

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**  
June 21, 2010, 7:00 p.m., M.T.

**1) Call to order**

- A) Roll Call: Norm Crume \_\_\_ Charlotte Fugate \_\_\_ John Gaskill \_\_\_  
Susann Mills \_\_\_ David Sullivan \_\_\_ Ron Verini \_\_\_  
Joe Dominick \_\_\_

**2) Pledge of Allegiance**

This Agenda was posted on Tuesday, June 15, 2010, and a study session was held on Wednesday, June 16, 2010. 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 06/07/10 ..... 1-12  
B) Proclamation: Americanism Week ..... 13  
C) Meetings List: July-December, 2010 ..... 14  
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) Old Business**

- A) Ordinance #2646-2010: Granting a Franchise Agreement to Idaho Power (Final Reading by Emergency Passage) ..... 15-23

**7) New Business:**

- A) Ratify Police Union Contract (Hand-Out)  
B) Dog Shelter Contract w/Ani-Care Shelter, LLC ..... 24-27  
C) Ordinance #2647-2010: Amend OMC 3-16 re: Dealers of Regulated Property (1<sup>st</sup> Reading) . . . 28-33

**8) Discussion Item(s): Wednesday**

- A) Approval of 5-Year Freeze on Rural Fire Board Contract in Exchange for Funding in Support of the Proposed Ontario Fire Department Storage Facility ..... 34-35

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

**10) Executive Session: 9:00 a.m. Wednesday, June 16, 2010**

- A) ORS 192.660(2)(d)

**11) Adjourn**

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**COUNCIL MEETING MINUTES**  
**June 7, 2010**

The regular meeting of the Ontario City Council was called to order by Mayor Joe Dominick at 7:00 p.m. on Monday, June 7, 2010, in the Council Chambers of City Hall. Council members present were Norm Crume, Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan and Ron Verini.

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Chuck Mickelson, Al Higinbotham, Mike Kee, Yorick deTassigny, Allen Montgomery, Mark Saito, Frank Grimaldo, Alan Daniels and camera operator Erika Hopper.

Charlotte Fugate led everyone in the Pledge of Allegiance.

**AGENDA**

Ron Verini moved, seconded by Charlotte Fugate, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**CONSENT AGENDA**

Councilor Crume recused himself from taking action on the Consent Agenda as his corporation had a payment due under the bills.

Susann Mills moved, seconded by John Gaskill, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 05/17/2010; Item B: Appointment to Airport Board: Shawn Coleman; Item C: Resolution #2010-132: City's Election to Receive State Revenues; Item D: Resolution #2010-133: Imposing and Categorizing Taxes for the Second Half of the 2009-2011 Biennial Budget Period; Item E: Ordinance #2645-2010: Requiring Telecommunications Franchisees to Maintain their Facilities Free from Nuisances, Including Graffiti (Final Reading); and Item F: Approval of the Bills. Roll call vote: Crume-abstain; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/0/1.

**NEW BUSINESS**

**Resolution #2010-130: Transfer Funds to Purchase Dog Lodging Services**

Mike Kee, Police Chief, stated Kim and Ross Henricks made an offer to purchase Atherton Kennels. The City had had a long-standing relationship with Atherton Kennels using them to lodge stray and vicious dogs. In recent years the quality of care at Atherton Kennels had become a concern of many of their customers, including the police department. Included in the packet was a proposed contract from the Henricks in which the cost of lodging dogs for the first year was proposed to increase 20%, with an increase of 7.5% for each year after for a total of five years. Staff felt that some changes needed to be made to the proposed contract in order for the City to sign. The monthly cost of lodging was proposed to increase from \$975 to \$1,170 or \$2,340 for the remaining year of the budget. As this was an unbudgeted cost, a transfer of funds from contingency into police dog lodging would be necessary. City staff was in support of the Henricks' proposal, and was excited about the improvements outlined. Staff would work with the Henricks and Larry Sullivan to reach a mutually agreeable contract.

Kim Henricks stated she and her husband were in the process of purchasing Atherton Kennels, and would be changing the name to Ani-Care Animal Shelter. Over the past year, the Ontario Police Department had delivered 148 dogs to the kennel, and citizens had brought out 35 for the year, for about 16 dogs a month on average.

Councilor Fugate asked about the 20% increase in fees. Also, would there be someone available at the kennel 24 hours a day?

Ms. Henricks stated the increase would be used partially for the installation of an incinerator, but also the facility overall was outdated and needed repairs made throughout. As for the coverage, there would be set hours, but she would make herself available for the off hours.

Mayor Dominick stated that based upon the increase requested, Ms. Henricks was estimating about \$80 a day, per dog, for housing.

Mr. Henricks stated it was hard to judge how much was needed, specifically.

Councilor Sullivan stated it appeared very high. How much was she charging to lodge an animal?

Ms. Henricks stated a boarded animal was about \$22 per day.

Councilor Sullivan stated the city was paying quite a bit more, and paying up front, and would also have a contract.

Ms. Henricks stated it was all perception. She didn't believe they could calculate out on a per dog basis, but more the number of kennels she would provide.

Councilor Sullivan stated it would seem the city would get closer to the cost being charged to people boarding their animals. Why would the city be charged three times that amount?

Ms. Henricks stated there was also maintenance provided; however, she didn't really have an answer.

Chief Kee stated that also provided access to the city 24-hour a day.

Ms. Henricks stated she would have no background on the strays, but she'd have all information on pets being boarded.

Councilor Sullivan suggested a shorter contract term in order to review a year's worth of statistics.

Ms. Henricks stated she would probably be okay with that, but wanted to speak with her attorney.

Mayor Dominick asked for clarification on the \$10 fee per animal subject to a "bite" hold.

Chief Kee stated the city's ordinance required a 3-day "bite" hold on an animal questionable for rabies.

Councilor Crume asked for an explanation on the price increase of 20% initially, then 7.5% per year for the next 5 years. That equated to a total 60% increase over the next five years.

Ms. Henricks stated no increase had been taken over the past 6 years, so it was to catch up to current financial needs. Also, the initial 20% was to help put in upgrades at the facility.

Mr. Sullivan stated he had spoken with County Counsel Stephanie Williams, and he had also seen the contract for what the county was paying to the kennel, and he believed it to be several hundred dollars more than the city was paying. Also, the Sheriff didn't transport dogs to the shelter, so they were paying a fee to the kennel without the county using it. The rationale was that they were paying it as a subsidy to allow a shelter to be available for local residents.

Mayor Dominick suggested to Larry Sullivan a change in the contract on page 21, the section regarding transferring the shelter without consent of the other party. That needed to be addressed. That section needed to be written to require the consent of the Council. He also agreed with a 1-year term right now, then readdressing it later after seeing the numbers for that one year.

Councilor Verini suggested a 2-year initial contract.

Mr. Sullivan stated the issue before the Council was the adoption of the resolution to transfer money for the increased payment to the kennel for the budget cycle. They did not have to discuss the contract at this point.

Chief Kee confirmed the money was for a 12-month period, or until the end of the 2011 budget.

Norm Crume moved, seconded by David Sullivan, to adopt Resolution #2010-130, A RESOLUTION APPROVING THE REALLOCATION OF \$2,340 WITHIN THE GENERAL FUND FOR THE PURCHASE OF DOG LODGING SERVICES. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**Ordinance #2646-2010: Granting a Franchise Agreement to Idaho Power (1<sup>st</sup> Reading by Emergency Clause)**

Larry Sullivan, City Attorney, stated Idaho Power Company had a 20-year franchise agreement with the City that was set to expire on June 30, 2010. The most significant changes in the new agreement were to shorten the length of the franchise term from 20 years to five years (Section 2); and to increase the franchise fee from 5% to 7% of Idaho Power Company's gross revenues (Section 13). The purpose of the shorter term was to allow the City to adapt more

quickly to changes in the utility business and in technology by allowing for more frequent negotiations. The reason for the increase in the franchise fee was to increase the revenues to the City.

Under the rules of the Oregon Public Utility Commission, an electric power franchisee must pay the first 3.5% of any franchise fee and must bill any additional amount to its customers within the jurisdiction. Therefore, under the current agreement's 5% franchise fee, the Idaho Power customers in the Ontario city limits paid 1.5% of the franchise fee. Under the proposed agreement's 7% franchise fee, those customers would pay 3.5% of the franchise fee.

Idaho Power Company provided a "template" contract form that it encouraged cities to use. Although the template was generally complete and fairly neutral, and many of the provisions were added in the new ordinance, there had been some changes made in the template for the Ontario ordinance. Changes included the requirement that the franchisee comply with the provisions of the City's right-of-way standards imposed in Chapter 8 of Title 8 of the Ontario City Code (Section 10); that the franchisee comply with the nuisance and anti-graffiti provisions of the City Code (Section 5); and that the franchisee allow the City to use its power poles and other facilities without charge so long as the City's use did not interfere with the franchisee's operations (Section 16).

The ordinance also included an emergency provision to allow the ordinance to take effect in less than 30 days, so that there would not be a gap between the expiration of the current franchise agreement on June 30, 2010, and the new agreement, assuming that the second reading took place before then.

As a side note, as of May 28, 2010, Idaho Power had not reviewed or commented on the proposed agreement.

Councilor Crume stated he would prefer a 5-year contract, but did not have an issue with a 10-year contract. He did, however, not agree with the 2% increase. Based on the current economic times, he did not believe it fair to add another burden on to the backs of the taxpayers.

Joe Dominick moved, seconded by David Sullivan, that the Mayor and Council declare the need to approve Ordinance #2646-2010 on an emergency passage. Roll call vote: Crume-no; Fugate-yes; Gaskill-yes; Mills-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

Ron Verini moved, seconded by John Gaskill, to approve Ordinance #2646-2010, AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE TO IDAHO POWER COMPANY, AND FIXING TERMS, CONDITIONS, AND COMPENSATION OF SUCH FRANCHISE, AND DECLARING AN EMERGENCY, on First Reading by Title Only. Roll call vote: Crume-no; Fugate-yes; Gaskill-yes; Mills-no; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 5/2/0.

#### **Fire Station Storage Building Design Build Award**

Chuck Mickelson, Public Works Director, stated the memorandum reviewed the process to date for the design and construction of the Fire Station Storage Building. Staff was recommending that the City Manager be authorized to sign a design-build agreement with MVCI, LLC of Ontario, Oregon for the design and construction of a Fire Station Storage Building on city-owned airport property located at the corner of Southwest 4<sup>th</sup> Avenue and Southwest 33<sup>rd</sup> Street. The project was needed to address the considerable space shortage issue facing the Ontario Fire Department and the Rural Fire Protection District that was resulting in the inability to adequately store critical emergency response equipment. Costs had been received for both a four bay facility and a five bay facility. Staff recommended proceeding with the construction of a five bay facility as that was the most economical option.

