**WHEREAS,** Citizens of Ontario recognize the ongoing efforts and commitments to educate the public on pool and spa safety issues and initiatives by the pool, spa, waterpark, recreation and parks industries; and

**WHEREAS,** Citizens of Ontario understand the vital importance of communicating Water Safety rules and programs to families and individuals of all ages, whether owners of private pools, users of public swimming facilities, or visitors to waterparks.

**NOW, THEREFORE,** I, Joe Dominick, Mayor of the City of Ontario, Oregon, do hereby proclaim the month of May, 2011 as



Dated this 2<sup>nd</sup> day of May 2011.

\_\_\_\_\_  
Joe Dominick, Mayor

## OLD BUSINESS – AGENDA REPORT

May 2, 2011

TO: Mayor and City Council

FROM: Mark Alexander, Interim Police Chief

THROUGH: Henry Lawrence, City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – NEW OUTLET  
Vegas Country (Full On-Premises Sales)**

DATE: April 21, 2011

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### **SUMMARY:**

Vegas Country LLC, owner of Vegas Country has completed the “New Outlet” application process for “Full On-Premises Sales” liquor license privileges through the Oregon Liquor Control Commission for their new business located at 117 SE 2<sup>nd</sup> Street, Ontario, Oregon.

All necessary paperwork has been approved through OLCC office and is awaiting approval through the Ontario City Council.

### **BACKGROUND:**

Criminal Record process was completed on Vegas Country LLC owner/manager Stefan Schachtell. All records returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met. Stefan Schachtell has purchased the business Saddles & Spurs. He is opening the business under the new name – Vegas Country.

This report was before the Council on Monday, April 18<sup>th</sup> when concerns arose about associated activities that Vegas Country might provide, specifically adult entertainment. On Tuesday, April 19<sup>th</sup>, Interim Police Chief Alexander made a phone call to Stefan Schachtell. During that phone call, Stefan Schachtell advised that he has absolutely no intention of bringing in adult entertainment and has no businesses associated with such. Stefan Schachtell’s records still remain clear.

### **RECOMMENDATION:**

Staff has completed a review of this application information in accordance with the City of Ontario’s ordinance regulating this license, and recommends approval

### **RECOMMENDED MOTION:**

I move that the City Council approve the application for New Outlet / Full On-Premises Sales liquor licenses for Vegas Country.

## OLD BUSINESS - AGENDA REPORT

May 2, 2011

TO: Mayor and City Council

FROM: Bob Walker, Deputy Public Works Director

THROUGH: Henry Lawrence, City Manager

**SUBJECT: APPROVAL OF ENGINEERING DESIGN AGREEMENT WITH ANDERSON PERRY & ASSOCIATES FOR SE 2<sup>ND</sup> STREET**

DATE: April 25, 2011

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### **SUMMARY:**

Attached is the following document:

- Anderson Perry Agreement for the design of SE 2<sup>nd</sup> Street from East Idaho Avenue to SE 18<sup>th</sup> Avenue.

This agreement with Anderson Perry and Associates of La Grande, Oregon provides for the preparation of plans and estimates for the rehabilitation/reconstruction of SE 2<sup>nd</sup> Street from East Idaho Avenue to SE 18<sup>th</sup> Avenue. This roadway is the number one priority within the City for reconstruction and completion of these plans will enable the City to be in a position to take advantage of potential state or federal funding.

### **PREVIOUS COUNCIL ACTION:**

- Budget Approved for design – June 2009
- Council tabled the contract award for this project at the March 17<sup>th</sup> Council Work Shop until the Rural Road Assessment District No.3 was contacted to see if they would participate in design costs.

### **BACKGROUND:**

This project is to provide the engineering design for rebuilding SE 2nd Street from East Idaho Avenue to SE 18th Avenue to a standard that will allow the street section to holdup to the truck traffic loading that it is currently supporting.

At present, SE 2nd Street is experiencing deterioration of the structural integrity of the street section due to inadequate road base material and pavement depth that is needed to support the loading it is receiving. The roadway was built many years ago with inadequate sub-grade, sub-base and pavement for the current truck weight limits. By rebuilding this section of street, the north /south freight route would become more user accessible and user friendly and would be

built to withstand the volume of traffic that is traveling on it for local business and access to the south bypass. The design will provide for upgrades to the existing utilities (sewer, storm and water), replacement of curbs, gutters and sidewalks, and the installation of an upgraded road section along SE 2nd Street from Idaho Avenue to SE 14<sup>th</sup> Avenue. In addition, it will also provide for centerline elevations and storm drainage design from SE 14<sup>th</sup> Avenue to SE 18<sup>th</sup> Avenue.

Public Works staff received formal responses to the RFP for this project from six firms on December 22, 2010. The formal responses were from Anderson Perry Associates of La Grande, Oregon, CH2M-Hill of Boise, Idaho, Engineering & Waste Solutions of Boise, Idaho, Ferguson Surveying & Engineering, of Mt. Vernon, Oregon, Holladay Engineering of Payette, Idaho, and Keller Associates of Meridian, Idaho. Chuck Mickelson, Bob Walker, Bret Turner and Norm Crume each reviewed the proposals. Each of the firms presented an excellent proposal and it was obvious that each of them could be successful in preparing the plans and specifications. However, we ranked each of the firms based on schedule, resumes (qualifications of the personnel to be assigned to the project), references and similar projects completed, and locations where the work will be completed. The committee unanimously selected Anderson Perry as the highest ranked firm based on their proposal.

The project will be designed to Federal Highway Administration and ODOT standards. Anderson Perry and Associates has significant experience is preparing plans and specifications to these standards and performed very effectively in the Phase 1 of North Oregon Street project. CK3 will conduct the surveying for the project.

The City Council requested that the Public Works staff contact Rural Road Assessment District No. 3 to request their participation in the design costs from SE 14<sup>th</sup> Avenue to SE 18<sup>th</sup> Avenue which is the portion of SE 2<sup>nd</sup> Street which is in the county. The cost for a complete design of this section of SE 2<sup>nd</sup> Street is \$22,500. As an alternative, the consultant can provide centerline elevations and storm drainage design from SE 14<sup>th</sup> Avenue to SE 18<sup>th</sup> Avenue for \$4,500. Bob Walker and Councilor Norm Crume met with the Directors of Rural Road Assessment District No. 3 on April 19<sup>th</sup> and they agreed to fund the \$4,500 for the reduced design on this portion of SE 2<sup>nd</sup> Street. Therefore, the overall design project has been reduced to \$125,000 with \$4,500 to be provided by the Road District.

This motion is for the approval of the agreement with Anderson Perry in the lump sum amount of \$125,000.

**ALTERNATIVE:**

Council could choose to not approve the Agreement.

**FINANCIAL IMPLICATIONS:**

This project was included in the 2009 – 2011 budget as STR-7 in the amount of \$175,000. When, and if, this project is approved for construction funding there will need to be an amendment to this agreement for completion of the specifications, preparation of an environmental study if needed and other additional services during construction to include inspection.

**RECOMMENDATION:**

Staff recommends approval of the Agreement.

**PROPOSED MOTION:**

I move the City Council approve the Agreement between the City of Ontario and Anderson Perry and Associates, Incorporated of La Grande, Oregon, for the professional engineering services for the design of the reconstruction of SE 2<sup>nd</sup> Street from Idaho Avenue to SE 18<sup>th</sup> Avenue, in the amount of \$125,000, and authorize the City Manager to sign the agreement on behalf of the City of Ontario.

## AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Ontario, Oregon, hereinafter referred to as the OWNER, and Anderson-Perry & Associates, Incorporated, hereinafter referred to as the ENGINEER:

The OWNER intends to reconstruct S.E. 2nd Street from E. Idaho Avenue to S.E. 14th Avenue. The project generally consists of full reconstruction of the existing roadway including asphalt pavement, curb and gutter, and sidewalks; installation of new curb and gutter and sidewalks in some areas where not currently existing; and realigning the intersection of S.E. 2nd Street and S.E. 9th Avenue. Utility work includes replacing existing water, sewer, and storm drain facilities as needed and design of storm drain facilities for the south portion of the project to connect to existing storm facilities at S.E. 9th. Storm drain design will include analysis of the Malheur County portion of S.E. 2nd Street from S.E. 14th Avenue to S.E. 18th Avenue to ensure compatibility with future improvements to the County portion of S.E. 2nd Street. The limits of the project are shown on maps provided by the OWNER, shown on Exhibit "A."

The ENGINEER agrees to provide professional Engineering Services for this project.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

### SECTION A - ENGINEERING SERVICES

#### DESIGN ENGINEERING

Upon approval by the OWNER for the ENGINEER to proceed, the ENGINEER shall provide design of the project utilizing the Oregon Department of Transportation (ODOT) Standard Drawings, Standard Specifications, and approved ODOT drawing formats. The design services shall include:

##### 1. Pre-Design Coordination Meeting

- A pre-design coordination meeting will be held with the OWNER's appropriate staff and other appropriate entities to review the project and discuss critical design issues, objectives, needs, etc. This meeting will also include an on-site walkthrough to address existing site conditions that may affect the design.
- Deliverable – meeting minutes.

## 2. Design Survey

- A field survey was previously conducted by ODOT and will be provided to the ENGINEER. The existing survey data will be ground verified and supplemented as required to identify roadway centerline, ground elevations, existing utilities, and basic right-of-way positions as required to perform the roadway design. It is anticipated that minimal surveying will be required to check and supplement the existing ODOT survey information.
- Deliverable – copy of survey files.

## 3. Geotechnical Evaluation

- An on-site geotechnical evaluation will be conducted to evaluate existing soil, pavement, and base conditions of the roadway and to obtain sufficient information to analyze pavement section alternatives for the project.
- Deliverable – copy of final Geotechnical Report.

## 4. Preliminary Plans

- Preliminary plans will be prepared for the project that will include plan profile sheets, identification of potential utility conflicts, and water sewer and storm sewer utility improvements. Storm drainage analysis of S.E. 2nd Street from S.E. 14th Avenue to S.E. 18th Avenue to ensure compatibility with future improvements to this section will be performed. A preliminary construction cost estimate will be prepared. Preliminary plans will be provided to the OWNER for review and comment.
- Deliverable – three sets of preliminary plans, preliminary construction cost estimate, and a list of potential utility conflicts.

## 5. Preliminary Plan Review Meeting

- A preliminary plan review meeting will be held with the OWNER to obtain comments and suggestions based on the OWNER's review of the preliminary plans.
- Deliverable – preliminary plan review meeting minutes.

## 6. Advance Plans and Outline for Future Specifications

- Incorporating comments received on the preliminary plans, advance plans will be prepared for the project, utility conflict relocations will be finalized, and an updated construction cost estimate will be prepared. Special Provisions will be prepared based on the advance plan design. Copies of the advance plans and an

outline for future specifications will be provided to the OWNER for review and comment.

- Deliverable – three sets of advance plans and an updated construction cost estimate.

#### 7. Advance Plan Review Meeting with the OWNER

- An advance plan review meeting will be held with the OWNER to obtain comments and suggestions on the advance plan set provided to the OWNER.
- Deliverable – advance plan review meeting minutes

#### 8. Final Plans and Estimate

- The comments received on the advance plans will be incorporated into the final plans and estimate. The project Special Provisions will be updated to a 90 percent complete level incorporating comments received at the advance plan review meeting.
- Deliverable – three sets of final plans and construction cost estimate, 90 percent Special Provisions, and a list of tasks required to prepare the project for bidding. These future work tasks will not be included at this stage of the project. They will need to be completed prior to the design being ready for advertising and bidding. These items are anticipated to include the following:
  - Technical Specifications
  - Environmental Clearance
  - 100 Percent Special Provisions
  - Contract Documents

### CONSTRUCTION ENGINEERING

The ENGINEER shall provide Construction Engineering services for this project when the project is funded. The scope of Construction Engineering services shall be negotiated between the OWNER and ENGINEER and an amendment to this Agreement shall be prepared defining the scope and fees for these services.

### OTHER ENGINEERING SERVICES

In addition to the foregoing being performed, the following services may be provided by the ENGINEER when requested by the OWNER in writing for each phase of the project, as required.

1. Complete the Special Provisions to 100 percent and prepare the project for bidding. Bidding documents may be provided to bid the project through ODOT or directly by the OWNER.