In October 2009, the Council approved a resolution to hire an architectural firm to prepare plans and specifications for the design of a storage building. At the subsequent Council meeting, that resolution was rescinded in order to pursue the design-build process as an alternative to the traditionally used design-bid-build method for completion of the work.

Following the Council's decision, the Mayor created a committee comprised of council members and local citizens to review and study the design build process as outlined in the Oregon code for municipalities. Several members also visited similar fire facilities in the area. In mid January, city staff became involved in the committee process. The decision was made to proceed with a design build package and public works and fire staff spent a considerable amount of time developing the solicitation documents for the project. Oregon statutes and adopted rules required a very specific process when pursuing design-build that was considered an alternative contracting method from the normal process of design-bid-build. Due to the city's lack of precedent employing this procurement methodology, a variety of resources were sought to assist in the process, including documents prepared by other cities for similar projects, guidance from the city's legal counsel and recommendations from the Mayor's committee. A design-build process not only considered price but also qualifications, schedule, previous work experience and other parameters that the owner considered important in the selection process.

In March 2010, the city released the bid proposal for the project with a response deadline that was extended into early May as staff addressed concerns raised by interested parties through the addendum process. The solicitation yielded a total of five proposals to be considered by a selection committee that included Mayor Joe Dominick, Council President Susann Mills, Council Member John Gaskill, Public Works Director Chuck Mickelson, Deputy Public Works Director Bob Walker, Fire Chief Al Higinbotham and Facilities Manager Yorick de Tassigny. Non-voting attendees invited to provide expertise at various stages of the selection process included Anderson Perry Engineer Allen Riecki, who was involved in a similar project for the City of La Grande, and the city's Building Official Dwayne Holloway, to provide insight on code issues arising from candidates' responses to interview questions. Respondents to the design build proposal included Sid Johnson and Co. (Baker City), Holcomb Construction Inc. (Nyssa), Guho Corp (Eagle Idaho), MVCI, LLC (Ontario) and Wellens-Farwell (Enterprise).

The selection committee rejected two of the five proposals (Holcomb Construction and Wellens-Farwell) for non-compliance with the pass/fail portion of the proposal submission requirements. The committee felt it was important to adhere to the submission terms clearly outlined in the solicitation documents in order to lend credibility to the selection process.

Costs for the remaining proposers were as follows:

Proposer	Base Bid	Additive Alternate No. 1	Total with Additive Alternate
Sid Johnson and Co.	672,062	55,192	727,254
Guho Corp.	456,666	55,200	511,866
MVCI, LLC	448,500	65,300	513,800

The base bid included a building with 4 drive-through bays and the additive alternate was for the construction of a 5<sup>th</sup> bay. These three proposals were evaluated and scored independently by each committee member following the scoring criteria published within the design build document. Price represented 30% of the score of the written proposal. A tally of the points resulted in the following ranking listed in order of highest to lowest score: 1. Guho Corp. 2. MVCI, LLC 3. Sid Johnson and Co. All committee members had independently ranked the three firms in the same order.

Guho Corp. emerged as the clear favorite of the committee based on price, understanding of the project, quality of their submissions and proposal content, and were invited to take part in an interview as a result. The decision was also made to interview the runner-up, MVCI, LLC. The selection committee compiled a list of questions to assist in evaluating each firm's presentation and responses.

It was discovered the day of the interviews that Guho Corp.'s contractor's license had expired. The firm's representatives were informed of this finding prior to the start of their allotted time and given the opportunity to look into the matter in case it was an administrative lapse at the state level. They elected to move forward with their presentation and interview in hopes the situation would be resolved in their favor.

During the interviews, both firms demonstrated they were capable of successfully completing the project. However, it was later determined that, despite their high level of professionalism and outstanding proposal quality, Guho Corp. was ineligible for further consideration for this project due to unresolved licensing issues. MVCI, LLC was identified as the successful firm, and was being recommended for the project by the selection committee.

One of the benefits of the design build process was to have the contractor and their representatives identify cost saving options. Each of the proposers had various suggestions as to how the project could be modified to save money without compromising the intent of the project. On June 1<sup>st</sup>, staff met with representatives of MVCI, LLC to see what cost saving measures could be considered in order to bring the project closer to the budgeted funds. Items that were identified included reorienting the building on the site to improve the ingress and egress; reducing the size of the concrete aprons in the front and back of the building saving on concrete and utilizing more asphalt which was less expensive on a per square foot basis; lowering the eave height from 20' to 17' which would still allow the fire department staff to stand on the top of the trucks when loading hoses and doing maintenance; eliminating the shower and urinal in the bathroom. As this building was intended to become a future fire station, showers would be provided during that construction; eliminating the translucent panels from the roof system - this was intended to save on energy costs. There would be significant natural light from the windows in the rollup doors and the exterior windows; and eliminating the vinyl composition tile in the bathroom and applying a sealant on the cement floor as an alternate finish.

During the meeting, a tour of the fire bays in City Hall was done. Following discussion, all were in agreement that the entry bay doors could be reduced in size from 14' to 12'. That would allow the length of the building to be reduced resulting in a smaller structure, less interior and exterior concrete, and less expensive doors.

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The Council could choose not to approve this design-build agreement with MVCI, LLC and direct staff to re-release the solicitation documents to see if more respondents could be lured by the project. Council could also instruct staff to pursue the services of a qualified firm for the design and development of bid documents for the project.

A \$400,000 budget was approved for this project which included a \$50,000 contribution from the Rural Fire District. The city intended to finance its cost over a period of 7 years. The placeholder in the budget now was for the debt service repayment of \$69,128 per year, and \$138,256 was in the 2009-2011 Biennial Budget. That was within the Fire Department budget in the debt service category. Staff recommended using the existing funds in the budget to partially pay for the construction and borrow the balance.

After further discussions with MVCI on June 3<sup>rd</sup> regarding the above cost saving measures, construction costs were reduced to \$430,000 from \$448,500 for the 4 bay facility and \$485,000 from \$513,800 for the 5 bay facility. The Fire Department would fill the 4 bay facility with existing equipment once it was constructed. The 5 bay facility provided additional capacity for future equipment and room for growth. It would be far more economical to construct the additional bay with this contract rather than adding onto it in the future.

In the work session on June 3<sup>rd</sup>, Council reviewed the finances for both scenarios (4 bay and 5 bay). A summary of costs and annual payments are as follows:

MVCI, LLC	4 - BAY	5 - BAY
Original Bid	448,500	513,800
Cost Saving Measures	(18,500)	(28,500)
Proposed Cost (MVCI)	430,000	485,300
Additional Costs (Permits, SDC's, Bills, Contingency, etc.)	50,000	50,000
<b>TOTAL COST</b>	<b>480,000</b>	<b>535,300</b>
Rural Fire District Contribution	(50,000)	(50,000)
	430,000	485,300
Debt Service 2009-2010 (use as cash)	(69,000)	(69,000)
<b>Balance To Borrow</b>	<b>361,000</b>	<b>416,300</b>
Annual Payments	62,388	71,945
5% Interest		
7 yr Amortization		

Staff was recommending approval of an agreement with MVCI, LLC for a guaranteed maximum price of \$430,000 for a 4 bay facility or a guaranteed maximum price of \$485,500 for a 5 bay facility. Following the decision of the Council, staff would issue a Notice of Award and MVCI could submit the necessary insurance certificates, performance and payment bonds and sign the contract. Final design drawings would be prepared following these actions.

Mayor Dominick informed the Council that he and Councilor Mills had met with the Rural Fire District Board, and there was a possibility that they would be willing to increase their contribution towards the Fire Substation by an additional \$55,000. That would be before Council at the next study session.

Joe Dominick moved, seconded by Charlotte Fugate, to authorize the City Manager to sign a design build agreement with MVCI, LLC, of Ontario, Oregon, for the construction of a 5-bay fire station storage building for a guaranteed maximum price of \$485,300. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**Resolution #2010-118: Transfer Funds to Extend Sewer Service to SW 4<sup>th</sup> Avenue and SW 33<sup>rd</sup> Street**

Chuck Mickelson, Public Works Director, stated a new Fire Station Storage Building was to be built on city property near the intersection of SW 4<sup>th</sup> Avenue and SW 33<sup>rd</sup> Street. The building would be used for storage of fire trucks, the hazardous materials response vehicle with trailers, and various other pieces of fire equipment. The building was intended to have a nominal dimension of 72' x 85' (6,120 square feet). Approximately 820 feet of 8-inch sanitary sewer line was needed to accommodate and provide service to the proposed new Fire Station Storage Building.

The only alternative to this was to construct a septic tank and drain field. After significant discussion with the Mayor's committee, it was determined that an extension of the sanitary sewer would be a better solution. The sewer line would also provide service to undeveloped property on the north side of SW 4<sup>th</sup> Avenue. The proposal would reduce the Sewer Fund contingency balance by \$90,000 and increase capital outlay in the Sewer Fund by the same amount, leaving a Sewer Fund contingency balance of \$1,318,542.

Susann Mills moved, seconded by Norm Crume, to approve Resolution #2010-118, A RESOLUTION AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE SEWER FUND TO EXTEND SEWER SERVICES TO SW 4<sup>TH</sup> AVENUE AND SW 33<sup>RD</sup> STREET. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

**Resolution #2010-135: Destination Resort – Burns-Paiute Tribe**

Henry Lawrence, City Manager, stated at the work session last Thursday, they had discussed that the Burns-Paiute Tribe was still interested in putting in a destination resort in Ontario, including a hotel, gaming facility, and possibility a golf course. There was a 2006 resolution on the books passed by a previous Council, supporting the effort of the Tribe. Before the Council was a new resolution that he, at the direction of the Council and with input from Councilor Sullivan, had developed to replace the 2006 resolution. It was also proposed that a letter, signed by the entire Council, be written and submitted along with the resolution to the elected officials at the state and federal level.

Councilor Sullivan asked the City Attorney to address the question that had been raised at the study session regarding conflicts of interest on this matter for members of the Council.