2. Complete the roadway and utility design for the S.E. 14th Avenue to S.E. 18th Avenue section. Such work may include geotechnical investigation, roadway design, utility design, and intersection design for the intersection of S.E. 2nd Street and S.E. 18th Avenue.
3. Provide engineering services as may be required to assist the OWNER in obtaining construction funding for the Project. Work may include assistance in preparing technical portions of grant and loan applications, assistance in public meetings, ongoing coordination and agreements with funding agencies, updating cost estimates, and other funding services that may be required.
4. Perform environmental review services if such services are needed.
5. Assist the OWNER with obtaining permits, etc., as necessary for the work. The OWNER shall pay all fees associated with such permits and applications, if such fees are required.
6. Assist the OWNER with property surveys, property plats, legal descriptions, and other items necessary for negotiating for land rights and easements if required for the project. Such work may include appearances before courts and boards on these matters.
7. Redesign work when requested to do so by the OWNER. Such work shall include changes in the design, after the conceptual design stage, that are beyond the control of the ENGINEER after such plans have been accepted by the OWNER.
8. Perform special tests, specialized geological, hydraulic, or other studies, or tests other than as previously outlined herein that may be required on the project.
9. Prepare to serve or serve as a consultant or witness for the OWNER in any litigation, arbitration, or other dispute resolution process relating to the project.

#### **SECTION B - RESPONSIBILITIES OF OWNER**

1. The OWNER shall provide the ENGINEER with all criteria and full information as to the OWNER's requirements for the project, including design objectives and constraints, performance requirements, and any budgetary limitations; furnish copies of all design and construction standards which the OWNER will require to be included in the Drawings and Specifications; and furnish copies of the OWNER's standard forms, conditions, and related documents for the ENGINEER to include in the Bidding Documents, when applicable.
2. The OWNER shall furnish to the ENGINEER all available information pertinent to the project including reports and data relative to previous designs, all existing maps, field survey data, lines of streets and boundaries or rights-of-way, and other surveys presently available. The OWNER shall also provide all known information

concerning the existing underground utilities, etc., that could impact the proposed improvements.

3. The OWNER shall provide for full, safe, and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
4. The OWNER shall give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any development that affects the scope or time of performance of the ENGINEER's services, or any defect or nonconformance in the ENGINEER's services or in the work of any Contractor.
5. The OWNER shall pay for any agency plan review fees, advertisement for bids, building or other permits, licenses, etc., as may be required by local, state, or federal authorities. The OWNER shall also secure the necessary land easements, rights-of-way, and construction permits. The ENGINEER can assist the OWNER with these tasks, if requested.
6. The OWNER shall examine all alternate solutions, plan reviews, Drawings, Specifications, and other documents presented by the ENGINEER (including obtaining the advice of an attorney, insurance counselor, and other consultants as the OWNER deems appropriate with respect to such examination) and render timely decisions pertaining thereto.
7. The OWNER shall assist the geotechnical subconsultant with traffic control and excavation for and repair of test pit holes along the roadway alignment.

#### **SECTION C - COMPENSATION FOR ENGINEERING SERVICES**

1. The OWNER shall compensate the ENGINEER for "Design Engineering" a lump sum amount of \$125,000. If, during the course of the work, the scope of the work should substantially change, the OWNER and the ENGINEER shall amend this section of the contract as necessary.
2. The OWNER shall compensate the ENGINEER for "Construction Engineering" by amendment to this Agreement.
3. The OWNER shall compensate the ENGINEER for "Other Engineering Services" requested by the OWNER on a time and materials basis, plus direct reimbursable expenses. See attached Hourly Fee Schedule, Exhibit "B."
4. The OWNER agrees to pay the ENGINEER for the services provided in accordance with this Agreement on a monthly basis for the services actually provided. The ENGINEER will render to the OWNER an itemized bill at the end of each month, for compensation for such services performed hereunder during such month, the same to be due and payable by the OWNER to the ENGINEER.

5. Past due amounts owed shall include a service fee charge of 12 percent annual interest beginning the 30th day after the date of billing. The ENGINEER may suspend work under this Agreement until the account is paid in full. If collection is made by suit or otherwise, and if the ENGINEER prevails, the OWNER agrees to pay interest until the account and all collection costs, including a reasonable attorney's fee, are paid.

#### SECTION D - GENERAL PROVISIONS

1. Approval of this Agreement by the OWNER and the ENGINEER will serve as written authorization for the ENGINEER to proceed with the services called for in the Agreement.
2. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.
3. In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
4. The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the project and makes no warranty expressed or implied. The ENGINEER shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, Drawings, Specifications, reports, and other services furnished by the ENGINEER under this Agreement. The ENGINEER shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, Drawings, Specifications, reports, and other services.
5. Any opinion of the probable construction cost or probable total project cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the OWNER.
6. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.
7. This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER for this project and supersedes all prior negotiation, representations, or agreements, either written or oral. This Agreement may be

amended only by written instrument signed by both the OWNER and the ENGINEER.

8. Original documents, survey notes, tracings, and the like, except those furnished to the ENGINEER by the OWNER, are and shall remain the property of the ENGINEER. Documents, including Drawings and Specifications which contain an ENGINEER's stamp prepared under this Agreement, are instruments of service of the ENGINEER. Reuse of any of the Drawings and Specifications that may be developed during the project by the OWNER on extensions of this project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk. The OWNER agrees to defend, indemnify, and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER. The ENGINEER shall make available to the OWNER, when requested, all documents, Drawings, pictures, etc., that are prepared as part of the ENGINEER's services under this Agreement. There will be no cost for these documents except for labor, reproduction, and copying costs.
9. There are no third party beneficiaries of this Agreement between the OWNER and the ENGINEER, and no third party shall be entitled to rely upon any work performed or reports prepared by the ENGINEER hereunder.
10. Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.
11. This Agreement may be terminated by either party in the event of default under this contract by the other party. Either party may do so by giving written notice to the other of its intent to terminate this Agreement for substantial failure to perform according to this Agreement, which written notice shall specify the failure and demand correction or remedy thereof in 10 days. In the event of failure to remedy or correct in 10 days, this Agreement may be terminated in writing at the option of the party giving the prior notice. If this Agreement is terminated, the ENGINEER shall be paid for services based on actual man hours worked to the termination notice date, including reimbursable expenses due, less any amount in dispute.
12. Unless otherwise specified within this Agreement, this Agreement shall be governed by the laws of the State of Oregon.
13. The ENGINEER shall acquire and maintain statutory Worker's Compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage.
14. The OWNER will require that any Contractor or subcontractor performing work in connection with Drawings and Specifications produced under this Agreement shall hold harmless, indemnify, and defend the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses, or damage arising out of or alleged to arise from the Contractor's (or subcontractor's) negligence in the performance of the work described

in the construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants, or their officers, agents, and employees.

15. The OWNER and the ENGINEER acknowledge that in a project of this magnitude and complexity, changes may be required as the result of possible omissions, ambiguities, or inconsistencies in the Drawings and Specifications or changes that are identified during construction which will result in an overall better end project for the OWNER, or changes which are necessary due to unusual field conditions or construction circumstances beyond the control of the OWNER, ENGINEER, or Contractor. As a consequence of the above, the OWNER realizes that the Construction Contractor may be entitled to additional payment. The OWNER agrees to set up a reserve in the project budget to be used as required to make additional payments to the Construction Contractor with respect to such changes. When additional payments are due to the Contractor, they will be made in accordance with an approved Change Order.
16. The ENGINEER shall comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex, or national origin. The ENGINEER shall comply with applicable federal, state, and local laws, rules, and regulations concerning Equal Employment Opportunity.
17. To the fullest extent permitted by law, the OWNER and ENGINEER each agree to indemnify and hold the other harmless, and their respective officers, employees, agents, and representatives from and against liability for all claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, and expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of the OWNER and ENGINEER, they shall be borne by each party in proportion to its negligence.

This Agreement is executed in duplicate the day and year written at the beginning of this Agreement.

OWNER:

ENGINEER:

City of Ontario, Oregon

Anderson Perry & Associates, Inc.

By \_\_\_\_\_

By \_\_\_\_\_

Type Name \_\_\_\_\_

Type Name Brad D. Baird, P.E.

Title \_\_\_\_\_

Title President

(SEAL)

(SEAL)

ATTEST

ATTEST

By \_\_\_\_\_

By \_\_\_\_\_

Type Name \_\_\_\_\_

Type Name Brett Moore, P.E.

Title \_\_\_\_\_

Title Secretary-Treasurer

**AGENDA REPORT**  
May 2, 2011

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: MCOA Bus Shelter Agreement**

DATE: April 25, 2011

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**SUMMARY:**

Attached is the following document:

- Malheur Council on Aging and Community Services Franchise and License Agreement, with Exhibits A and B.

**DISCUSSION:**

Malheur Council on Aging and Community Services (MCOA) is an Oregon public benefit corporation with 501(c)3 tax exempt status. It has received grant funds from Malheur County to purchase and install benches and bus shelters for use by customers of the Snake River Transit bus system. The proposal is to install those benches and shelters at the locations within the City specified in Exhibit "A" to the attached Agreement. The benches and shelters will be designed in accordance with Exhibit "B" to the attached Agreement.

The specified locations are within the City rights-of-way, on public sidewalks. The proposal is to authorize MCOA to install and maintain the benches and shelters without the payment of a fee to the City, because the installation of the benches and shelters will be a benefit to the city residents who use the bus service.

MCOA has requested that it be allowed to put advertising on the benches and bus shelters. This is allowed under the City Code if done with the City's permission, through a franchise agreement. The content of the advertising will be within MCOA's discretion. The Oregon courts have determined that cities may not constitutionally regulate or restrict the content of commercial advertising, so the City will not be able to control the advertisements that are placed on the benches or shelters. However, MCOA intends to adopt a written policy informing advertisers of the kinds of advertising MCOA will accept, which MCOA will provide to the Council at the Council's request.

The attached Agreement requires MCOA to keep the benches and shelters in good condition, free from graffiti. The Agreement also requires MCOA to indemnify the City from any claims arising from the use of the benches and shelters as well as the advertising that is done. The City may terminate the Agreement for cause within 30 days, or within 180 days without cause.

**RECOMMENDATION:**

City staff recommends that the City Council approve the MCOA Franchise and License Agreement.

**PROPOSED MOTION:**

I move that the City Council approve the Malheur Council on Aging and Community Services Franchise and License Agreement.

## FRANCHISE AND LICENSE AGREEMENT

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Ontario, Oregon (“the City”) and Malheur Council On Aging and Community Services, an Oregon public benefit corporation (“MCOA”).

### RECITALS:

- A. MCOA desires to install benches and bus shelters on City sidewalks within the City rights-of-way for the use of customers of the Snake River Transit public transportation system.
- B. MCOA also desires to install commercial advertising signs on said benches and shelters.
- C. City Code Section 8-8-19 authorizes the City to grant license agreements to entities desiring to occupy City rights of way.
- D. City Code Section 10A-57-188 designates signs painted on the surface of bus shelters or street benches as accessory uses in any zone within the City so long as it is done pursuant to a franchise agreement with the City.
- E. The City is willing to grant MCOA a franchise and license for the installation of said benches and shelters with commercial advertising signs on the terms and conditions of this Agreement.

### AGREEMENT:

1. The City grants to MCOA a franchise and revocable license to install and maintain benches and bus shelters on City sidewalks within the City rights-of-way at the specific locations identified in Exhibit “A” attached hereto. The benches and shelters shall conform to the designs set forth in Exhibit “B” attached hereto.
2. The installation and placement of MCOA benches and bus shelters at the locations in Exhibit “A” shall be subject to approval of the Public Works Director or his designee, to minimize unnecessary interference with pedestrian use of the City sidewalks and insure conformity with the City Code, including the vision clearance requirements of Section 10A-57-15.
3. MCOA will be solely responsible for the maintenance and upkeep of all benches and bus shelters in the City rights-of-way under this Agreement and shall keep said benches and shelters in good condition and repair and free from graffiti. MCOA is designated as the owner of said benches and shelters under the provisions of Title 7, Chapter 4 of the City Code, requiring owners of property to promptly remove graffiti.

4. At its sole discretion, MCOA may solicit advertising to be placed on MCOA's benches and bus shelters within the City rights-of-way. MCOA shall hold the City harmless from any claims arising from its agreements with advertisers.

5. MCOA shall be solely responsible for all decisions concerning the content of all information to be displayed on signs on its benches and bus shelters. MCOA shall hold the City harmless from any claims arising from such decisions.

6. MCOA will indemnify and hold City harmless from any claims of injury to persons or property relating to the installation, use and maintenance of MCOA's benches and bus shelters.

7. If MCOA is in default of any provisions of this Agreement, MCOA shall correct the default to the City's satisfaction within thirty days of receiving written notice of the default from the City. If MCOA fails to correct the default, City may terminate this agreement without further notice to MCOA.

8. City may revoke MCOA's license to occupy the City rights-of-way granted in this Agreement without cause upon delivering to MCOA not less than 180 days written notice of revocation. This Agreement shall terminate on the revocation date.

9. Upon termination of this Agreement for any reason, MCOA shall promptly remove all benches and bus shelters installed within City rights-of-way and restore the rights-of-way to the same condition as existing prior to their installation.

IN WITNESS WHEREOF, this Agreement is effective on the date first above written.

**CITY OF ONTARIO:**

By:

\_\_\_\_\_  
Henry Lawrence, City Manager

**MALHEUR COUNCIL ON AGING AND  
COMMUNITY SERVICES**

By:

\_\_\_\_\_  
Loni Debban, Executive Director

Attest:

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

## Stop # Bus Stop Location

## Stop Times

## Interests Nearby

Stop #	Bus Stop Location	On the hour	Interests Nearby
2	SE 1st Ave. & SE East Ln. (west side)	+ :03	Walmart Oregon Department of Human Services, Da Vita Four Rivers Dialysis Center
3	SE 5th Ave. (north side) & SE 6th St.	+ :07	
4	SW 11th Ave. & SW 4th St. (east side)	+ :11	
5	SW 7th Ave. & College Blvd. (parking lot of TVCC)	+ :19	Treasure Valley Community College
6	SW 4th Ave. (north side) & SW 10th St.	+ :23	Holy Rosary Hospital
7	SW 6th Ave. & SW 30th St. (parking lot of Social Security AdmLn.)	+ :29	Social Security Administration
8	SW 3rd Ave. & NW 9th St. (east side)	+ :34	Ontario Pharmacy
9	NW 8th Ave. (south side) & NW 9th St.	+ :38	Malheur County Fairgrounds
10	NW 8th Ave. (south side) & NW 2nd St.	+ :41	
11	NE 6th Ave. (south side) & NE 2nd St.	+ :49	Ore-Ida
12	NE 2nd Ave. & NE East Ln. (southeast corner of Walmart building)		Walmart
13	NE 3rd Ave. & NE East Ln. (southeast corner of Walmart building)		Walmart
14	Hwy 30 (south side) & Holy Rosary Dominican Health Services	+ :03	Holy Rosary Dominican Health Services
15	NW 16th St. (south side) & Woodgrain Millwork	+ :06	Woodgrain Millwork
16	NE 12th St. & N Pennsylvania Ave. (west side)	+ :08	
17	SW 2nd St. (north side) & S Whitley Dr.	+ :13	Fruitland City Hall
18	N Whitley & N Whitley Dr. (east side)	+ :15	
19	Hwy 95 at River Ridge Trailer Park. (east side)	+ :17	
17A	Hwy 95 at Shady River Trailer Park. (east side)	+ :18	
20	4th Ave S & S Main St.	+ :21	Albertsons, Kiwanis Park
21	2nd Ave. N & S Main St. (east side)	+ :22	
22	3rd Ave. N (north side) & N 12th St.	+ :26	Payette County Courthouse
23	Center Ave. (north side) & N 9th St.	+ :28	Payette Post Office
24	7th Ave. N & N 6th St. (southeast corner)	+ :30	
25	7th Ave. N & N 6th St. (northwest corner)	+ :35	
26	1st Ave. N & N 6th St. (west side)	+ :37	
27	6th Ave. S & S 12th St. (west side)	+ :41	Payette
28	NW 16th St. (south side) & Woodgrain Millwork	+ :47	Fruitland Woodgrain Millwork

**EXHIBIT "A"**

\*The bus will pass through Fruitland twice before returning to Ontario. In order to reduce time spent on the bus, riders wanting to go from Fruitland to Ontario should board on the 2nd leg of the Fruitland/Payette loop.