Larry Sullivan stated any time there was an out of town business relocating into a community, it was going to have both positive and negative impacts. Councilors who were also business owners might believe that there would be a positive impact on their business, but others might believe there would be a negative impact. Regardless, in either situation, that would not prevent any Councilor from voting on the issue. There was nothing in the proposed resolution that would prohibit any Councilor from participating or voting. There were very strict rules in Oregon that prohibited Councilors from voting on measures that would have a direct financial impact on their business, but in his review of the resolution, and having read the articles in the newspaper, he did not see anything that would give rise to a conflict of interest in this situation.

Mayor Dominick read some sections of the proposed resolution into the record: *Whereas the Burns-Paiute Tribe has approached the city with a tentative proposal of a destination resort and casino development, and the city has just started the process of gathering information and input from interested parties, the city was waiting to receive additional information from the Burns-Paiute Tribe. Because the City Council was still in the fact finding process, we are not prepared to offer our full support to the project at this time. The City Council encourages the continued efforts of the Burns-Paiute Tribe to improve the economic prospects of our region through the exploration of the possibility of locating a destination resort in the Ontario area. As more information about the proposed project becomes available and the City Council has been able to review the requested community impact analysis and hold public hearings, the City Council will amend this resolution as appropriate. As the process moves forward, the City Council encourages the Burns-Paiute Tribe to engage in a significant public effort to provide increased information as it becomes available and seek public input to ascertain the degree of public support for this project. The City Council requests that the Burns-Paiute Tribe work cooperatively with the City Council to choose a mutually agreed third-party consultant to complete the community impact analysis.*

Councilor Sullivan stated he was pleased that they had something in writing that would slow the process down and to allow for public input. He was under the impression that things were moving at the federal level that would impact the city's ability to have input into the process. He wanted the Council to consider the proposed resolution, as it reflected the position of the city currently, while still allowing for the input of information and discussion of the matter in a public form.

Councilor Verini didn't know if everyone had received a copy of the 96-412, the Indian Trust Land Acquisition Summary. The Burns-Paiute Tribe were not going through congress to secure land in this area. What they appeared to be doing was attempting to get congress to approve a trust. Eventually, wherever they did purchase property, whether in Ontario or somewhere else, that property would go into the trust. In the paperwork the Council received that evening, it stated "...where land was being acquired for business purposes, the Tribe shall provide a plan that specifies the anticipated economic benefits associated with the proposed use. Contact with state and local governments pursuant to 151-10, shall be completed at follows upon receipt that the Tribe's written request to have the lands taken in trust." The important piece to note was that nothing happened until they got the land. Once they got the land, then the discussions would begin. He did not think they could have an impact study if they didn't know where the piece of property was going to be. And it read quite clearly in the summary, "...the secretary shall notify the state and local governments (Ontario) having regulatory jurisdiction over the land to be acquired. The notice shall

inform the state and local governments that each would be given 30 days in which to provide written comment as to the acquisitions potential impacts on regulatory jurisdictions, real property taxes, and the special assessments.” He was thinking that if the city passed the proposed resolution, it would seem that it would stop the Burns-Paiute Tribe right in their tracks. They wouldn’t be able to go forward and create a trust. When the trust was put together and they obtained the land, that’s when the city would become involved.

Councilor Sullivan stated what Councilor Verini was speaking of was if the Tribe went through the Department of Interior Standards, which were put in place during the Bush administration. The Burns-Paiute Tribe did not qualify under that because their land was located more than 100 miles from their current established reservation. Therefore, the 96-412 rules did not apply. They were requesting, through our congressional delegation, was to have it passed in the form of a Bill to give them congressional approval, which would go outside of the 96-412 guidelines.

Councilor Verini stated if the land was in trust, was Councilor Sullivan telling him that 96-412 was for naught?

Councilor Sullivan stated that was correct, that 96-412 was for if they moved under the provisions of the Department of Interior structure put in place by the Bush administration, which specifically stated that in order for it to qualify for those guidelines, it would have to be within a 100 mile radius of the current location. Because it was not, they were moving forward outside of the guidelines to get a congressional Bill that would allow them to acquire land that was more than 100 miles away from their land.

Councilor Verini stated that was all they were doing. They were trying to get congress to approve the move more than 100 miles from the reservation.

Councilor Sullivan stated as such, the only way that congress could do that was by placing it outside of the guidelines of the agreement. So once they received congressional approval, they had the right to build whatever they wanted on the land they purchased, without any input. What Councilor Verini was reading was not applicable because the Tribe did not fall within the guidelines.

Mayor Dominick stated there were two tracks that all Tribes could explore for land acquisition or land trading. One being 96-412, but the Burns-Paiute Tribe was working on the other track. None of that information regarding the second track had been received by the city.

Councilor Verini stated if the Tribe didn’t have the land, and all they were doing was going for the trust, if they didn’t know where the land was, how could they do an impact study?

Councilor Sullivan stated they were done all the time. He believed that Councilor Verini was mistaken in that the establishment of a trust was not recognizing the land as to where it was going to go, and saying all they were trying to do was establish a trust. That’s irrelevant to this process because they weren’t required to establish a trust when getting congressional approval, they could simply move forward with the purchase of the land that would be placed within their jurisdiction and outside of the city’s. At that time, the city would have no say on what they built on the land.

Councilor Verini stated once they put the land in trust through congress...

Councilor Gaskill stated if Councilor Sullivan was correct, the track the Tribe was taking, to go through congress to have a Bill passed, supplanted the provisions issued by the Department of the Interior. It would not be a trust process. It would be a grant to the Tribe to do something outside of the guidelines. It would appear they were attempting to bypass every rule established by the Department of the Interior, which effectively stopped the process that was begun in 2004 when they first looked around Ontario. He wanted to see from Senator Merkley’s office, the documentation that the Tribe was proposing, whatever it was named, to see what it said. That’s if Councilor Sullivan was right.

Councilor Verini stated if Councilor Sullivan was wrong, it was doing a disservice to the Tribe.

Councilor Gaskill disagreed. In the resolution and letter, they were asking to be included in the process. If the Tribe was trying to politicize this by using congress to get an exemption, the potential was there for the Council and community to be shortcut in the process of determining if it would be good for the community or not.

Mayor Dominick stated that was why the comments about the impact study were such a vital part of the proposed resolution.

Councilor Sullivan stated they also needed to be involved in the strategic location of the complex. It could have a huge impact on the growth patterns of the city.

Councilor Verini agreed, but he had a problem with the resolution, The 2006 resolution stated, in part, "...as the process moves forward, the City council also supports a significant public effort by the Burns-Paiute Tribe to provide increased information as it becomes available, and to obtain public input and ascertain the degree of public support for this project." In the new resolution, it read, and it was the piece he had an issue with, "...because the City Council is still in the fact-finding process, we are not prepared to offer our full support to the project at this time." That one statement would stop...

Councilor Sullivan asked what was inaccurate about the statement?

Councilor Verini stated there was nothing inaccurate about it.

Councilor Sullivan asked if there was anything outlined in proposed Resolution 2010-135 that Councilor Verini disagreed with?

Councilor Verini stated he disagreed with it, he didn't say it was inaccurate. He disagreed with it because it was already addressed in the 2006 resolution.

Councilor Sullivan asked Councilor Verini if he agreed with what was addressed in the 2006 resolution, and he wanted to keep it, why did he disagree now?

Councilor Verini stated it was the wording. They were throwing it in the face of the Tribe. Without the facts in front of them, they had no idea what was being brought forth.

Councilor Sullivan stated that was exactly the point of the resolution. It was to stop the process until they could find out what was going on at the congressional level, and to state the Council could not give support until studies had been completed, they had received public input, and they had an opportunity to speak with all the interested parties.

Mayor Dominick added it stated in the title of the resolution that the city was encouraging the Tribe to continue exploring the concept by providing the community impact analysis and working with the Council.

Councilor Sullivan stated he did not see anything in the proposed resolution that would present a roadblock to the Tribe proceeding.

Councilor Verini disagreed. The first sentence of the resolution, "Because the City Council was still in the fact-finding process, we are not prepared to offer our full support to the project at this time."

Councilor Sullivan stated the resolution read "As the process moves forward, the City Council encourages the Burns-Paiute Tribe to engage in significant public effort to provide increased information as it becomes available and seek public input to ascertain the degree of public support for this project. The City Council requests that the Burns-Paiute Tribe work cooperatively with the City Council to chose a mutually agreed upon third party consultant to complete the requested community impact." Maybe #3 was more appropriate "As more information about the proposed project becomes available, and the City Council has been able to review the requested community impact analysis and hold public hearings, the City Council will amend this resolution appropriately."

Councilor Gaskill stated following review, the Council would be in a better position to determine the level of support.

Mr. Sullivan suggested taking out the first paragraph and putting in that the City Council affirms that the position was stated in the resolution.

Councilor Sullivan stated the problem was that the resolution was taken as a support document from the City.

Councilor Gaskill asked if there was a plan presented at last Wednesday's meeting?

Mayor Dominick stated no plans had been shown.

Councilor Sullivan stated at the meeting last Wednesday, the Tribe stated the first level was going to include a truck plaza, which was something not mentioned in their press statement. It was confusing to find out what they wanted to put in there, as they've changed between that meeting and the press release. The press release did not accurately reflect what was said in the meeting.

Councilor Gaskill confirmed that Councilor Sullivan had spoken with someone in Senator Merkley's office.

Councilor Sullivan stated he had.

Councilor Gaskill asked if Councilor Sullivan had asked if they could provide the Council with the bill or resolution that was being discussed.

Councilor Sullivan stated he did not ask, but he would.

Councilor Gaskill stated he wanted to see what they were proposing and how it related to what was done and what rules and regulations were in place before, to see if building on this, which were the rules for everyone else, or if they were trying to get a special provision.

Mayor Dominick encouraged each Councilor to do their homework. It was the Council's responsibility to become informed and educated on what was going on so they could speak with the public and get their input also. He was pleased to see the proposed resolution; it was not stopping anything, it was asking for more.

Councilor Sullivan stated he believed one of the biggest reasons that the Council wanted the resolution in place was to state specifically what the City's position was now. He had no problem stating the City was not prepared to offer full support at this time.

Councilor Crume stated in reading the proposed resolution, there was no question on where the Council stood on the issue. They were arguing about this because they still didn't have the answers they wanted. It was his understanding that on the federal side, they were trying to circumvent the rules that were put in place, to have the ability to find the piece of property and eventually put it into trust, which put it into the hands of the federal government, to where they could place a gaming facility on it. To get to that point, there were many things that had to occur. The city had to support the project, the Tribe had to have an environmental impact study done, they had to have the ability to purchase the property, they had to have a community impact study completed, etc., all which had to be completed so they could put it into the federal act to get it changed over. With all the different things that had to be done, even if they picked a specific piece of property, they could not purchase that land, but they might set it aside to purchase; or "maybe" purchase, but it would be set aside on the provision that they could get the impact studies done.