Google maps

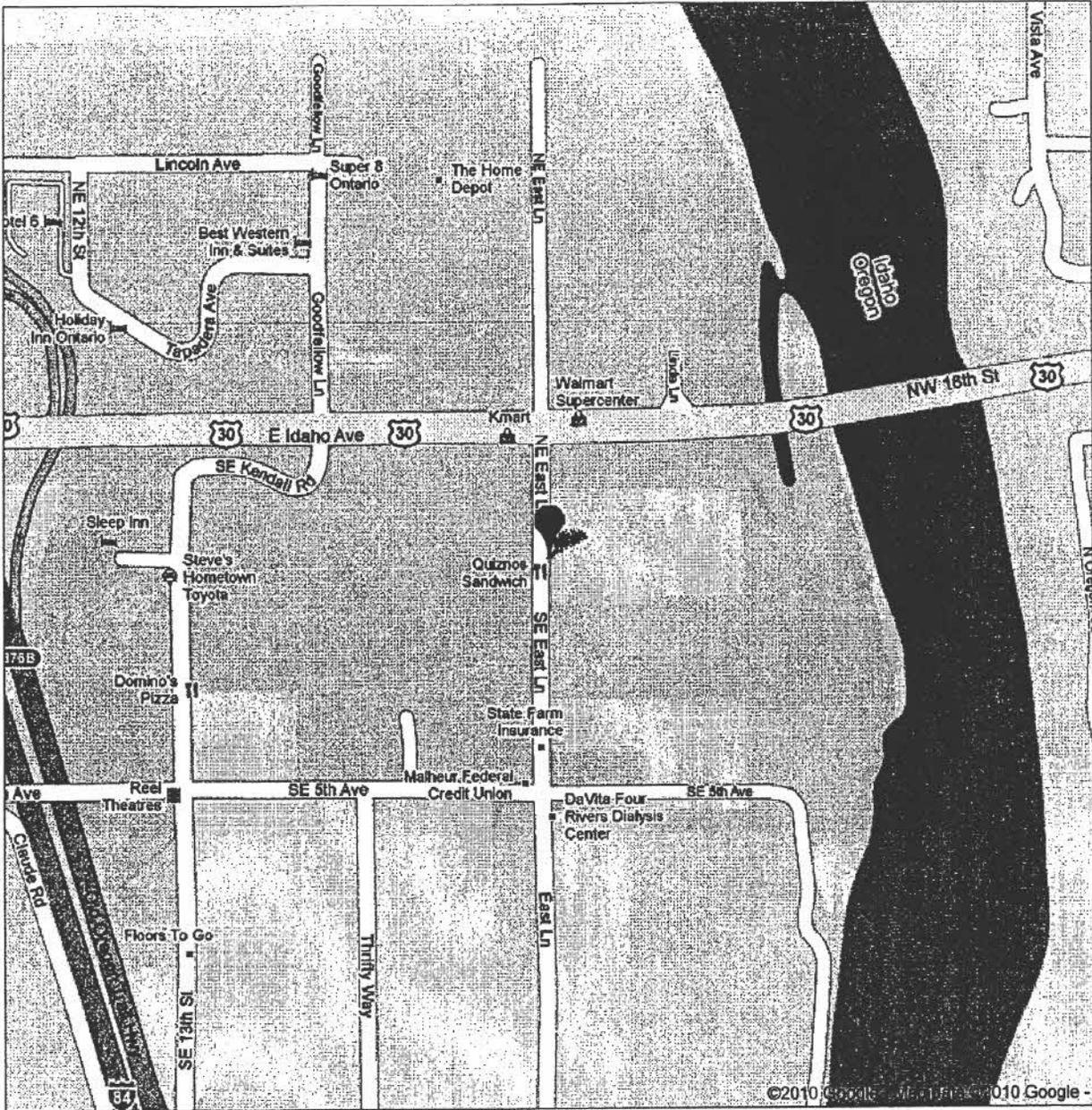
Address SE 1st Ave. & SE East Ln

Get Google Maps on your phone

Text the word "GMAPS" to 466453



2



STOP 2

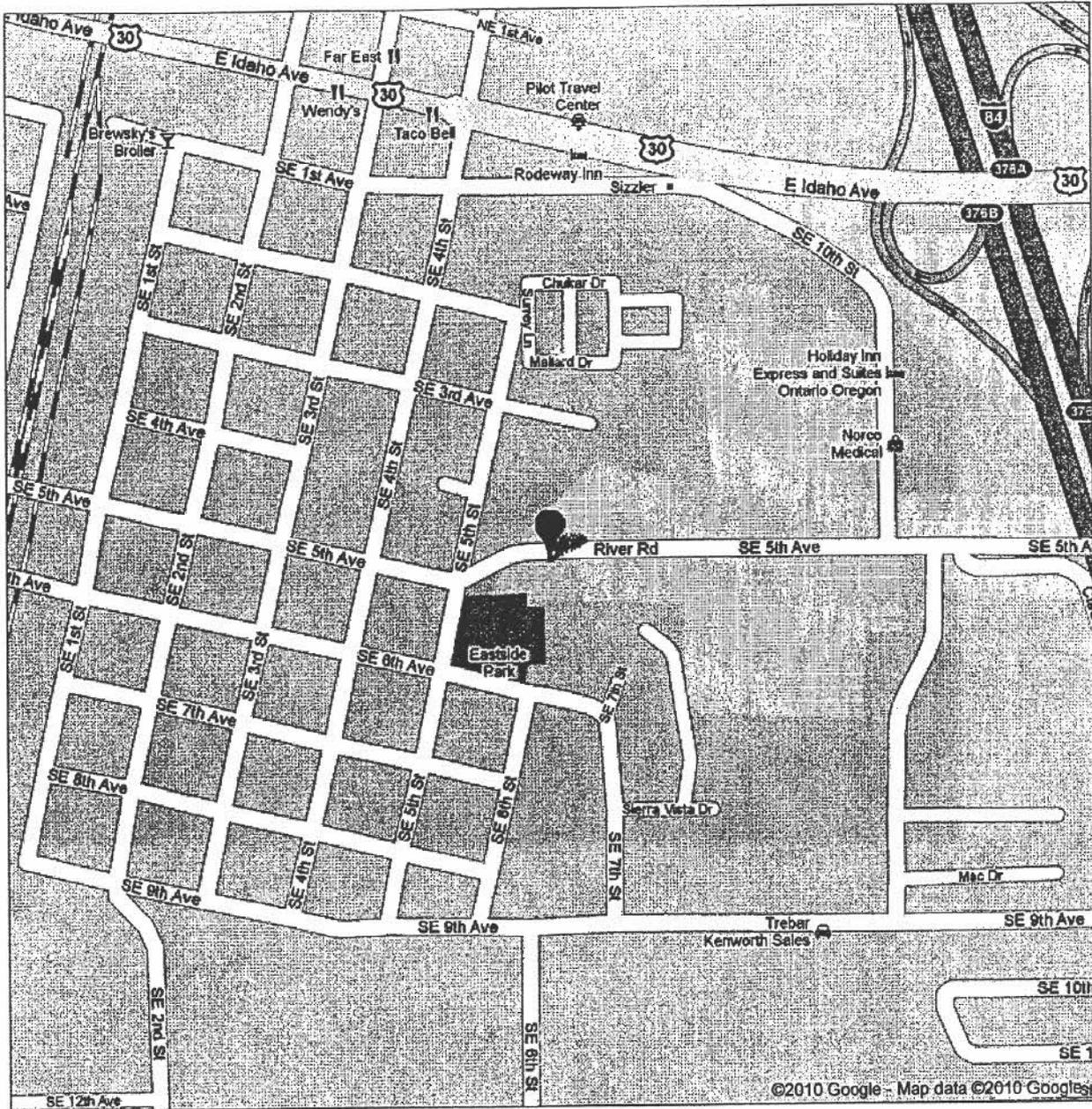
Google maps

Address SE 5th Ave. & SE 6th St

Get Google Maps on your phone  
Text the word "GMAPS" to 466453



3

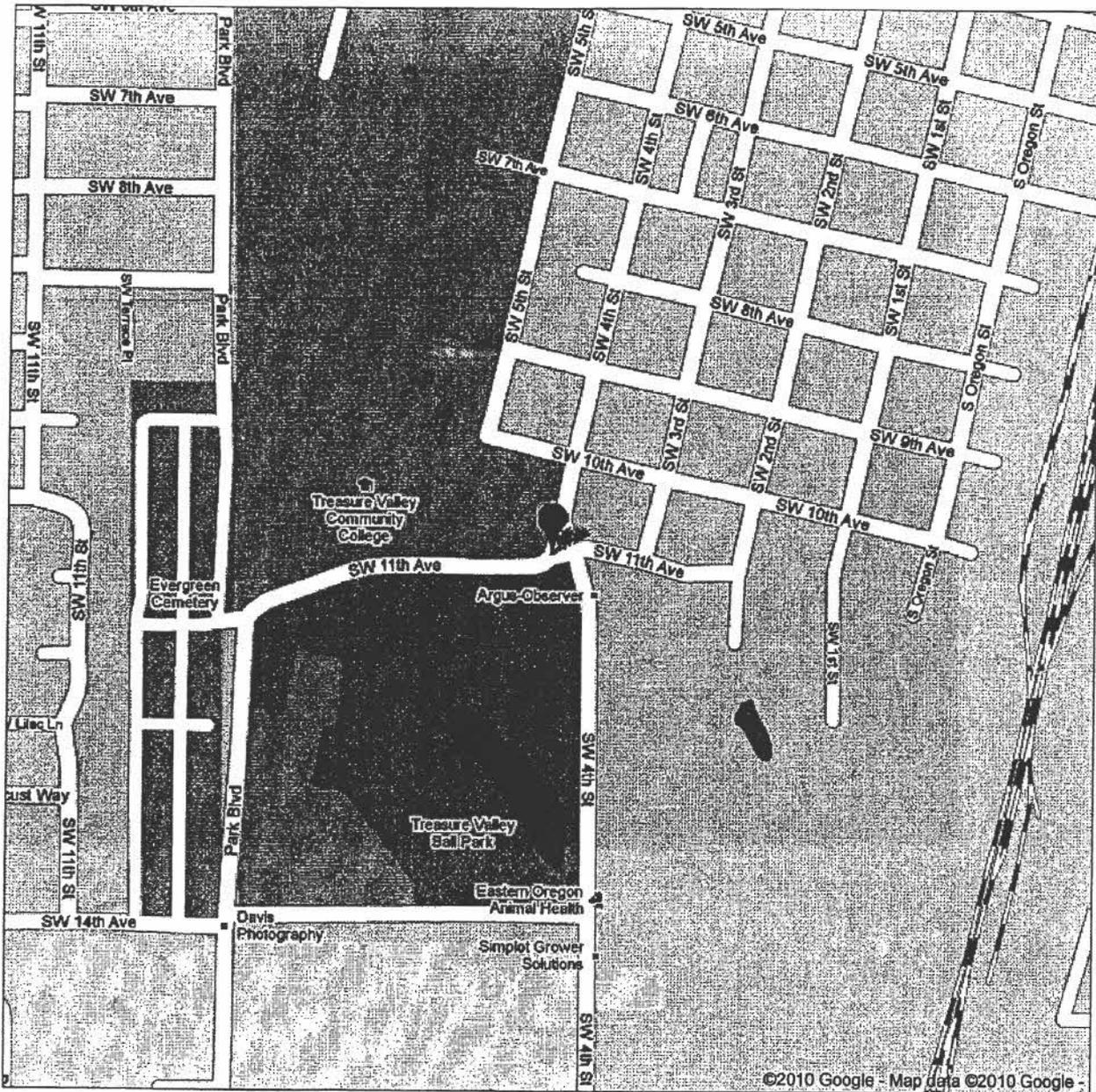


Stop 3

Google maps

Address SW 4th St & SW 11th Ave  
Ontario, OR 97914

Get Google Maps on your phone  
 Text the word "GMAPS" to 466453

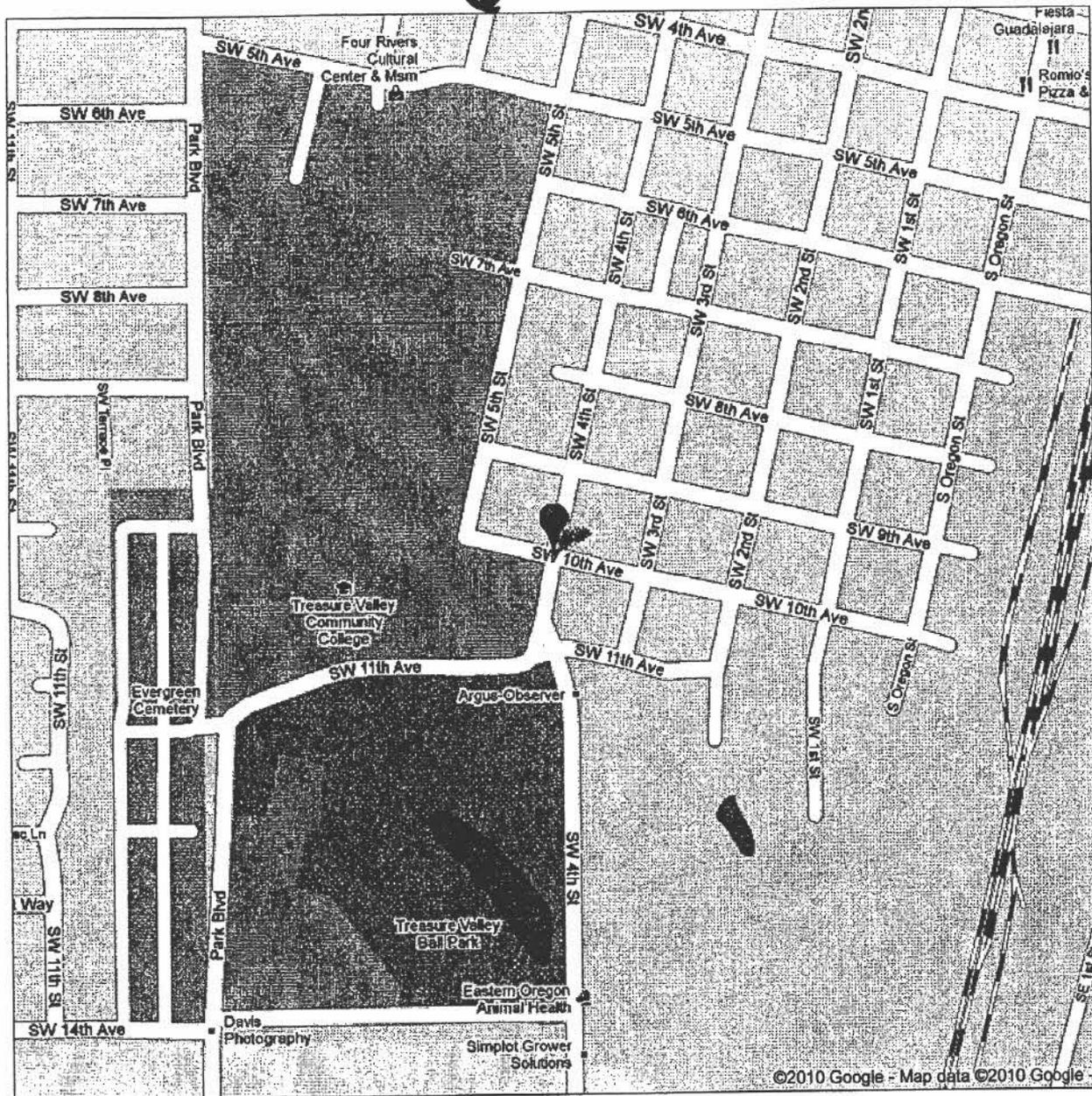


Stop 4

Google maps

Address SW 4th St & SW 10th Ave  
Ontario, OR 97914

Get Google Maps on your phone  
Text the word "GMAPS" to 466453



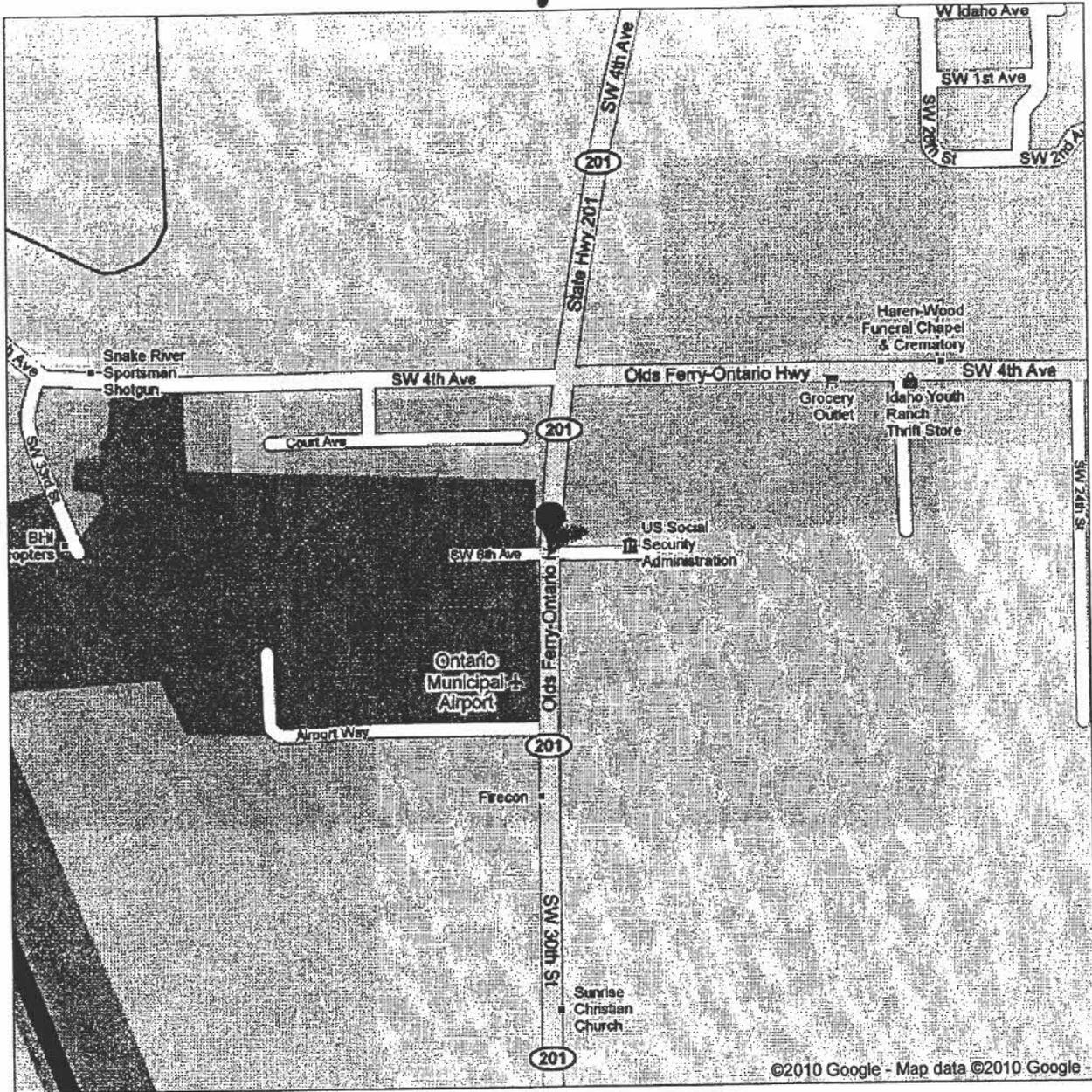
Stop 6

No picture

Google maps

Address SW 30th St & SW 6th Ave  
Ontario, OR 97914

Get Google Maps on your phone  
Text the word "GMAPS" to 466453



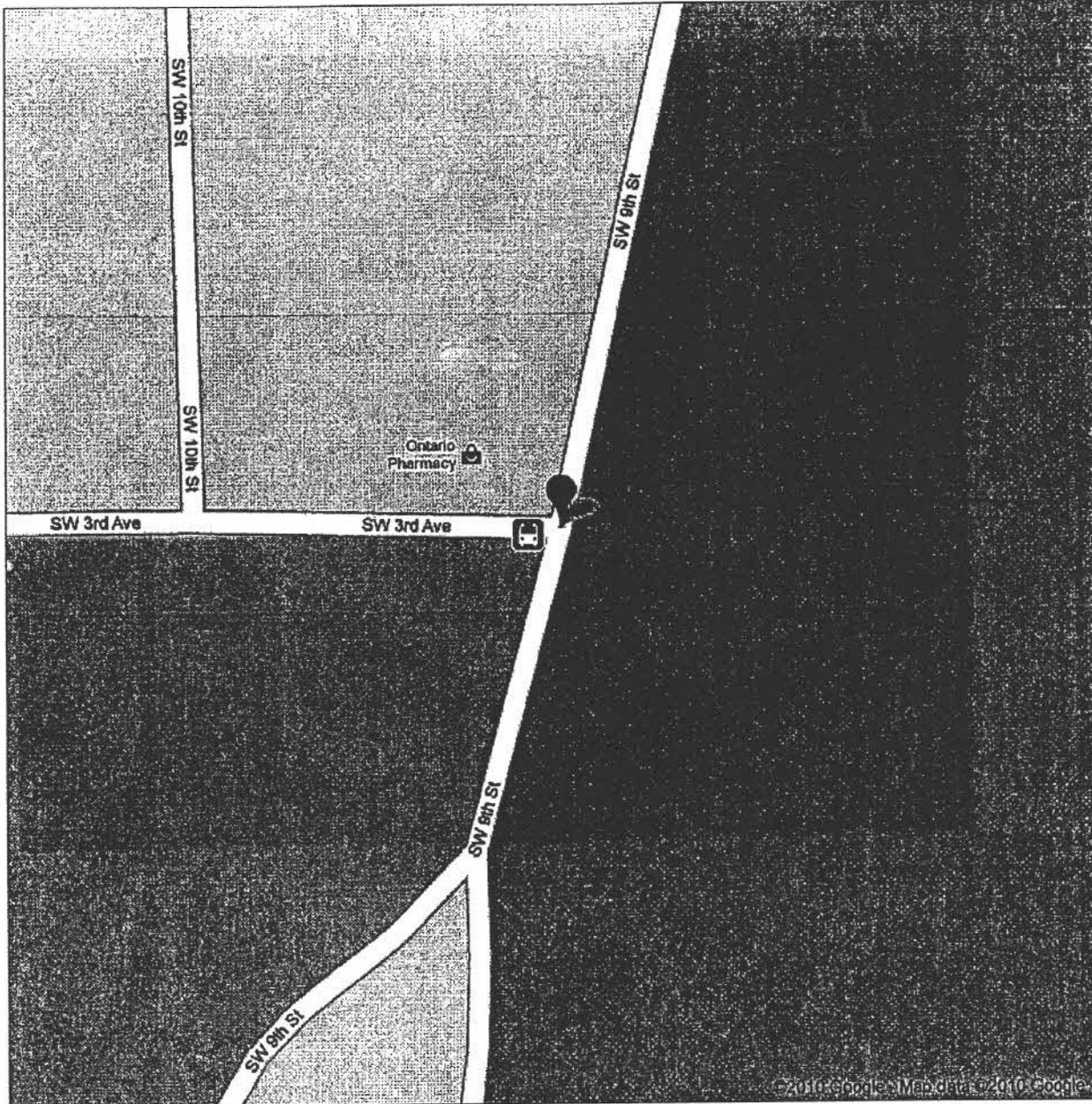
STOP 

Google maps

Address SW 3rd Ave & SW 9th St  
Ontario, OR 97914

8

Get Google Maps on your phone  
Text the word "GMAPS" to 466453

STOP 8

Google maps

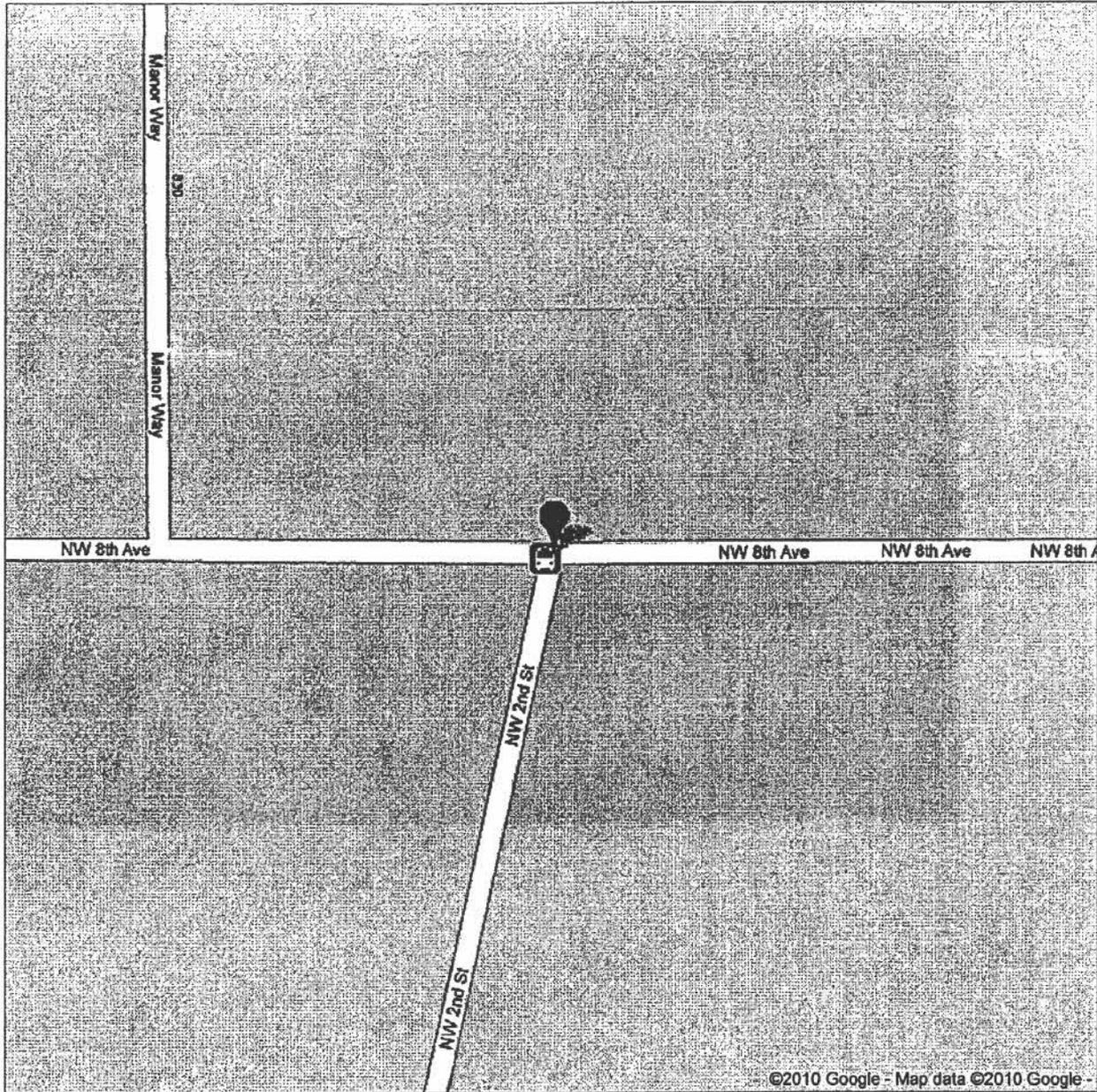
Address NW 8th Ave & NW 2nd St  
Ontario, OR 97914

Get Google Maps on your phone



Text the word "GMAPS" to 466453

10



Stop 10

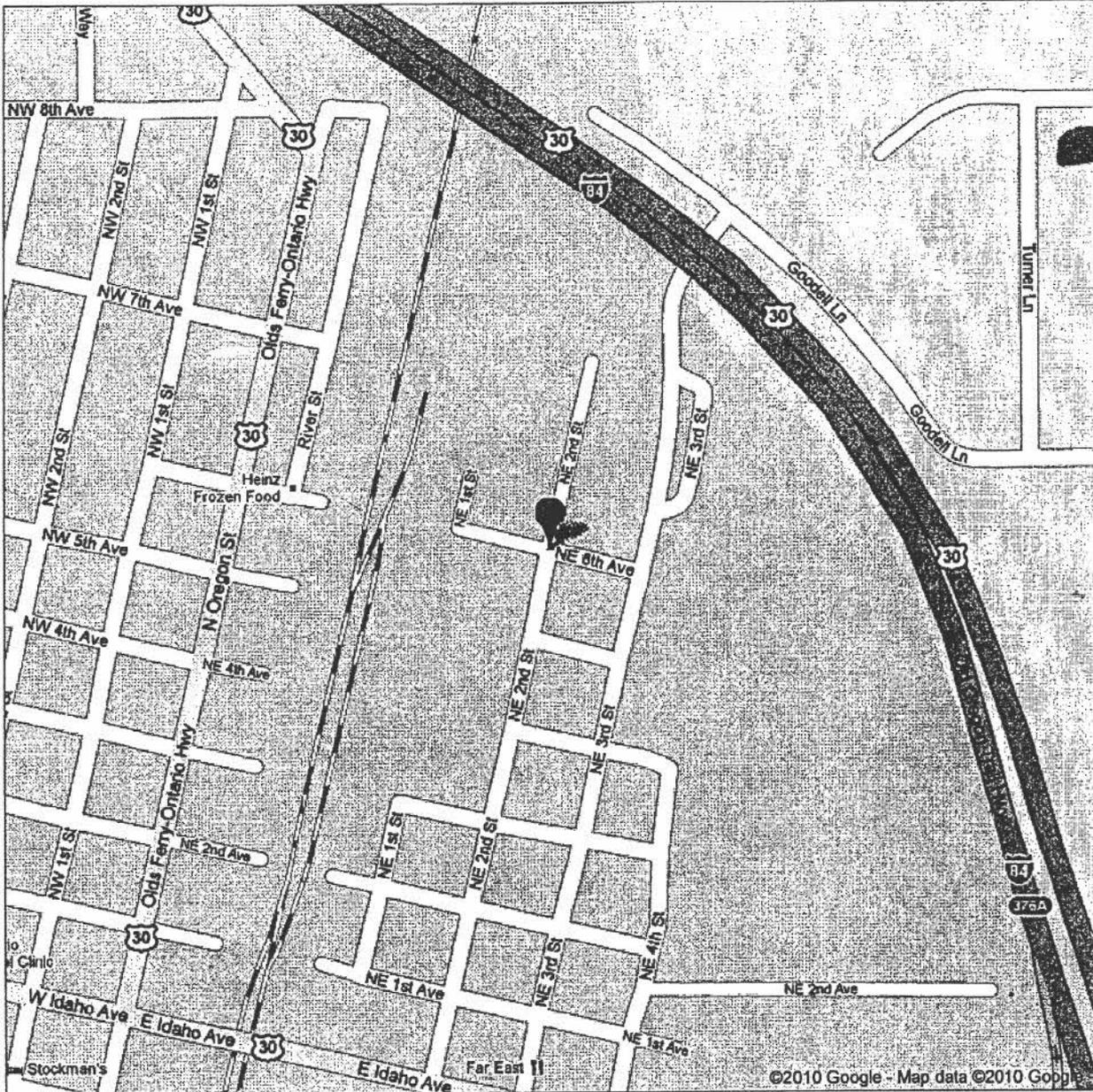
Google maps

Address NE 2nd St & NE 6th Ave  
Ontario, OR 97914

Get Google Maps on your phone  
Text the word "GMAPS" to 466453



11



STOP 11

47

No picture



# Snake River Transit

Public Transit Serving Malheur and Payette Counties

03/30/2011 10:33:58

03/30/2011 10:33:39

B

03/30/2011 10:34:19

EXH. B



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Fax#: 1.888.381.2868

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**Smoking Shelter Dome Roof Four Sided With Left Front Opening 7'6 X 5'**



Smoker shelter provides a designated smoking area outdoors. Outdoor shelter can be used as a convenient bus stop providing a bench and backrest. Dome roof is made with 1/4" thick white translucent acrylic that is break resistant.

Stock #: T9A239085C  
Our Price: \$3,745.00

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EXA. "B"

**AGENDA REPORT**  
May 2, 2011

TO: Mayor and City Council

FROM: Mark Alexander, Interim Chief of Police

Through: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE #2657-2011: AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 6, OF THE NUISANCE PROVISIONS, ADDING NEW PROVISION (D), on First Reading by Title Only**

DATE: April 21, 2011

---

**SUMMARY:**

Attached is the following document:

- Ordinance #2657-2011
- Written Notice to Homeowner Sample

The Police Department would like to amend Municipal Code Chapter 4, Title 7, Section 6, by adding Subsection (D), an emergency clause for graffiti removal when graffiti contains obscenities.