Councilor Sullivan stated he knew the Tribe was required to do the environmental study, and another study to make sure the property wasn't on a burial ground. Bottom line, did the Council want to have input into the project? Norm?

Councilor Crume stated absolutely.

Councilor Sullivan asked Councilor Verini if he wanted to have input into the development of this project?

Councilor Verini stated he believed they would have input.

Councilor Sullivan stated he didn't ask him if he thought they would, did he WANT to?

Councilor Verini stated absolutely.

Councilor Sullivan asked Councilor Gaskill?

Councilor Gaskill replied absolutely.

Councilor Sullivan asked Mayor Dominick?

Mayor Dominick replied absolutely.

Councilor Sullivan asked Councilor Mills.

Councilor Mills replied yes.

Councilor Sullivan asked Councilor Fugate.

Councilor Fugate replied yes.

Councilor Sullivan stated then they needed to put a document out there that stated the city wanted to have input into the process. They were not trying to outthink the government; they were just putting the city's provision in to enable them to support the project. It would be irresponsible of the Council to do anything of this project's nature without impact studies, public hearings, and discussions with the community of Ontario. That was all the resolution would do.

Councilor Verini stated it was under discussion because of how it was worded. If the original resolution was read, it was not a resolution that said the city gave 100% support for the Paiute Tribe.

Mayor Dominick agreed, and the disagreement was not with that; however, somewhere, the resolution had been represented differently, and the Council needed to ask Senator Merkley's office how they were using it, and get a copy of the bill. The Council needed make it clear, and let the business that wanted to come to Ontario, know that the Council wanted them to continue looking, but more information was needed. The Council wanted to be a full partner, just as the Burns-Paiute Tribe wanted to be. He did not see anything in the proposed resolution that should be offensive to the Tribe in any way. The Council just wanted information. Following a conversation he had that day, the city was going to receive as much information as was out there. The Council needed, and wanted, the public's input, because the seven of them should not decide the fate of the community – it should be a community decision.

Mr. Lawrence stated staff had been meeting with County Counsel Stephanie Williams to discuss the possibility of finding a specialty attorney to advise the city. The City's Attorney, Larry Sullivan, did not specialize in this type of issue. The idea was to stay ahead of this on the legal side, and to share the cost of the specialty attorney between the city and the county. Following a discussion between Larry Sullivan and Stephanie Williams, the next step would be to have an executive session to discuss retaining the attorney, and then bringing that attorney before the Council and the public about the process. The Council also might want to form an ad-hoc committee. Another issue was that a representative from the Burns-Paiute Tribe had offered to come to Ontario to make a presentation before the Council, but it wouldn't be for a few weeks.

David Sullivan moved, seconded by Norm Crume, to approve Resolution #2010-135, A RESOLUTION ENCOURAGING THE BURNS-PAIUTE TRIBE TO CONTINUE EXPLORING THE CONCEPT OF A DESTINATION RESORT/CASINO IN THE ONTARIO AREA BY PROVIDING A COMMUNITY IMPACT ANALYSIS AND WORKING WITH THE CITY COUNCIL TO SEEK PUBLIC INPUT. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 7/0/0.

Mr. Lawrence stated that Councilor Sullivan would be going to Washington, DC later in the week, and would be hand-delivering the resolution and a cover letter to three individuals there.

Councilor Gaskill read the cover letter into the record:

*The City of Ontario would like to ask our federal delegation to please defer consideration of all federal legislation regarding the proposed move by the Burns-Paiute Tribe to the Ontario area. This will give the City an opportunity to properly underwrite and assess the impact to the City of the proposal.*

*This time will allow us to:*

- 1. Acquire and review the requested impact study;*
- 2. Investigate the impact of gaming operations on the municipalities within Oregon and Idaho;*
- 3. Discuss the findings with all interested parties; and*
- 4. Conduct a series of public meetings with the citizens of Ontario.*

*After completing our due diligence, we will make our intentions known to all parties and we can take appropriate action to approve or disapprove the Burns-Paiute proposal.*

Councilor Verini stated if that didn't cease and desist all congressional matters, nothing would.

Councilor Sullivan stated if someone entered a bank for a loan, but didn't provide any information, what would the banks say?

Councilor Verini stated Councilor Sullivan didn't even have the information.

Councilor Sullivan agreed, no one had the information. That was the issue. They needed information before a decision could be made. He didn't understand why Councilor Verini was having such difficulty saying that at this time, the city did not have enough information to make a decision.

Councilor Crume stated the first sentence was rough. He suggested *"The City of Ontario would like to ask our federal delegation to please temporarily defer consideration..."*

Councilor Sullivan asked what that meant?

Councilor Crume stated it was asking them to defer consideration.

Councilor Sullivan stated the word "temporarily" would have no impact.

Councilor Verini stated they might not even need the impact study if it was not located in this area.

Councilor Sullivan stated they certainly did.

Councilor Verini stated yes, if they were going after a trust. The problem was, according to Councilor Sullivan, the Indian Trust Land Acquisition Act was thrown out.

Mayor Dominick stated it wasn't thrown out. There were two avenues available to go through. One was federal, and the other under discussion was route two. If the federal one didn't work, they could try route two.

Councilor Sullivan stated that was what they said in their meeting. The Tribe represented that.

Councilor Verini stated that was the first time he had heard that, that the Tribe didn't qualify under one of the processes, so the only other way for them to get it was to go through congressional approval. He believed it was still a slap in the face.

Councilor Sullivan asked where it was slapping anyone?

Councilor Gaskill stated they might be slapping Senator Merkley for presuming too much based on the 2006 resolution.

Councilor Sullivan stated all they were trying to do was communicate the position of the Council. There would be public meetings, they would have impact studies, and the Council would discuss it. The resolution was simply asking to go through the process, to not make a decision until the process had been done. That was why the Council defined exactly what they wanted to do. They didn't want to put forward a document that was grey, that wouldn't allow the Tribe to see what the path was to get the Council's approval. It was very specific, but at the same time, the Council needed to communicate where they were at currently so that the process went to the city prior to going to the federal government.

Councilor Gaskill stated that whoever was helping with this process on behalf of the Tribe needed to understand that the 2006 resolution should not be misused. It should be used for what it was, a statement much like the proposed one, that indicated the Council supported the continued investigation, etc.

Mr. Sullivan stated what he was hearing, was that the letter was sent out, and someone misinterpreted the letter in Merkley's office, the same way they misinterpreted the earlier resolution, and read it to mean that the City of Ontario did not want the project, so they would then take that letter and use it as proof that the City didn't want the Tribe to locate here.

Councilor Sullivan stated that would be handed out with the resolution, specifically stating that there would be a further resolution providing approval or disapproval. His goal was to get the process started here, not Washington, DC. Start it here, discuss it here, with the people who would be affected. What in that letter indicated there was anything else?

Councilor Verini just didn't want the new document misconstrued as the original had been.

Councilor Sullivan stated they were dealing with a \$500,000,000 project. Did Councilor Verini really think that a word in a letter was really going to stop that process?

Mayor Dominick suggested rewriting the letter, and restating the information from the resolution, would that work?

Council consensus to do that.

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

- Chief Higinbotham thanked the Council for moving forward on the new Fire Station Storage Facility. Also, they had responded to a mutual aid to Payette for sandbagging.

CITY OF ONTARIO 444 SW 4<sup>TH</sup> STREET ONTARIO OREGON 97914

- Chuck Mickelson stated he had been working with the health department and the residents of Nadine Drive, a cul-de-sac off Alameda, just outside of the city limits. They were on private wells and septic tanks, but a number of the residents were interested in obtaining city water and sewer. That would require annexation of the property. The line extension would likely be done through an LID.
- Henry Lawrence stated there would be an executive session on Wednesday, the 16<sup>th</sup>, to discuss labor negotiations, with a special meeting to follow.
- Councilor Verini provided an update on the local Suicide Hotline.
- Councilor Fugate provided an update on the city's website.
- Mayor Dominick thanked the Chief for his involvement in the Buck-a-Roo supper. Also, the Global Village had taken place over the week-end, and it had been well attended, along with the Kid's Fair. He had also buzzed up to the Cambridge Show and Shine Car Show, and then moved on to Marsing for the Jet Boat Races. On June 11-12, the annual Relay for Life was scheduled in Ontario.

**ADJOURN**

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

ATTEST:

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

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

**AMERICANISM PROCLAMATION**

**WHEREAS**, Strengthening the Unity of the United States of America is vital, and

**WHEREAS**, There is a need to strengthen the American Heart of Emblem, and

**WHEREAS**, There is a need to strengthen the beliefs of each individual and each Club, and

**WHEREAS**, In these interests, it seems appropriate at this time to restate our Citizen Principles:

We do Pledge to bear true allegiance to the Constitution of the United States of America, and to the Flag which is the Emblem of our Country. The Supreme Emblem Club of the United States of America® has, in fact, adopted the Flag of our Country as the Emblem of our Order and have adopted the name **EMBLEM** by which our organization is known throughout the land.

We are citizens dedicated to the beliefs that the United States of America shall be sustained, preserved and perpetuated.

**NOW THEREFORE BE IT RESOLVED**, In keeping with these principles, it seems obligatory that we act now to more forcefully display these beliefs:

1. That each club create an Americanism Committee;
2. That each club originate and participate with others in patriotic community endeavors;
3. That each Emblem member as an individual, finish a patriotic deed each day;
4. That each club and every member engage in assisting the Americanism Program of the Benevolent and Protective Order of Elks on every occasion when members are invited to participate;
5. That each club and each member give determined effort to actively fulfilling the purpose to which we dedicate ourselves, to bear true allegiance to the Constitution and Flag of the United States of America.

**NOW, THEREFORE, I,** \_\_\_\_\_,

**MAYOR OF THE CITY OF ONTARIO, OREGON, DO HEREBY PROCLAIM JUNE** \_\_\_\_\_

**THROUGH JUNE** \_\_\_\_\_, 20 \_\_\_\_\_, **AS SUPREME AMERICANISM WEEK.**

**MEETINGS LIST JULY THROUGH DECEMBER, 2010**

<b>JUL</b>	1	Council Study Session	12 Noon	City Hall
	1	V&C Board	7:00 am	Holiday Inn
	6	(TUE) Council Meeting	7:00 pm	City Hall
	7	Police Board	12 Noon	City Hall
	12	Planning Commission	7:00 pm	City Hall
	12	Airport Board	7:00 pm	Airport
	13	Golf Committee	5:30 pm	Golf Course
	15	Council Study Session	12 Noon	City Hall
	15	Public Works Committee	3:00 pm	City Hall
	19	Council Meeting	7:00 pm	City Hall
	21	Recreation Board	3:30 pm	City Hall
	29	Council Study Session	12 Noon	City Hall
<b>AUG</b>	2	Council Meeting	7:00 pm	City Hall
	4	Police Board	12 Noon	City Hall
	5	V&C Board	7:00 am	Holiday Inn
	9	Airport Committee	7:00 pm	Airport
	9	Planning Commission	7:00 pm	City Hall
	10	Golf Committee	5:30 pm	Golf Course
	12	Council Study Session	12 Noon	City Hall
	16	Council Meeting	7:00 pm	City Hall
	18	Recreation Board	3:30 pm	City Hall
	19	Public Works Committee	3:00 pm	City Hall
	<b>SEP</b>	1	Police Board	12 Noon
2		Council Study Session	12 Noon	City Hall
2		V&C Board	7:00 am	Holiday Inn
7		(TUE) Council Meeting	7:00 pm	City Hall
13		Airport Committee	7:00 pm	Airport
13		Planning Commission	7:00 pm	City Hall
14		Golf Committee	5:30 pm	Golf Course
15		Recreation Board	3:30 pm	City Hall
16		Council Study Session	12 Noon	City Hall
16		Public Works Committee	3:00 pm	City Hall
20		Council Meeting	7:00 pm	City Hall
30		Council Study Session	12 Noon	City Hall
<b>OCT</b>		4	Council Meeting	7:00 pm
	6	Police Board	12 Noon	City Hall
	7	V&C Board	7:00 am	Holiday Inn
	11	Airport Committee	7:00 pm	Airport
	11	Planning Commission	7:00 pm	City Hall
	12	Golf Committee	5:30 pm	Golf Course
	14	Council Study Session	12 Noon	City Hall
	18	Council Meeting	7:00 pm	City Hall
	20	Recreation Board	3:00 pm	City Hall
	21	Public Works Committee	3:00 pm	City Hall
	28	Council Study Session	12 Noon	City Hall
<b>NOV</b>	1	Council Meeting	7:00 pm	City Hall
	3	Police Board	12 Noon	City Hall
	4	V&C Board	7:00 am	Holiday Inn
	8	Airport Committee	7:00 pm	Airport
	8	Planning Commission	7:00 pm	City Hall
	9	Golf Committee	5:30 pm	Golf Course
	10	(WED) Council Study Session	12 Noon	City Hall
	15	Council Meeting	7:00 pm	City Hall
	17	Recreation Board	3:30 pm	City Hall
	18	Public Works Committee	3:30 pm	City Hall
<b>DEC</b>	1	Police Board	12 Noon	City Hall
	2	V&C Board	7:00 am	Holiday Inn
	2	Council Study Session	12 Noon	City Hall
	6	Council Meeting	7:00 pm	City Hall
	13	Airport Committee	7:00 pm	Airport
	13	Planning Commission	7:00 pm	City Hall
	14	Golf Committee	5:30 pm	Golf Course
	15	Recreation Board	3:30 pm	City Hall
	16	Council Study Session	12 Noon	City Hall
	16	Public Works Committee	3:00 pm	City Hall
	20	Council Meeting	7:00 pm	City Hall
30	Council Study Session	12 Noon	City Hall	

**OLD BUSINESS**  
June 16, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE NO. 2646-2010, AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE TO IDAHO POWER COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND DECLARING AN EMERGENCY (SECOND READING)**

DATE: June 14, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance 2646-2010

This ordinance is a new franchise agreement for Idaho Power Company.

**PREVIOUS COUNCIL ACTION:**

June 7, 2010 Council approved first reading

**BACKGROUND:**

Some changes have been made in the ordinance since the first reading. Based on the discussion at the June 7, 2010, Council meeting, the term of the franchise agreement has been changed from a five year to a ten year term (Section 2(1)).

In addition, the wording with respect to the effective date of the ordinance has been changed. In the original ordinance, in the last Whereas clause it was stated that the ordinance took effect immediately on its passage "or on July 1, 2010, whichever is later". Under the Ontario City Charter, an ordinance enacted with an emergency clause takes effect immediately. There is no provision in the Charter for having a later effective date under an emergency enactment. Therefore, in order to comply with the Charter, the ordinance language has been corrected to provide that the ordinance takes effect immediately. Although it takes effect immediately, Section 2(1) has been changed to explicitly state that the franchise is granted for a ten year term starting on July 1, 2010.

Last, Section 19 of the ordinance has been reworded to provide that Idaho Power's signature on the ordinance is retroactive to July 1, 2010.

**RECOMMENDATION:**

Staff recommends the Council approve the final reading of Ordinance No. 2646-2010 by emergency passage.

**PROPOSED MOTIONS:**

"I move that the Mayor and City Council declare the need to approve Ordinance #2646-2010 on an emergency passage."

"I move that the Mayor and City Council approve **ORDINANCE 2646-2010, AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE TO IDAHO POWER COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND DECLARING AN EMERGENCY**, on Second and Final Reading by Title Only."

**ORDINANCE NO. 2646-2010**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE ELECTRIC UTILITY FRANCHISE  
TO IDAHO POWER COMPANY, AND FIXING TERMS, CONDITIONS  
AND COMPENSATION OF SUCH FRANCHISE,  
AND DECLARING AN EMERGENCY**

**WHEREAS,** the City of Ontario ("City") is authorized by state statutes, its charter, and ordinances to grant non-exclusive franchises to occupy its Rights-of-Way and public places within the City; and

**WHEREAS,** Idaho Power Company, an Idaho corporation ("Grantee"), owns, maintains, and operates, in accordance with regulations promulgated by the Public Utility Commission ("PUC"), an electric energy utility system and desires to install, operate, and maintain its facilities in the Rights-of-Way in the City; and

**WHEREAS,** the City agrees to grant a franchise to Grantee under the terms and conditions provided in this ordinance; and

**WHEREAS,** the existing franchise as set forth in Ordinance No. 2278 expires on June 30, 2010, and this ordinance being necessary for the immediate preservation of the public health, safety and welfare, this ordinance shall be effective immediately upon its passage.

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

**SECTION 1. DEFINITIONS AND EXPLANATIONS.**

- (1) As used in this ordinance:
  - (a) "City" means the City of Ontario, Oregon.
  - (b) "City Council" means the legislative body of the City.
  - (c) "Grantee" means the corporation referred to in Section 2 of this ordinance.
- (2) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the City Council or by such official, officials, agent or agents as the City Council may designate.

## **SECTION 2. GRANTING CLAUSE.**

(1) Subject to the conditions and reservations contained in this ordinance, the City hereby grants to Idaho Power Company, an Idaho corporation, for a period of ten (10) years from July 1, 2010, unless sooner terminated as provided in this ordinance, the right and privilege to:

(a) construct, maintain and operate within the corporate limits of the City an electric utility system; and

(b) construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other electric fixtures necessary or proper for the maintenance and operation in the City of an electric distribution system and wires connected therewith. All such electric utility property and facilities now maintained by the Grantee within the corporate limits of the City shall be deemed covered by this ordinance, and the present location thereof hereby is ratified and approved.

## **SECTION 3. USE OF STREETS, PUBLIC PLACES.**

The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right, subject to Section 18 hereof, to grant a similar use of said streets, alleys and other public ways and places, to any other person or corporation at any other time during the period of this franchise.

## **SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.**

The Grantee shall, at all times during the life of this right and privilege, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

## **SECTION 5. SPECIFICATIONS.**

All of the Grantee's electric property and facilities (including poles, wires, conductors, transformers and other appliances) shall be constructed and at all times maintained in good order and conditions and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations. Grantee is subject to and shall comply with the provisions of the Ontario City Code pertaining to nuisance abatement, including but not limited to Sections 7-4-5 and 7-4-6 of the Ontario City Code requiring removal of graffiti. The City shall have authority at all times, in furtherance of the safety, convenience and welfare of the public, to control by appropriate regulations the location, elevation and manner of construction and maintenance of the Grantee's electric property and facilities on the City streets, alleys, highways and other public places, subject to the provisions of any state or federal law applicable thereto, and the Grantee shall at all times and promptly conform with all such regulations.

## **SECTION 6. CONTINUOUS SERVICE; UNAVOIDABLE SHUTDOWNS.**

Grantee shall maintain and operate a system for the distribution of electricity in the City so as to provide 24-hour a day service. The Grantee shall use due diligence to maintain continuous and uninterrupted service which shall at all times be up to standards common in the business. However, the Grantee does not guarantee continuous and uninterrupted service and under no circumstances is the Grantee liable to the City for any interruption or failure of service caused in whole or in part by any cause beyond the reasonable control of the Grantee, including but not limited to acts of God or the public enemy, fires, floods, earthquakes or other catastrophes, severe weather, strikes or failure or breakdown of generating, transmission or distribution facilities. The Grantee shall maintain emergency repair service available on call.

## **SECTION 7. CONDITIONS ON STREET OCCUPANCY.**

(1) All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(2) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the City shall remove, relay and relocate its poles, wires, cables and other fixtures at its own expense, unless the facilities are to be relocated for the benefit of a third party, in which case the third party shall pay the costs of relocation.

(3) **PLACEMENT OF FIXTURES.** The Grantee shall not place poles or other fixtures where the same will interfere with any telephone wire or conduit, sewer line, water hydrant or water main, and all such poles or other fixtures shall, wherever practicable, be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall, wherever practicable, be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

(4) **TEMPORARY REMOVAL OF WIRE FOR BUILDING MOVING.** The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires where practicable to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given reasonable advance notice to arrange for such temporary wire changes.

## **SECTION 8. COVENANT TO SAVE CITY HARMLESS FROM DAMAGES.**

The Grantee hereby agrees and covenants to save the City, its officers and employees, harmless from all loss or expense sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever, and to indemnify the City against any such loss or expense arising from any casualty or accident to person or property, by reason of any negligent construction, excavation or any other negligent act done under this privilege and permit by or for the Grantee, its agents or employees, or by reason of any neglect or omission of the Grantee to keep said poles, wires, pipes, conduits or facilities in a safe condition, or by reason of its operation of its said system.