**PREVIOUS COUNCIL ACTION:**

None.

**BACKGROUND:**

Graffiti on properties that can be viewed by the public from a city right of way attributes to visual pollution and detracts from having a clean, safe, healthful and economically sound community.

Ontario Municipal Code requires property owners to remove graffiti within a specified time after receiving notice to remove such graffiti. If not addressed, Ontario Municipal Code provides for an abatement process at the cost of the property owner.

The Police Department tries to work with property owners, realizing they are victims of crime. Graffiti is a community problem that requires cooperation between the police and our citizens. There are resources available for property owners to have the graffiti removed for them.

The Police Department has recently seen graffiti that has profanity and sexual graphics associated with it.

An abatement process can take up to 23 days when a property owner is unwilling or unavailable to work with the Police Department for removal.

The Police Department would like to have emergency provisions for abatement in the event graffiti contains profanity, obscene graphics, racial comments or that is sexual in nature. The Police Department proposes changes to Ontario Municipal code Title 7, Chapter 4, Section 6, by adding Subsection (D) which would allow abatement to occur within 48 hours from the time notice is received by a property owner.

**FINANCIAL IMPLICATIONS:**

Property owners have the right to appeal notices given to abate graffiti. We could see an increase in those appeals after abatement has been done.

**RECOMMENDATION:**

Staff recommends the City Council adopt Ordinance #2657-2011.

**PROPOSED MOTION:**

I move the Council adopt Ordinance #2657-2011, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 6, ADDING SUBSECTION (D), on first reading by title only.

After recording, return to:  
City Recorder  
City of Ontario  
444 SW 4<sup>th</sup> Street  
Ontario, OR 97914

**ORDINANCE NO. 2657-2011**

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE  
TITLE 7, CHAPTER 4, SECTION 6, ADDING SUBSECTION (D)**

- WHEREAS,** the City Council of Ontario is authorized through its legislative authority to define nuisances, specifically graffiti, within the City of Ontario; and,
- WHEREAS,** the City Council of Ontario has an interest in providing a clean, safe, and healthy City for its residents; and,
- WHEREAS,** in order to accomplish this mission, there must be a procedure to quickly abate graffiti that is offensive in nature.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Ontario, Oregon, as follows:

Section 7-4-6 of the Ontario City Code is hereby amended by adding those portions, which are underlined:

7-4-6 Graffiti notice to remove.

(A) Whenever the Chief of Police or his designated representative discovers graffiti on any public or private property or any surfaces visible to persons utilizing public rights-of-way within the City, he shall, whenever seasonal temperatures permit the painting of exterior surfaces, cause a notice to be issued to the owner or person in control of the premises to abate the nuisance and remove the graffiti or cover it with paint or other suitable substance.

(B) Said notice shall be served upon the owner(s) of the affected premises, as shown on the last property tax assessment rolls of Malheur County, Oregon, with a copy to the occupant of the premises. If there is no known address for the owner, the notice shall be served at the property address. Service of the notice may be accomplished through personal service on the owner, occupant, or person in charge or control of the property or by certified mail.

(C) Notice shall be in writing and shall clearly state that the owner or person in charge or control of the property is required by this Chapter to remove from public view or paint over the graffiti within fifteen (15) days of receipt of the notice; that failure to so abate will cause the City to abate the nuisance and to assess the costs to the owner; that if the costs of the abatement are not paid within thirty (30) days of the date the billing is sent, an assessment of the costs as stated or as determined by the Council shall be made by resolution and shall thereupon be entered in the docket of City liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated. The owner or person served may within ten (10) days of receipt of the notice, deliver in writing to the City Manager his objections to the removal requirement and request a hearing before the City Council.

(D) In the event graffiti contains profanity, obscene graphics, racial comments or is of a sexual nature, the written notice shall require removal within 48 hours from time of receipt of the notice.

**APPROVED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the following vote.

AYES:

NAYS:

ABSENT:

**APPROVED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

\_\_\_\_\_  
Joe Dominick, Mayor

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder



## City of Ontario

### POLICE DEPARTMENT

444 SW 4<sup>th</sup> Street

Ontario, OR 97914

Voice (541) 889-7266

Fax (541) 889-3026

---

Date of Letter

Case #P2011-00000

Owner of Property

Owner address

Owner City/State/Zip

Your property at **Address of vandalized property Ontario, Oregon – description of area of graffiti** has been vandalized with graffiti. It is a well-established fact that once a property is vandalized by graffiti it will continue to be vandalized while the graffiti is visible. Often times even after the graffiti has been removed a property may be vandalized however eventually the criminals will give up and move onto other property.

In an attempt to help keep neighborhoods livable and reduce the occurrence of crime and vandalism the Ontario City Council adopted Ordinance Number 2389 several years ago. Ordinance 2389 requires property owners to be notified by the City that a nuisance exists and the property owner is required to abate the nuisance.

In order to abate the nuisance the property owner is required to either cover the graffiti or remove the graffiti. This letter is to notify you that a nuisance exists on property in which Malheur County Real Property records indicate is owned by you. You are required to abate the nuisance within 15 days of this notice. After the **Fifteen (15) day** period the City of Ontario will cause the above property to be abated unless the Ordinance violations listed above are corrected. If the nuisance does not cease to exist, the property owner will be charged with the cost of the abatement, which will be conducted by private contractors. In addition, an administration charge of \$100 will also be assessed. If the abatement and administrative charges are not paid within thirty (30) days of the abatement billing, a lien shall be entered against the property. The lien shall bear interest at the rate of ten (10) percent of annum. The interest shall commence from this date of entry of the lien in the lien docket. If you are unable to do so please contact the Ordinance Department at the number listed above.

If you have cause to disagree with the removal order you may, within 10 days of the date of this notice, file a written objection with your basis for objection addressed to the City Manager at Ontario City Hall, 444 SW 4th Street, Ontario, OR 97914. If the matter remains unresolved a hearing will be scheduled before the City Council.

Often times volunteer assistance is available to help you remove graffiti. The Ontario Police Department, the Malheur County Juvenile Department and Councilman Crume have teamed up to help the citizens of our community combat the ongoing graffiti problem that has plagued our community for years. Accompanying this abatement is a permission to remove graffiti form. Please read and fill out the form and return it to the Ontario Police Department or contact Ordinance Officer L. Hansen to have the form picked up. If you do not wish to have the graffiti removed through this program remember it is the property owner's responsibility to abate the graffiti by City ordinance. Please keep in mind the graffiti will be removed with a pressure washer system and this system may cause damage to certain types of material.

The City of Ontario, Oregon would appreciate a timely response to this matter.

In case the property is not abated or you choose not to have the graffiti removed by the pressure washer system. The graffiti will be abated and covered in either black or dark blue.

Signed: Officer L. Hansen

Date: Ontario Police Department-Ordinance

**Please be aware that prompt removal of graffiti helps prevent continual graffiti incidents.**

Ontario's Graffiti Abatement Program  
**Permission to Remove Graffiti**  
Business and Publicly Owned Buildings

I, \_\_\_\_\_ certify that I own or have the legal authority on behalf of the  
(print name)

owner to sign this document for the property located at: \_\_\_\_\_,  
(property address)

Ontario, Malheur County, Oregon. Business Name: \_\_\_\_\_.

I hereby give permission to the City of Ontario (City) and the City's employees, officers, contractors, agents and volunteers to enter onto my Property at their convenience for the purpose of inspecting and eliminating graffiti located on exterior surfaces of my Property. I understand that only the graffiti and the area immediately surrounding the graffiti is to be painted, pressure washed, treated or cleaned. I further agree that the graffiti may not be removed to my satisfaction and that there are no guarantees or warranties.

I agree \_\_\_\_\_ or do not agree \_\_\_\_\_ that trained workers from the Malheur County Juvenile Department Work Crew (Malheur County) may use chemical products to remove the graffiti, such as Taginator, 85<sup>th</sup> Street and Maxxstrip Blast. More information about these products may be obtained from the City or Malheur County. I understand that the use of these chemicals may cause abrasion damage to some surfaces. All chemicals will be properly disposed of.

I hereby release and hold harmless the City and Malheur County, their employees, officers, agents, contractors and volunteers from and against any and all liability, claims, suits, demands or causes of action which may arise due to any loss or damage to personal property or personal injury resulting from the graffiti abatement work on my Property. The permission granted herein to enter onto my Property and to eliminate graffiti shall remain in effect for \_\_\_\_\_ following receipt of this document by the City.

I agree to donate \$ \_\_\_\_\_ toward chemical replacement and to maintain the graffiti removal equipment. Donations can be mailed to Malheur County Juvenile Department, Graffiti Fund, 251 B. Street West Box 11, Vale, Oregon 97918. Actual cost can be obtained upon completion if requested.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Address: \_\_\_\_\_ Phone \_\_\_\_\_

**Description of Affected Area and Type of Building**

Unpainted Brick     Wood     Unpainted Stone     Metal     Siding  
 Painted Brick     Concrete     Painted Stone     Garage     Asphalt  
 Other Specify: \_\_\_\_\_

Single Family House     Duplex House     Apartment     Commercial  
 Other Specify: \_\_\_\_\_

**Please fold this form at lines and mail or fax to:**

Malheur County Juvenile Department  
Graffiti Abatement Program  
444 SW 4<sup>th</sup> St  
Ontario, OR 97914  
(Fax) 541-889-3026

## AGENDA REPORT

May 2, 2011

TO: Mayor and City Council

FROM: Alan Daniels, Airport Manager

THROUGH: Henry Lawrence, City Manager

**SUBJECT: CHANGE ORDER #1 CONTRACT AWARD FOR CONNECT OREGON 3/FAA PROJECT #3-41-0044-008/009/010 RUNWAY, TAXIWAY AND APRON REHABILITATION AND RUNWAY LIGHTING AT THE ONTARIO MUNICIPAL AIRPORT**

DATE: April 25, 2011

---

### **SUMMARY:**

Attached is the following document:

- Contract Change Order #1
- Grant Agreement 3-41-0044-008
- Grant Agreement 3-41-0044-009
- Grant Agreement 3-41-0044-010

The contract was awarded as bid. This proposed change order was required to fully utilize the grant. This change order total is \$550,236.60 for a revised contract total of \$3,596,691.76.

### **PREVIOUS COUNCIL ACTION:**

April 4, 2011 Council approved the Contract Award to Valley Paving & Asphalt.

### **RECOMMENDATION:**

Staff recommends approval of Change Order #1.

### **PROPOSED MOTION:**

I move that the City Council authorize the City Manager to be signatory on change order #1 to the contract with Valley Paving & Asphalt for the Airport Improvement Project FAA #3-41-0044-008/009/010.

## CONTRACT CHANGE ORDER

### City of Ontario, Oregon ONTARIO MUNICIPAL AIRPORT

#### AIRPORT IMPROVEMENTS FY 2011 FAA AIP PROJECT NO. 3-41-0044-008/009/010 & Connect Oregon III Project

NUMBER:   1    
DATE: 4-19-2011

AIRPORT: Ontario Municipal Airport  
LOCATION: Ontario, Oregon  
CONTRACTOR: Valley Paving and Asphalt, Inc.

AIP PROJECT NO: 3-41-0044-008/009/010

You are requested to perform the following described work upon receipt of an approved copy of this document, or as directed by the Engineer.

Schedule- Item No.	Description	CHANGE IN			
		Unit	Unit Price	Quantity	Amount
A-1	Contractor Quality Control	LS	\$31,165.00	+0.48	\$14,959.20
A-5	Large Crack Repair	LF	\$7.74	+17,400	\$134,676.00
A-6	Mobilization/Demobilization	LS	\$64,200.00	+0.48	\$30,816.00
A-7	Airport Safety and Security	LS	\$10,000.00	+0.48	\$4,800.00
A-8	Bituminous Surface Course	Ton	\$65.50	+5,421	\$355,075.50
B-3	Removal of Existing Asphalt by Milling	SY	\$1.60	+2,178	\$3,484.80
B-38	C.O. #1 Preparing Existing Base Course	SY	\$2.95	+2,178	\$6,425.10
This Change Order Total:					\$550,236.60
Previous Contract Total:					\$3,046,455.16
Revised Contract Total:					\$3,596,691.76

The time provided for completion of Phase 1 as listed in the Contract Documents-Special Provisions Section 50 has been formally changed to 62 Calendar Days. The Liquidated Damages per Calendar Day will remain the same as will all other Phase completion times. This document shall become an amendment to the Contract and all provisions of the Contract will apply.