## **SECTION 9. SERVICE STANDARDS.**

The Grantee shall maintain and operate its plant and system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Council as provided for in Section 4 of this Ordinance, subject to the authority of the Public Utility Commission of the State of Oregon (the "Commission"). During the term of this franchise, Grantee shall at all times assure that customers within the City have access to customer service from the Grantee as required by the Commission.

## **SECTION 10. CONSTRUCTION AND LOCATION OF FACILITIES**

Grantee shall comply with the requirements of Chapter 8 of Title 8 (Right-Of-Way) of the Ontario City Code in connection with any construction, installation, extension, removal, relocation, or maintenance of any facilities in the City Rights-of-Way or any public place.

## **SECTION 11. PERMISSION TO CONSTRUCT.**

Except in emergencies, prior to the commencement of any construction or relocation of any of the Grantee's underground wires or of the Grantee's poles and lines in the streets, alleys or other public places within the City, the Grantee shall notify the City of such work and upon request shall furnish a map showing the location of such construction or relocation. The location of all such poles and lines and underground wires shall be at places approved by the City. The provisions of this paragraph shall not apply to the construction or relocation of service wires from poles to dwellings or buildings.

## **SECTION 12. RECORD KEEPING.**

The Grantee shall keep an accurate record of all accounts pertaining to the sale of electricity within the City for a period not to exceed three years. For the purpose of determining the amounts due under Section 13 of this ordinance, the City may inspect the books of account and other data and records of the Grantee at any time during business hours and may audit them from time to time and may require the Grantee to make available to it all records for such purpose.

## **SECTION 13. COMPENSATION.**

(1) As compensation for the rights and privileges herein granted, the Grantee shall pay to the City during the term hereof an amount equivalent to seven (7.00) percent of the Grantee's "Gross Revenue" on all sales of electrical service within the City, such compensation to be due and payable quarterly, within thirty (30) days from and after the close of each quarter during the term hereof. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last quarter for which compensation has been paid.

(2) "Gross Revenue" shall be defined as set forth in Oregon Administrative Rule 860-022-0040.

(3) Compensation required by this Section 13 of this ordinance to be paid and rendered by the Grantee to the City shall be a credit against all license, occupation, business or other fees or taxes which the City now is or may hereafter be empowered to levy or assess against the Grantee.

(4) Nothing herein contained shall be deemed to give to the Grantee any credit against any ad valorem property tax now or hereafter levied against the real and personal property of Grantee located within the City or against any improvement assessment, permit or inspection fee.

(5) The City shall provide appropriate information to the Grantee to allow the Grantee to identify which of its customers are located within the corporate limits of the City for purposes of paying franchise fees. Grantee shall not be responsible for any failure to pay franchise fees which results from deficiencies in such information provided by the City. In the event the City annexes a new area into its corporate limits, the terms of this Section 13 regarding franchise fees shall not apply to the annexed area until sixty (60) days after the City has supplied the Grantee with appropriate information for the identification of the Grantee's customers within the annexed area.

(6) When direct access is implemented by Grantee in accordance with Oregon law and regulations adopted by the PUC, if the City so directs, instead of calculating the franchise fee in accordance with subsection (1) of this Section 13, Grantee shall calculate the franchise fee using volume-based methodologies in accordance with PUC regulations.

#### **SECTION 14. REMOVAL OF EQUIPMENT FOLLOWING EXPIRATION OR REVOCATION.**

Upon expiration or revocation (pursuant to Section 19) of this privilege and permit, the Grantee shall, within one year or such further time as may be allowed by the City, remove from the streets, alleys and other public places all its property and equipment, and forthwith replace and restore the streets, alleys and other public places to their former condition. If the Grantee fails to remove its property and equipment within such time, the City may take such steps as may be necessary to forcibly remove the same at the expense of the Grantee and the Grantee shall promptly pay the full cost and expense thereof on demand by the City.

#### **SECTION 15. TREE TRIMMING.**

The Grantee shall have the right and privilege, insofar as the City is able to grant the same, in accordance with National Arborist Association standards, of the pruning of all trees which overhang the present and future streets, alleys, highways and other public places within the corporate limits of the City, in such a manner and to such extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its wires, poles and other fixtures and equipment. However, except in an emergency, no pruning shall be undertaken without giving the occupant of the adjacent property written or oral notice that such pruning will be performed.

#### **SECTION 16. CO-LOCATION.**

In consideration for granting this franchise, Grantee grants the right and privilege without payment or charge to the City, but at the City's expense, with prior notice and approval of Grantee, to place and maintain wires, control boxes, and any other necessary equipment as the City may require for fire, police, emergency or other municipal purposes, on Grantee's facilities placed by Grantee in the City's Rights-of-Way or public places, whether above or underground. All such installations shall be made in a manner so as not to interfere with Grantee's electric energy service and in conformance with good electrical practice, Grantee's standards, and local, state and federal regulations. When safety is an issue, Grantee shall not be required to share locations with water or sewer utilities. The City shall not sell or lease its rights under this Section 16 to any third parties. The City shall hold Grantee harmless from all claims or liability for damage that arises out of the City's use of Grantee's facilities under this Section 16.

#### **SECTION 17. PUBLIC WORKS AND IMPROVEMENTS NOT AFFECTED BY FRANCHISE.**

(1) The City reserves the right to:

(a) Construct, install, maintain and operate any public improvement, work or facility in, over or under any Right-of-Way or public place;

(b) Perform or authorize or direct the performance of any work that the City may find desirable or convenient in, over or under any Right-of-Way or public place;

(c) Vacate, alter or close any Right of way or public place, provided that the City shall make available to Grantee with alternative Right-of-Way for the location of its facilities or provide for the preservation of Grantee's rights of use, replacement and maintenance. If Grantee's facilities must be relocated from a vacated Right-of-Way, the petitioners of the vacation shall bear the cost of relocation of the facilities;

(d) Control or prevent the use of any public place by Grantee and require payment of additional compensation for the use of the public place in any amount the parties agree is reasonable;

(e) Exercise any non-regulatory power that the City currently holds, or may hereafter be authorized or granted by the laws of the State of Oregon or the City Charter, except where that power may be preempted or superseded by the constitutions of the United States or the State of Oregon;

(f) Exercise any regulatory power that is abandoned by the Oregon Public Utility Commission, not vested exclusively by law in any other state regulatory body, and that can be lawfully exercised by the City.

(2) Whenever the City shall perform or cause or permit to be performed any work in any Right-of-Way where such work may disturb or interfere with Grantee's facilities, the City shall, or require its permittee, to notify, in writing, Grantee sufficiently in advance of the contemplated work to enable Grantee to take those measures, including relocation or removal, as may be deemed necessary to protect its facilities, at its own expense.

**SECTION 18. EMINENT DOMAIN; OTHER FRANCHISES.**

In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof, the City agrees not to engage in the business of providing electric service during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns; but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State of Oregon. The City shall not grant a franchise to another electric service provider during the term of this franchise agreement unless the electric service provider has received approval to provide electrical service within the City from the Commission, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

**SECTION 19. ACCEPTANCE.**

The Grantee shall within thirty days from the effective date of this ordinance to file with the City its written unconditional acceptance of this privilege, retroactive to July 1, 2010; and if the Grantee fails so to do, this ordinance shall be void.

**SECTION 20. REVOCATION AND MUTUAL MODIFICATION.**

The franchise hereby granted may be revoked and forfeited by the City, by duly enacted ordinance therefor, and following a hearing at which the Grantee has an opportunity to be present and to be heard, in the event that the Grantee shall fail after reasonable notice or demand to comply with any of the terms, conditions, and obligations imposed upon the Grantee hereunder.

The terms of this franchise and the rights and privileges hereby conferred may be changed, altered, amended or modified at any time upon mutual agreement between the City and the Grantee, and this franchise will be subject to renegotiation at any time by service by either the City or the Grantee upon the other of notice in writing for a period of sixty (60) days and following such renegotiations and mutual agreement, this ordinance may be amended by majority vote of the City Council and execution by the Grantee and the terms of such amended ordinance will in all respects supersede any terms hereof with which said amended ordinance is in conflict.

**SECTION 21. RESERVATION OF STATUTORY AND CHARTER AUTHORITY.**

The City reserves the right to exercise, with regard to this privilege and permit and the Grantee, all authority now or hereafter granted to the City by state statute or City Charter.

**SECTION 22. TRANSFER OF FRANCHISE.**

Grantee shall not, directly or indirectly, transfer, assign, or dispose of by sale, lease, merger, consolidation or other act of Grantee, ownership or control of a majority interest in the telecommunications system, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

PASSED AND ADOPTED by the Common Council of the City of Ontario this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

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

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

Franchise Ordinance No. 2646-2010, accepted this \_\_\_\_ day of \_\_\_\_\_, 2010.

IDAHO POWER COMPANY

By: \_\_\_\_\_  
Dan B. Minor  
Senior Vice President - Delivery

ATTEST:

\_\_\_\_\_  
Secretary

## **AGENDA REPORT**

June 16, 2010

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Henry Lawrence, City Manager

**SUBJECT: DOG SHELTER CONTRACT WITH ANI-CARE SHELTER, LLC**

DATE: June 14, 2010

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### **SUMMARY:**

Attached is the following document:

- Dog Shelter Contract with Ani-Care Animal Shelter, LLC

### **PREVIOUS COUNCIL ACTION:**

June 7, 2010--The Council discussed the initial draft of the Contract prepared by the LLC and directed City attorney Larry Sullivan to redraft the Contract in light of issues raised by the Council.

### **BACKGROUND:**

The changes made in the Contract from the previous draft include the following:

1. The Contract has been retitled as a "Dog Shelter Contract" rather than a "Rental Contract" because the LLC is providing a service to the City, not simply renting pens. References in the Contract to "rent" have been removed.
2. The Contract has been reorganized to more clearly reflect to obligations the parties are undertaking in the Contract.
3. Section 1(b) refers specifically to the chapter in the Oregon Administrative Rules setting standards for commercial kennel owners. These standards including standards for feeding, watering, kennel cleaning, and health and sanitation.
4. Section 1(c) establishes a standard for temperature control, in light of Kim Henricks' stated intent at the June 7, 2010, meeting to install heating units in the kennels for the winter.

5. Section 1(d) includes the hours of operation as stated by the Henricks in their letter to the City, and 1(e) sets out the City's right to obtain access to the kennel after hours as discussed by Kim Henricks at the last Council meeting.
6. Section 2(b) sets forth the fees to be paid by the City. The \$50 euthanasia fee is deleted, based upon a telephone message from Kim Henricks saying that fee was not going to be imposed.
7. Section 4 sets a one year term for the Contract from July 1 to June 30, automatically renewable unless terminated by the parties by June 1 of each year.
8. The Henricks' draft of the Contract referred to anticipated 7.5% annual fee increases. Section 5 requires the Henricks to request a fee increase by April 1 biennially, to correspond with the City's two year budget cycle. If the parties are unable to agree on an increase, the Contract will terminate at the end of the fiscal year.
9. Section 6 changes the Contract to require the LLC to obtain the City's consent to any assignment of the Contract.
10. Section 7 is a standard provision protecting the Contract signatories from third party claims.

The Henricks have not reviewed this draft of the Contract.

**RECOMMENDATION:**

Staff recommends the Council approve the Dog Shelter Contract with Ani-Care Animal Shelter, LLC.

**PROPOSED MOTIONS:**

"I move that the Mayor and City Council approve the Dog Shelter Contract with Ani-Care Animal Shelter, LLC.

## DOG SHELTER CONTRACT

This Dog Shelter Contract effective this 1<sup>st</sup> day of July, 2010, between Ani-care Animal Shelter, LLC, an Oregon limited liability company ("the Shelter"), whose address is 3616 Hwy 201, Ontario, OR 97914, and the City of Ontario, an Oregon municipal corporation ("The City"), whose address is 444 SW 4<sup>th</sup> Ave, Ontario, OR 97914.

- 1) The Shelter shall provide the following services to the City pursuant to this Contract:
  - a) The Shelter shall provide at least eighteen (18) pens having a maximum capacity of thirty-six (36) compatible dogs, for the maintenance, care, and disposal according to law, of abandoned or stray dogs originally located within the confines of Malheur County.
  - b) The Shelter shall comply with Oregon standards for indoor and outdoor facilities and health and husbandry practices for commercial kennels, including those specified in Division 15 of Chapter 603 of the Oregon Administrative Rules.
  - c) The Shelter shall maintain proper and healthy temperatures for confined dogs at all times. Adequate ventilation shall be maintained to provide a fresh air supply and to minimize drafts, odors, and moisture condensation.
  - d) The Shelter shall maintain the following minimum hours of operation:
    - i) Tuesday through Saturday: 10:00 a.m. through 5:30 p.m., excluding a lunch break from 1:00 p.m. to 2:30 p.m.
    - ii) Mondays by appointment.
  - e) The Shelter shall allow the City to have after-hours access by providing the City with a key and access to empty pens after hours. The City shall give the Shelter notice of its delivery of a dog outside of regular business hours by leaving a telephone message for the Shelter. Thereafter the Shelter shall be responsible for any dogs delivered after hours.
  - f) The Shelter shall accept delivery, custody, and responsibility for the care and disposition of dogs transported to the Shelter by any person, whether acting privately or as an agent or representative of the City. This provision does not impose liability on the Shelter for the initial capture and transportation of abandoned or stray dogs.
  - g) The Shelter shall keep records relating to dogs taken into custody and disposed of, open and available for inspection at reasonable times by the City. In addition, the Shelter shall provide the City with an annual accounting of the number of dogs taken into custody and disposed of and the manner of such disposal during the previous fiscal year, including the number of dogs delivered by representatives of the City, which accounting will be due on or before August 5<sup>th</sup> of each subsequent year.
- 2) As compensation for the services provided by the Shelter, the City shall pay the following fees to the Shelter:
  - a) The sum of \$1,170.00 per month, due on or before the 15<sup>th</sup> day of each month commencing in July, 2010.

- b) The sum of \$50.00 per dog delivered by City representatives for each emergency or after hours euthanasia.
  - c) The sum of \$10.00 per dog per day for each day or portion of a day a dog is impounded pursuant to a hold placed on the dog by the City, such as an impound for biting a person or an impound in which the dog is being held for evidence.
- 3) In the event of a default in the performance of this Contract by either party, the nondefaulting party may terminate this Contract for cause.
  - 4) The initial term of this Contract shall be from July 1, 2010, to June 30, 2011. Unless terminated for cause, this Contract shall renew automatically on an annual basis unless a written notice of termination is mailed to the other party by no later than June 1 of any year.
  - 5) The City budgets expenses on a two year budget cycle, with its current budget expiring on June 30, 2011. If the Shelter requests a fee increase from the City for any future budget cycle, the Shelter shall give the City notice of any proposed increase at least 90 days prior to the beginning of the next budget cycle. If the parties are unable to reach a fee agreement before June 30 of any year, this Contract shall terminate on July 1 of that year.
  - 6) Neither party may assign or transfer its rights under this Contract to a third person without the other party's written consent in advance.
  - 7) Nothing contained in this Contract shall give or allow any third person a claim or right of action. It is the express intention of the parties that any person other than the City and the Shelter receiving services or benefits under this Contract shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties herein have signed this Dog Shelter Contract on the dates listed below.

ANI-CARE ANIMAL SHELTER, LLC  
By:

\_\_\_\_\_ Date: \_\_\_\_\_  
Kim Henricks, Member

\_\_\_\_\_ Date: \_\_\_\_\_  
Ross Henricks, Member

CITY OF ONTARIO  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Lawrence, City Manager

Attest:  
\_\_\_\_\_ Date: \_\_\_\_\_  
Tori Barnett MMC, City Recorder

# AGENDA REPORT

June 21, 2010

TO: Honorable Mayor and City Council Members

THRU: Henry Lawrence, City Manager

FROM: Captain Mark Alexander

**SUBJECT: ORDINANCE #2647-2010: AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 3, CHAPTER 16 REGARDING DEALERS OF REGULATED PROPERTY (1<sup>st</sup> Reading)**

DATE: June 9, 2010

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## **SUMMARY:**

Attached is the following document:

- Ordinance #2647-2010

Title 3, Chapter 16, of the Ontario Municipal Code establishes regulations for dealers of regulated property. The police department desires to amend the ordinance to add desired language and new procedures.

## **PREVIOUS COUNCIL ACTION:**

10-06-2003 Council adopted Ordinance #2515-2003, amending Ontario Municipal Code 3-16, Establishing Pawn Broker and Second-Hand Dealer Licensing standards and requirements.

## **BACKGROUND:**

Ontario Municipal Code Title 3, Chapter 16, establishes regulations for dealers of regulated property within the City of Ontario.

Dealers of regulated property purchase various types of property from the general public, which is later sold back to the general public.

Criminals involved with stolen property will seek these types of businesses in order to dispose of the property for cash. Criminals are less apt to use businesses that employ good practices such as video surveillance, customer identification and property documentation. It is common for criminals involving stolen property to travel to neighboring cities or even neighboring states to sell stolen property to these types of businesses.

Dealers of regulated property are required to submit reports of transactions to the police department. Reports are required to contain information such as the date of transaction, identity of the person making the transaction and a full description of property that was purchased by the business.

Police department staff compares transaction reports to reports by crime victims of stolen property. Staff assigned to these duties are Telecommunicators from the 9-1-1 Center. Ontario Municipal Code requires dealers of regulated property hold property from transactions for a ten-day period in order to get comparisons complete. Police department staff has recently been inundated by the amount of transaction reports received and it has been impossible to complete the comparisons within the 10-day period.

Several Idaho cities have pawnshops, which also take in property from the general public. Similar ordinances exist to regulate these businesses and are also considered dealers of regulated property. The number of records they are tasked in reviewing has also inundated other law enforcement agencies.

Due to the popularity of these types of businesses across the nation, there has been the evolvement of businesses that will assist police agencies with the receipt, storage and comparison of property transactions. These are subscription-based services that police agencies initiate and in turn, then provide to dealers of regulated property within their jurisdiction. Dealers of regulated property are able to submit their transactions on-line immediately following the transaction. Subscribing police agencies are then able to search property and suspects within a database in order to solve crimes. There have been cases of recovered property and arrests made within hours of a theft due to these types of services.

The police department desires to modify language in Ontario Municipal Code Title 3, Chapter 16 to help address issues involving Dealers of Regulated Property concerning employee requirements, business and record keeping practices and violations of the ordinance.

The two primary changes are that in addition to keeping written records, dealers of regulated property would also submit electronic records of transactions, if requested by the police department, and also going from 10 days to 14 days for holding property to allow the police department to review stolen property records.

**PROBLEM DISCUSSION:**

These proposed changes further direct how a private business operates. The proposed changes will require additional time by the dealer of regulated property to complete electronic transaction submissions. The proposed changes increase the time property is taken in until that property can be put out for sale for the dealer of regulated property to gain a profit.

**FINANCIAL IMPLICATIONS:**

The desired subscription for services that will assist with the receipt, storage and comparison of property transactions will cost approximately \$1400 per year.

**RECOMMENDATION:**

Staff recommends that the Council adopt Ordinance #2647-2010.

**PROPOSED MOTION:**

I move that the Council adopt Ordinance #2647-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE 3-16 REGARDING DEALERS OF REGULATED PROPERTY WITHIN THE CITY OF ONTARIO on First Reading by Title Only.

**AN ORDINANCE AMENDING VARIOUS PROVISIONS  
OF ONTARIO MUNICIPAL CODE TITLE 3, CHAPTER 16  
CONCERNING CHANGES FOR DEALERS OF REGULATED PROPERTY**

**WHEREAS,** the Ontario Police Department is charged with enforcing the laws of Ontario Code Title 3, Chapter 16, which addresses Dealers of Regulated Property, and;

**WHEREAS,** the sale of regulated property is commonly associated with criminal activity; and

**WHEREAS,** regulations and procedures need to be updated for dealers of regulated property.

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

Ontario City Code Section 3-16-4 is amended by adding the following underlined subsection (C):

License qualifications.

The applicant has not had an Ontario Dealer of Regulated Property License or other similar permit or license denied, revoked, or suspended by the City within three (3) years prior to the date of the application.

(A) License Fee.

Any person applying for a license under this Section shall make application to the Ontario Police Department and shall pay a license fee to be set by resolution of the Council. The license shall be effective for a period not to exceed twelve (12) months. Renewal shall be on an annual basis, and each license shall be renewed on or before January 15 of each calendar year. For those merchants in business before the passage of the ordinance codified in this Chapter, the license fee shall be paid within fifteen (15) days after the effective date of the ordinance codified in this Chapter.

(B) Posting of License.

Every dealer of regulated property shall prominently post his/her license in a conspicuous location at his/her place of business.