Recommended by: \_\_\_\_\_ DATE \_\_\_\_\_  
Kimley-Horn and Associates

Approved by: \_\_\_\_\_ DATE \_\_\_\_\_  
City of Ontario

Accepted by: \_\_\_\_\_ DATE \_\_\_\_\_  
Valley Paving and Asphalt, Inc.

Approved by: \_\_\_\_\_ DATE \_\_\_\_\_  
Federal Aviation Administration

Approved by: \_\_\_\_\_ DATE \_\_\_\_\_  
State of Oregon

AIP PROJECT NO: 3-41-0044-008/009/010  
AIRPORT: Ontario Municipal Airport

CHANGE ORDER NO: 1  
LOCATION: Ontario, OR

JUSTIFICATION FOR CHANGE

1. Brief description of the proposed contract change(s) and location(s).

Increase the amount of large crack repair and increase asphalt overlay thickness from 2" to 3" on both the parallel taxiway and runway. The Contractor Quality Control, Mobilization/Demobilization, and Airport Safety and Security have been increased by the associated percentage to for pay additional fixed costs and incidentals. Additional asphalt milling and preparing existing base course was added to help fix severally cracked areas in Taxiway "A-5" & "A-6".

2. Reason(s) for the change(s).

Help reduce future reflective cracking and increase life of parallel taxiway and runway pavement.

3. Justifications for unit prices or total cost.

Bid Unit Costs & Negotiated Unit Price for Preparing Existing Base Course  
See attached Updated Quantity and Cost Breakdowns for each Schedule.

4. The sponsor's share of this cost is available from:

State of Oregon and FAA

5. If this is a supplemental agreement involving more than \$2,000; is the cost estimate based on the latest wage rate decision?

Yes X No     Not Applicable

6. Has consent of surety been obtained?

Yes     X Not Necessary

7. Will this change affect the insurance coverage?

Yes     No X

8. If yes, will the policies be extended?

Yes     Not Applicable X

9. Has this Change Order been discussed with FAA Officials?

Yes X No



Grant Agreement  
Part 1 - Offer

Date of Offer: February 12, 2009

Ontario Municipal Airport  
Ontario, Oregon

Project Number: 3-41-0044-008

Contract Number: DOT-FA09NM-0079

To: City of Ontario, Oregon (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated March 4, 2008, for a grant of Federal funds for a project at or associated with the Ontario Municipal Airport which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 14/32 (overlay) (Phase 1); Rehabilitate parallel taxiway (overlay) (Phase 1); Rehabilitate apron (Phase 1); Install Runway 14/32 lighting (Phase 1);

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, ninety-five (95) percentum of all allowable Project costs.

This Offer is made on and subject to the following terms and conditions:

#### Conditions

1. The maximum obligation of the United States payable under this Offer shall be \$124,168.00. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

\$	0.00	for planning
	\$124,168.00	for airport development or noise program implementation

2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the provisions of the Act.
3. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
6. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this Offer has been accepted by the Sponsor on or before February 20, 2009, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order, or judgment to the Secretary. It shall furnish upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.
9. Trafficking in persons:
- a. **Provisions applicable to a recipient that is a private entity.**
1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
    - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either ---
      - A. Associated with performance under this award; or
      - B. Imputed to your or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- b. **Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity –
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either –
    - i. Associated with performance under this award; or
    - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. **Provisions applicable to any recipient.**
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. **Definitions.** For purposes of this award term:

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

#### Special Conditions

10. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overfund in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.
11. The Sponsor agrees to perform the following:
  - a. Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:
    1. The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.

2. Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
  3. Procedures for determining that testing laboratories meet the requirements of the American Society of Testing and Materials standards on laboratory evaluation, referenced in the contract specifications (D 3666, C 1077).
  4. Qualifications of engineering supervision and construction inspection personnel.
  5. A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.
  6. Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, and that the proper corrective actions, where necessary, are undertaken.
- b. Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or did not meet the applicable test standard. The report shall include the pay reductions applied and reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.
  - c. Failure to provide a complete report as described in paragraph b, or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under the grant agreement.
  - d. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that sponsor test results are inaccurate.
12. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.
  13. It is understood and agreed the Sponsor will not claim reimbursement for costs under this grant until FAA has approved the DBE goals.
  14. For a project to replace or reconstruct pavement at the airport, the Sponsor shall implement an effective airport pavement maintenance management program as required by Airport Sponsor Assurance Number 11. The Sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport.
  15. This Phase I grant is intended to be the first phase of a two-phase 2009 construction project. The bidding of the entire project will be completed with sufficient time to properly apply for a Phase II grant prior to August 15, 2009. The Phase II grant funding will be the difference in funding necessary for the Federal share of the entire project less the Phase I funding, subject to available sponsor entitlements. The FAA makes no commitment of funding beyond the Sponsor's available entitlements pursuant to law. If the project does not receive acceptable bids, or sufficient funding is unavailable, the FAA has the option to close this grant and recover the funds.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION

By: Stanley C. Allison  
Stanley C. Allison, Acting Manager, Seattle Airports District Office

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this 17th day of February, 2009.  
City of Ontario, Oregon

(SEAL)

By: [Signature]  
Sponsor's Designated Official Representative  
Title: Mayor

Attest: [Signature]  
Title: City Recorder

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Larry Sullivan, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Oregon. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at #8 Vale, OR this 18 day of February, 2009.

[Signature]  
Signature of Sponsor's Attorney



Grant Agreement  
Part 1 - Offer

Date of Offer: August 26, 2010

Ontario Municipal Airport  
Ontario, Oregon

Project Number: 3-41-0044-009

Contract Number: DOT-FA10NM-0115

DUNS Number: 02-582-5886

To: City of Ontario, Oregon (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated March 4, 2008, for a grant of Federal funds for a project at or associated with the Ontario Municipal Airport which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 14/32 (Phase 2 – overlay), Station 10+00 to 62+20; Install Runway 14/32 lighting (Phase 2), Station 17+00 to 62+20; Rehabilitate Parallel Taxiway (Phase 2 – overlay) Station 10+00 to 61+28; Rehabilitate north terminal apron (Phase 2 – 21,660 s.y.); Expand south terminal apron (Phase 1 – 7,725 s.y.);

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, ninety-five (95) percentum of all allowable Project costs.

This Offer is made on and subject to the following terms and conditions:

#### Conditions

1. The maximum obligation of the United States payable under this Offer shall be \$168,913.00. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:
 

\$	0.00	for planning
	\$168,913.00	for airport development or noise program implementation
2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the provisions of the Act.
3. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.
6. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this Offer has been accepted by the Sponsor on or before September 10, 2010, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order, or judgment to the Secretary. It shall furnish upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.
8. The United States shall not be responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

9. Trafficking in persons:a. **Provisions applicable to a recipient that is a private entity.**

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not –
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
    - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either –
      - A. Associated with performance under this award; or
      - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- b. **Provision applicable to a recipient other than a private entity.** We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either –
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

c. **Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
- d. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)), and
- e. Is in addition to all other remedies for noncompliance that are available to us under this award.
1. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

f. **Definitions.** For purposes of this award term:

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

Special Conditions

10. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.
11. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION

By..... *Carol Suomi* .....  
Carol Suomi, Manager, Seattle Airports District Office

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this ..... *2nd* ..... day of ..... *September* ..... , 2010.  
City of *Ontario*, Oregon

(SEAL)

By..... *[Signature]* .....  
Sponsor's Designated Official Representative  
Title:..... *Mayor* .....

Attest: *Doris Barnett* .....  
Title:..... *City Recorder* .....

CERTIFICATE OF SPONSOR'S ATTORNEY

I, *USRRY SULLIVAN* ....., acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Oregon. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at *ONTARIO, OREGON* ..... this ..... *2* ..... day of ..... *SEPTEMBER* ..... , 2010.

..... *[Signature]* .....  
Signature of Sponsor's Attorney



**GRANT AGREEMENT**  
**Part I - Offer**

Ontario Municipal Airport  
Ontario, Oregon

Date of Offer: March 9, 2011

Project Number: 3-41-0044-010  
Contract Number: DOT-FA11NM-0002  
DUNS Number: 02-582-5886

To: City of Ontario, Oregon (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated March 4, 2008, for a grant of Federal funds for a project at or associated with the Ontario Municipal Airport, which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Rehabilitate Runway 14-32 (Phase 3-overlay), Station 10+00 to 62+20; Install Runway 14-32 lighting (Phase 3) Station 17+00 to 62+20; Rehabilitate parallel Taxiway (Phase 3-overlay) Station 10+00 to 61+28; Rehabilitate north terminal apron (Phase 3-21,660 s.y.); Expand south terminal apron (Phase 2-7,725 s.y.);

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, ninety-five (95) percentum of all allowable Project costs.

This Offer is made on and subject to the following terms, conditions and special conditions. General conditions are contained in the attached four page General Conditions, and when referenced to by their number herein, are hereby incorporated and made a part hereof.

**Conditions**

1 The maximum obligation of the United States payable under this Offer shall be: \$553,168.00. For the purposes of any future grant amendments which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

\$0.00 for planning  
\$553,168.00 for airport development or noise program implementation

2 This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this Offer has been accepted by the Sponsor on or before March 17, 2011, or such subsequent date as may be prescribed in writing by the FAA.

3 The following general conditions apply to this Grant as written in the attached General Conditions:  
1-8, 10-11, 13-14, 19

**Special Conditions**

None.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement as provided by the Act constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

UNITED STATES OF AMERICA  
FEDERAL AVIATION ADMINISTRATION

By Stanley C. Allison  
Stanley Allison, Acting Manager, Seattle Airports District Office

**Part II - Acceptance**

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this 15<sup>th</sup> day of MARCH, 2011.

City of Ontario, Oregon

(SEAL)

By [Signature]  
Sponsor's Designated Official Representative

Title: Mayor

Attest: [Signature]  
Title: [Signature]

**CERTIFICATE OF SPONSOR'S ATTORNEY**

I, LARRY SULLIVAN, acting as Attorney for the Sponsor do hereby certify:

That in my opinion, the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Oregon. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at VOLE, OREGON, this 15 day of MARCH, 2011.

[Signature]  
Signature of Sponsor's Attorney

## Public Hearing - Agenda Report

May 2, 2011

TO: Mayor and City Council

FROM: David Richey, Planning & Zoning Administrator

THROUGH: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE #2655-2011: ANNEXATION AND REZONE OF 12.54 NET ACRES OF PROPERTY INTO THE CITY OF ONTARIO; UGA-RESIDENTIAL TO CITY RS-50 SINGLE FAMILY RESIDENTIAL. PROPERTIES ARE GENERALLY IDENTIFIED AS INCLUDING AND THEN RUNNING SOUTH OF THE NADINE DRIVE NEIGHBORHOOD TO SW 18<sup>TH</sup> AVE AND EAST FROM THE NADINE DRIVE NEIGHBORHOOD TO THE ONTARIO CITY LIMITS - PLANNING ACTION 2011-01-01 AZ, ON FIRST READING BY TITLE ONLY**

DATE: April 25, 2011

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### **SUMMARY:**

Attached are the following documents:

- Ordinance # 2655-2011
- Exhibit "A" Assessor's Map
- Exhibit "B" Legal Description

At its regular meeting of February 14, 2011 the Planning Commission heard the annexation and rezone proposal contained in Planning File 2011-01-01 AZ, which was applicable to property generally known as the Nadine Drive Neighborhood, located north of 18<sup>th</sup> Ave, along Alameda Drive and found on Assessor's Map 18S 47E -09C.

### **PREVIOUS COUNCIL ACTION:**

None,

### **BACKGROUND:**

The applicant, a combination of property owners and the City in response to a public health hazard from domestic wells and septic systems, are proposing the annexation to facilitate a local improvement district to extend City services into the area.

### **STAFF RECOMMENDATION:**

The Planning Commission addressed the proposed annexation and the accompanying rezone from Urban Growth Area Residential to a City Zone classification of RS-50 Single Family Residential at its regular meeting of February 14, 2011, and recommends approval as presented before City Council in Ordinance #2655-2011.

**PROPOSED MOTIONS:**

- 1) I move that the City Council accept the Findings of Fact as presented (or amended).
  
- 2) I move that the City Council adopt Ordinance #2655-2011, AN ORDINANCE ADDRESSING THE FINAL ORDER AND FINDINGS OF FACT FOR THE ANNEXATION OF 12.54 NET ACRES OF PROPERTY INTO THE CITY OF ONTARIO INCLUDING ASSOCIATED STREET RIGHTS-OF-WAY AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO CITY RS-50 SINGLE FAMILY RESIDENTIAL, on First Reading by Title Only.

**ORDINANCE NO. 2655-2011**

**AN ORDINANCE PROCLAIMING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF ONTARIO; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL FIRE PROTECTION DISTRICT; AND WITHDRAWING SAID TERRITORY FROM THE ONTARIO RURAL ROAD ASSESSMENT DISTRICT NO. 3. THE PROPERTY IS KNOWN AS THE NADINE DRIVE NEIGHBORHOOD, WITHIN THE ASSESSORS MAP 18S47E09C, LOCATED ALONG ALAMEDA DRIVE NORTH OF SW 18<sup>TH</sup> AVENUE**

**FINDINGS OF FACT:**

**Whereas:** The proposal complies with applicable provisions of the Ontario Comprehensive Plan, Title 10 and its zone and administrative sections 10A and 10B; and,

**Whereas:** Notice has been sent to the Department of Land Conservation and Development a minimum of 45 days prior to this formal procedure to annex and in particular, rezone the subject property in accord with State Administrative Rules; and,

**Whereas:** The subject site is within the City of Ontario Urban Growth Area and thus approved under the rules and regulations of the State of Oregon for annexation to the City; and,

**Whereas:** The subject Urban Growth Area is classified as Residential and the proposed zone is RS-50 Single Family Residential which is consistent with the UGA classification; and,

**Whereas:** The subject area is immediately adjacent to the City boundary; and,

**Whereas:** The purpose behind this annexation proposal is extend City utilities into the area to protect the public health from the effects of domestic wells and failing septic systems; and,

**Whereas:** City emergency services are available to this site in a manner similar to other land in the City; and,

**Whereas:** All appropriate local notices have been given for this proposal and the public hearings it requires; and,

**Whereas:** The net private property included is 12.54 acres. The annexation also includes associated street rights-of-way; and,

**Whereas:** Pursuant to the formal proposal, the Ontario Planning Commission held a properly noticed public hearing on February 14, 2011 and made a recommendation to City Council supporting the annexation and the rezone to RS-50 Single Family Residential; and,

**Whereas:** The City Council held a properly noticed public hearing on May 2, 2011, and reviewed all evidence and testimony submitted at the City of Ontario hearings.

**NOW THEREFORE, THE CITY COUNCIL OF ONTARIO ORDAINS AS FOLLOWS:**

Based upon the Comprehensive Plan, the procedures and regulations provided in Title 10, of the Comprehensive Plan and Zoning Ordinance, and the above listed Findings, the Ontario City Council approves and adopts Ordinance #2655-2011 annexing and rezoning the 12.54 of property plus the associated street rights-of-way as specifically described in the attached annexation area description. This annexation is for the purpose of furthering good public health by enabling the creation and execution of a City local improvement district to extend City utilities to the subject area and to apply the City RS-50 Single Family Residential zone to that same area. The following contiguous territory be and the same is hereby annexed: The property mapped and legally described in the attached Exhibits "A" and "B" respectively.

PASSED AND ADOPTED by the Common Council of the City of Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAINED:

APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Joe Dominick, Mayor

ATTEST:

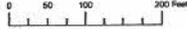
\_\_\_\_\_  
Tori Barnett, MMC, City Recorder

**Exhibit "A"**  
 Ordinance #2655-2011  
 Nadine Drive Annex/Rezone

18S47E09CC  
 ONTARIO

CANCELLED  
 500  
 1201  
 1301  
 2301  
 3300  
 3901  
 4800

THIS MAP WAS PREPARED FOR  
 ASSESSMENT PURPOSE ONLY



S.W.1/4 S.W.1/4 SEC.9 T.18S. R.47E. W.M.  
 MALHEUR COUNTY

1" = 100'



SEE MAP 18S 47E 16

Revised: M/  
 3/10/2006

**LEGAL DESCRIPTION**

Land in Malheur County, Oregon, bounded and described as follows:

A portion of the S1/2 of the SW1/4 of the SW1/4 of Section 9, Township 18 South, Range 47 East, W.M. more particularly described as follows:

Commencing at the Southwest corner of Section 9;

thence N. 89° 47' 30" E., 110 feet along the Southerly boundary of Section 9 to the TRUE POINT OF BEGINNING;

thence continuing N. 89° 47' 30" E., 552.57 feet along the Southerly boundary of Section 9 to the centerline of Alameda Drive;

thence N. 0° 17' 59" E., 330.15 feet along the centerline of Alameda Drive to a point;

thence N 89° 51' 52" E., 662.99' to a point on the Easterly boundary of the SE ¼ of the SW ¼ of the SW ¼ of Section 9;

thence N. 0° 21' 55" E., 331.50 feet along the Easterly boundary of the SE ¼ of the SW ¼ of the SW ¼ of Section 9 to the Northeast corner of SE ¼ of the SW ¼ of the SW ¼ of Section 9;

thence S. 89° 44' 57" W., 663.36 feet along the Northerly boundary of the SE ¼ of the SW ¼ of the SW ¼ of Section 9 to the Northeast corner of the SW ¼ of the SW ¼ of the SW ¼ of Section 9;

thence S. 89° 49' W., 662.25 feet along the Northerly boundary of the SW ¼ of the SW ¼ of the SW ¼ of Section 9 to the Northwest corner of the SW ¼ of the SW ¼ of the SW ¼ of Section 9;

thence S. 0° 08' 45" W., 330.49 feet along the Westerly boundary of the SW ¼ of the SW ¼ of the SW ¼ of Section 9 to the Northwest corner of the S ½ of the SW ¼ of the SW ¼ of the SW ¼ of Section 9;

thence N. 89° 47' 30" E., 110 feet along the Northerly boundary of the S ½ of the SW ¼ of the SW ¼ of the SW ¼ of Section 9 to a point;

thence S. 0° 08' 45" W., 330.39 feet along a line parallel to and 110 feet East of the Westerly boundary of the SW ¼ of the SW ¼ of the SW ¼ of Section 9 to the Point of Beginning

## PUBLIC HEARING – AGENDA REPORT

May 2, 2011

TO: Mayor and City Council

FROM: City of Ontario Planning Commission

THROUGH: Henry Lawrence, City Manager  
David Richey, Planning & Zoning Admin.

**SUBJECT: ORDINANCE #2658-2011: A DE NOVO PUBLIC HEARING IN THE MATTER OF ANNEXATION OF 1/4 ACRE OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO RD-40 DUPLEX RESIDENTIAL. THE PROPERTY IS GENERALLY KNOWN AS TAX LOT 1000, ASSESSORS MAP 18S 47E-05AC, LOCATED AT 2040 HUNTER LANE, ONTARIO - PLANNING FILE 2011-02-04 AZ, BROWN, ON FIRST READING BY TITLE ONLY**

DATE: April 25, 2011

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### SUMMARY:

Attached are the following documents:

- Ordinance # 2658-2011
- Exhibit “A” Assessor’s Map
- Exhibit “B” Legal Description

At its regular meeting of April 11, 2011 the Planning Commission heard the annexation and rezone proposal contained in Planning File 2011-02-04 AZ, which was applicable to property generally known as Tax Lot 1000, Assessors Map 18S47E05AC, located at 2040 Hunter Lane, Ontario.

### PREVIOUS COUNCIL ACTION:

None

### BACKGROUND:

The applicants, Michael and Marion Brown, need to connect their house to city sewer. To accomplish that, it required approximately 500 feet of service line.

The Planning Commission addressed the proposed annexation and the accompanying rezone from Urban Growth Area Residential to a City Zone classification of RD-40 Duplex Residential for Tax Lot 1000, Assessor's Map #18S 47E 05AC. It is 1/4 acre in size, and is known as 2040 Hunter Lane. The Comprehensive Plan urban growth area residential classification is broad enough that any of the City residential zones may be considered to be consistent with it. Existing land use on neighboring properties range from single family to assisted living facilities so this proposed care facility will not be a departure from the character of the existing neighborhood

**RECOMMENDATION:**

The Planning Commission recommends passage of Ordinance #2658-2011.

**PROPOSED MOTIONS:**

- 1) I move that the City Council accept the Findings of Fact as presented (or amended).
- 2) I move that the City Council adopt Ordinance #2658-2011, AN ORDINANCE ADDRESSING THE FINAL ORDER AND FINDINGS OF FACT FOR THE ANNEXATION OF 1/4 ACRE OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO CITY RD-40 DUPLEX RESIDENTIAL FOR PROPERTY LOCATED AT 2040 HUNTER LANE, ONTARIO, TAX LOT 1000, MAP 18S 47E-5AC, PLANNING FILE 2011-02-04 AZ, on First Reading by Title Only.

**ORDINANCE #2658-2011**

**FINAL ORDER AND FINDINGS OF FACT IN THE MATTER OF PLANNING FILE 2011-02-04 AZ, THE ANNEXATION OF 1/4 ACRE OF PROPERTY INTO THE CITY OF ONTARIO AND TO REZONE SAID PROPERTY FROM UGA-RESIDENTIAL TO THE CITY RD-40 DUPLEX RESIDENTIAL. THE PROPERTY IS GENERALLY KNOWN AS TAX LOT 1000, ASSESSORS MAP 18S 47E-05AC, LOCATED AT 2040 HUNTER LANE, ONTARIO**

**FINDINGS OF FACT:**

- Whereas:** The proposal complies with applicable provisions of the Ontario Comprehensive Plan, Title 10 and its zone and administrative sections 10A and 10B; and;
- Whereas:** Notice has been sent to the Department of Land Conservation and Development a minimum of 45 days prior to this formal procedure to annex and in particular, rezone the subject property in accord with State Administrative Rules; and,
- Whereas:** The subject site is within the City of Ontario Urban Growth Area and thus approved under the rules and regulations of the State of Oregon for annexation to the City; and,
- Whereas:** The subject Urban Growth Area is classified as Residential and the proposed zone is RD-40 Duplex Residential which is consistent with the UGA classification; and,
- Whereas:** The property owner has formally requested that the subject site be annexed, the primary purpose of the annexation is to have City sewer service; and,
- Whereas:** The subject site is immediately adjacent to the City boundary; and,
- Whereas:** City emergency services are available to this site in a manner similar to other land in the City; and,
- Whereas:** All appropriate local notices have been given for this proposal and the public hearings it requires; and,
- Whereas:** The property is 1/4 acre in size and is known as Tax Lot 1000, Assessor's Map #18S 47E 05AC; and,

**Whereas:** Pursuant to the formal application, the Ontario Planning Commission held a properly noticed public hearing on April 11, 2011 and made a recommendation to City Council; and,

**Whereas:** The City Council held a properly noticed public hearing on May 2, 2010, and reviewed all evidence and testimony submitted at the City of Ontario hearings.

**NOW THEREFORE, THE CITY COUNCIL OF ONTARIO ORDAINS AS FOLLOWS:**

Based upon the Comprehensive Plan, the procedures and regulations provided in Title 10, of the Comprehensive Plan and Zoning Ordinance, and the above listed Findings, the Ontario City Council approves and adopts Ordinance #2658-2011 annexing and rezoning the 1/4 acre property identified as Tax Lot 1000, Assessor's Map #18S 47E 05AC and rezoning to RD-40, Duplex Residential. The following contiguous territory be and the same is hereby annexed: The property mapped and legally described in the attached Exhibits "A" and "B" respectively.

**PASSED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

**APPROVED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Joe Dominick, Mayor

ATTTEST:

\_\_\_\_\_  
Tori Barnett, MMC, City Recorder



**ANNEXATION DESCRIPTION  
FOR BROWN PROPERTY  
AND STREET FRONTAGE**

Land in Malheur County, Oregon, as follows:  
In Township 18 South, Range 47 East of the Willamette Meridian:

Section 5: A parcel of land in the NW  $\frac{1}{4}$  SW $\frac{1}{4}$ NE  $\frac{1}{4}$  more  
particularly described as follows:

Beginning at the Northeast corner of said

NW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ ;

thence South 145 feet;

thence West 110 feet;

thence North 145 feet;

thence East 110 feet to the Point of

Beginning