(Ord. 2515 (part), 2003)

**(C) Applicant Qualifications.**

**The applicant and the person who will be principally in charge of the business must be (18) years of age or older.**

**The applicant must not have been convicted of a felony or theft related offense within the five (5) years prior to the application date.**

**No dealer of regulated property shall employ a person under the age of eighteen (1\*) to conduct transactions regulated by this Chapter.**

Ontario City Code Section 3-16-5 is amended by the following:

Records required.

(A) Required Information.

On reporting forms furnished by the Ontario Police Department, every person who shall be engaged in the business of a dealer of regulated property shall maintain a records system. The records shall be written, in the English language **and legible** at the time of each loan or purchase.

The records shall contain an accurate account or description of the goods, article or other thing pawned, pledged, or purchased, the time of the receipt, and a description of the person, verified by identification, pawning, pledging, or selling the property.

The record shall be made immediately upon taking the item or article into possession. The description of any item of personal property shall include serial numbers, make, model, year or such other identification

numbers if available. **as applicable: brand name, make, model, serial number, and owner applied number or other identifying marks. Jewelry shall be described with the type, weight, color, number and description of stones, style, size or length, any engraving, and whether it is considered a man's woman's or child's piece. CDs, DVDs, videos, tapes, records, etc., shall be described with any owner identification marks and the category of movie or music to which it belongs. The title and artist should also be documented if practicable.**

Purchases by a dealer of regulated property of individual goods or items priced at less than a ten dollars (\$10.00) value are exempt from the above reporting requirements, but shall be reported at such times when the cumulative total of all such sales exceeds fifty dollars (\$50.00).

**(B) Records Transmittal**

**All records described in this Chapter shall be electronically stored in addition to paper records, as long as the process to do so has been provided by the City of Ontario. These electronic records shall be transmitted by noon the next business day to the Ontario Police Department in a method and fashion approved by the Chief of Police or his designee.**

**(B) Reports to Police Chief.**

~~Every dealer of regulated property shall make available to the Police Chief, daily, a legible and correct copy of the records required by subsection (A) of this Section. The Police Department will then be responsible for acquiring those records.~~

**(C) Inspection of Items.**

At all times during business hours while the license is in effect, the licensee shall allow the Police Chief or the Chief's designee to enter the premises where the licensed business is located, for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this Chapter.

**(D) Identification Requirements.**

Neither a dealer of regulated property, nor any of his/her agents shall transact any business with any person who fails to identify himself/herself as provided herein. Identification shall be made as follows:

1. By showing an Oregon driver's license or Oregon identification card which was issued to the person presenting it; or

In the event the person has no Oregon driver's license or identification card, then by showing some other form of identification issued to him/her by a governmental body or a recognized organization, which shows either his/her picture or a physical description of him/her or both.

2. The licensee or agent shall record the type of identification, any identifying number on the identification, the customer's name, date of birth and address on the identification in the record required by subsection (A) of this Section; or

By a statement by the licensee that said person is personally known to the licensee and a recording of his/her full name, date of birth, and address.

The licensee or his/her designee transacting purchase shall have the affirmative duty to compare all pictures, physical descriptions and signatures on the identification present with the physical features and signatures of the person presenting such identification and shall not transact any business with any person who appears to be presenting false identification.

(Ord. 2515 (part), 2003)

Ontario City Code Section 3-16-6 is amended by the following:

Condition of property not to be changed.

All property purchased or received by a dealer of regulated property, incident to such business, and valued by the merchant for sale at ten dollars (\$10.00) or more, shall be held without alteration, change or subsequent sale for a period of ~~ten (10)~~ **fourteen (14)** days after the property is received by the merchant and the record has been completed.

(A) During the holding period required by this Section, the licensee shall not commingle the property to preclude identification.

(B) During the holding period required by this Section, every licensee shall produce any article required to be reported under Section 3-16-1 for inspection by any Ontario Police Officer.

(C) It shall be unlawful for any licensee to violate subsection (A) of this Section or to fail to produce any article required under subsection (B) of this Section.

(Ord. 2515 (part), 2003)

Ontario City Code Section 3-16-7 is amended by adding the following underlined:

Stolen property--Return to true owner.

**It is the responsibility of every dealer of regulated property to notify police whenever they have reason to believe they are in receipt of property that my have been lost or stolen.**

If in the course of a specific criminal investigation, the Chief has probable cause to believe that property received by a dealer of regulated property was not lawfully obtained by the seller or borrower or is evidence of a criminal offense, the Chief may issue a written or oral order requiring the dealer of regulated property to hold said property without alteration or change, and not allow it to be sold or redeemed for a specific period, not to exceed ninety (90) days from the date of the order. If such order is given orally, the Chief shall confirm it in writing within seventy-two (72) hours.

(A) During any holding period ordered under this Section, every licensee shall, upon request by an Ontario Police Officer, deliver the article to any peace officer of this State.

(B) It shall be unlawful for any licensee to violate an order under this Section or to fail to deliver any article requested under this Section.

(C) Notwithstanding any holding period ordered under this Section, the Chief may authorize the sale or transfer of an item before the expiration of the ordered holding period in cases in which the dealer shows that an extreme hardship will result from holding the property for the ordered period.

(D) If a pledger seeks to redeem property that is subject to an order under this Section, the licensee shall advise the pledger of the order and the name of the officer who placed the hold on the property. If the property is not required to be held pursuant to a criminal prosecution, the order shall be rescinded.

(E) Whenever the Chief has reason to believe that property in the possession of a dealer of regulated property has been reported lost or stolen, the Chief may notify the person who reported the property as lost or stolen and the police agency taking such report of all of the following:

1. The name, address and telephone number of the licensee who reported the acquisition of the property.
2. That the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property by the licensee.
3. The length of any holding period ordered under this Section.

(Ord. 2515 (part), 2003)

Ontario City Code Section 3-16-8 is amended by adding the following underlined to subsection (C) 6 through 9:

Unlawful acts.

(A) Dealing with Minors, etc.

It is unlawful for any dealer of regulated property to purchase or receive on deposit any personal property, goods, wares, merchandise, article or thing, from persons of unsound mind or intoxicated persons.

A dealer of regulated property is also prohibited from purchasing or receiving property from any person less than eighteen (18) years of age. A dealer of regulated property may however purchase and receive property from the parent or guardian of a person under the age of eighteen (18) years.

(B) Minors--Prohibitions.

No person under the age of eighteen (18) years shall sell, pawn, or pledge any personal property or other valuable thing with any person licensed to do business under this Section. It is unlawful for any person under the age of eighteen (18) years to represent to any person licensed under the provision of this Section, at the time of his or her selling, pawning, attempting to pawn, or pledging of any personal property, that he or she is eighteen (18) years of age or older.

(C) Misconduct of Dealer of Regulated Property. It is unlawful for any licensee to:

1. Lend money on a pledge at a rate of interest above that allowed by law; or
2. Have goods in his possession and refuse to permit a law enforcement officer to examine them during usual business hours; or
3. Sell goods before the time to redeem has expired; or
4. Make a loan on a pledge to a person of unsound mind, intoxicated persons, or persons under lawful age; or
5. Fails to properly identify person selling or pawning items.

**6. Enter into any regulated transaction in which the property at interest is such property that is manufactured or produced with a serial or identification number, and the said number has been removed, altered or rendered unreadable.**

**7. Fail to report the possession of property that may be lost or stolen.**  
**8. Failure to make a record of any transaction as described in this Chapter.**  
**9. Falsifying, obliterating or destroying any records required to be kept pursuant to this Chapter.**

(Ord. 2515 (part), 2003)

PASSED AND ADOPTED by the Common Council of the City of Ontario this \_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

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

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

## AGENDA REPORT

June 21, 2010

TO: Mayor and City Council

FROM: Mayor Joe Dominick

THROUGH: Henry Lawrence, City Manager

**SUBJECT: A MOTION AUTHORIZING THE CITY COUNCIL TO ENTER INTO A 5 (five) YEAR AGREEMENT BETWEEN THE CITY OF ONTARIO, OREGON AND ONTARIO RURAL FIRE BOARD.**

DATE: June 14, 2010

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### **SUMMARY:**

The City Council recently approved a contract with MVCI, LLC, to construct a 5 bay Fire Station Storage Building totaling \$513,800 (without sewer costs). The Ontario Rural Fire Board previously had approved \$50,000 from their budget to assist with the construction of the building. With City budget dollars very limited, the Mayor and Council President Mills approached the Fire Board with a request for additional money.

### **PREVIOUS COUNCIL ACTION:**

In 2006, 07, & 08, the City Council increased the Rural Fire Boards contact for services provided by the Ontario Fire Department by 1% each year. In 2009, 10 & 11, their contract was not increased, staying frozen at \$111,572.00 per year.

### **BACKGROUND:**

The City Council approved the design build agreement on June 7<sup>th</sup>. Knowing budget is limited, on June 3<sup>rd</sup>, the Mayor along with Council President Mills attended the Rural Fire Board meeting. We requested additional dollars to assist with the construction. After discussion, the Rural Board is willing to pay an additional \$55,000 to the City, towards the Fire Building, making their total contribution \$105,000. In exchange, the Rural Board is asking for a 5 (five) year freeze on their contract, locking the \$111,572.00 payment thru 2016.

With the additional payment from the Rural Fire Board, we will be \$58,800 over budget for the Fire Building. Using the debt service dollars (\$69,000) set aside in the 2009-10 City budget, we would be within the budgeted amount the Budget Committee approved.

**FINANCIAL IMPLICATIONS:**

*\$111,572.00 Base Rate currently through budget year 2011.*

Using a 2% increase for 5 years - \$11,565.16 loss in revenue.

2%	\$113,803.44	2012
2%	\$116,079.51	2013
2%	\$118,355.58	2014
2%	\$120,722.70	2015
2%	\$123,137.16	2016

Using a 1% increase for 5 years - \$5691.30 loss in revenue.

1%	\$112,687.72	2012
1%	\$113,814.60	2013
1%	\$114,952.75	2014
1%	\$116,102.27	2015
1%	\$117,263.30	2016

**ALTERNATIVE:**

The Council could choose not to approve the freeze on the contract, and not receive the additional \$55,000.

The Council could approve a shorter term to freeze the contract, taking the proposal to the Rural Fire Board.

**RECOMMENDATION:**

The Mayor recommends that the Council approve the additional 5 year freeze on the Rural Fire Boards contract with the City.

**PROPOSED MOTION:**

I move the City Council approve the 5 (five) year additional freeze on the Rural Fire Board contract, in exchange for an additional \$55,000 towards the Fire Station Storage Building, and authorize the Mayor or City Manager to sign the contract.