

**AGENDA**  
**ONTARIO CITY COUNCIL - CITY OF ONTARIO, OREGON**  
Tuesday, September 2, 2014, 7:00 p.m., M.T.

- 1) **Call to order**  
Roll Call: Norm Crume \_\_\_\_\_ Jackson Fox \_\_\_\_\_ Charlotte Fugate \_\_\_\_\_ Dan Jones \_\_\_\_\_  
Larry Tuttle \_\_\_\_\_ Ron Verini \_\_\_\_\_ LeRoy Cammack \_\_\_\_\_

2) **Pledge of Allegiance**

This Agenda was posted on Wednesday, August 27, 2014, and a study session was held Thursday, August 28, 2014. 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:**

- A) Minutes: August 18, 2014 Regular Council Meeting ..... 1-10  
B) Approval of the Bills

5) **Department Head Updates: *Thursday Only***

- 6) **Public Comments:** Citizens may address the Council on items not on the Agenda. Please limit your comments to three (3) minutes. This time limit will be enforced. Please state your name and city of residence for the record.

7) **Old Business:**

- A) Ordinance 2693-2014: Amend OMC 1-5-3 Whistle Blower Protection (*Final*) ..... 11-12

8) **New Business:**

- A) Request for Business Loan Fund Monies: Ernie's Electric (Roy & Marge Scott) ..... 13-14  
B) Resolution #2014-128: Clean Up Economic & Community Enhancement Small Fund Grant ..... 15-16  
C) Resolution #2014-129: IAFF (Firefighter) Contract 2014-2016 ..... 17-51

9) **Discussion/Informational/Hand-Out Items (*Thursday*)**

- A) CH2M Hill/Public Works Update  
B) North Park Boulevard Update (w/PowerPoint)  
C) County Court Minutes: 08-13-2014  
D) Financial Reports for Council  
E) Proposed Resolution 2014-130: Suspending SDCs  
F) Proposed Change to OMC 8-12-2: Zoning Compliance by Annexed Properties  
G) Old City Shop - Broker/Commission  
H) Potential Railroad Crossing Closing: 6<sup>th</sup> Avenue

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

11) **Adjourn**

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**ONTARIO CITY COUNCIL MEETING MINUTES**

**Monday, August 18, 2014**

The regular meeting of the Ontario City Council was called to order by Mayor LeRoy Cammack at 7:00 p.m. on Monday, August 18, 2014, in the Council Chambers of City Hall. Council members present were LeRoy Cammack, Norm Crume, Charlotte Fugate, Dan Jones, Larry Tuttle, and Ron Verini. Jackson Fox participated by telephone.

Members of staff present were Tori Barnett, Marcy Siriwardene, Kari Ott, Mark Alexander, Cliff Leeper, Larry Sullivan, and Dan Cummings. The meeting was recorded, and copies are available at City Hall.

Ron Verini led everyone in the Pledge of Allegiance.

**AGENDA**

Mayor Cammack asked to have two items added to the Agenda: 9)A would now be a Public Hearing (properly advertised) for the Community Development Block Grant Application and 10)L – Union Pacific Railroad Crossing: Possible Closure on SE 6<sup>th</sup> Avenue; and to add an additional bill for approval.

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

**CONSENT AGENDA**

Charlotte Fugate moved, seconded by Norm Crume, to approve Consent Agenda Item A: Minutes of the Council Meeting of August 4, 2014; and Item B: Approval of the Bills. Roll call vote: Crume-yes; Fox-abstain; Fugate-yes; Jones-yes; Tuttle-yes; Verini-yes; Cammack-yes. Motion carried 6/1/0.

Councilor Fox abstained from voting as he was out of town and had not reviewed the minutes or the bills.

**OLD BUSINESS**

**Ordinance #2692-2014: Amend OMC 7-1-1, 4 re: Nuisance and Health Regulations (Final Reading)**

Mark Alexander, Police Chief, stated the Police Department would like to amend Municipal Code Title 7, Chapter 1, Sections 1 and 4 relating to Nuisance and Health Regulations in order to be more effective. There have been no changes since First Reading on August 4, 2014.

Norm Crume moved, seconded by Ron Verini, the Council adopt **Ordinance #2692-2014, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, SECTIONS 1 AND 4, RELATING TO NUISANCE AND HEALTH REGULATIONS, on Second and Final Reading by Title Only.** Roll call vote: Crume-yes; Fox-yes; Fugate-yes; Jones-yes; Tuttle-yes; Verini-yes; Cammack-yes. Motion carried 7/0/0.

**Options for the Future of the Ontario Golf Course**

Larry Sullivan, City Attorney, stated on August 4, 2014, the Council tabled this action as questions were raised by Council, leading to the request to have the City Attorney present to address legal issues that might arise from this action.

The City golf course was currently being managed by Scott McKinney pursuant to a written contract that would expire on December 31, 2014. Mr. McKinney requested that the city make a commitment to renew that contract for an additional three years. At the July 21, 2014, Council meeting, Councilor Crume made a motion not to renew that contract and to essentially close down the golf course after 2014. Because of concerns expressed by the City Attorney as to the wording of that Agenda item in the notice of the meeting, Councilor Crume withdrew his motion, and the subject was placed on the agenda for the August 4, 2014, meeting.

In both the July 21<sup>st</sup> and August 4<sup>th</sup> meetings, the Council discussed the annual subsidies provided by the city for the operation and maintenance of the golf course, and the likelihood of those continuing into the future. The Council also discussed the declining membership, the proximity of other golf courses to the City of Ontario, and the potential use of the annual golf course subsidy for public safety instead of recreation. On the other hand, Councilors also discussed the large financial investment that the city has made in the golf course which may be lost if funding is withdrawn, and the potential harm that may be done to the city's economic development efforts and the city's quality of life if funding is discontinued.

During the discussion on July 21, 2014, all the Council members expressed satisfaction with the job done by Mr. McKinney in managing the golf course. The primary issue addressed by Councilors was whether the city could justify continuing to fund the course after the 2014 season, or at the end of Mr. McKinney's contract, which is December 31, 2014.

The city was obligated to fulfill its current financial obligations on the golf course to Mr. McKinney through 2014. The proposed motion ended the funding for the commercial operation of the golf course after that time. The city could continue to fund the cost of minimally maintaining and watering the course to avoid its deterioration as a municipal asset, but other funding would be discontinued except by majority vote of the Council.

Potential costs, such as mowing, weed abatement, insurance on property and structures, utilities, etc., would be submitted in detail for discussion by Alan Daniels.

Tori Barnett, Interim City Manager, stated she had spoken with John Forsyth, the city's insurance provider for the golf course, who indicated if the building became vacant, the insurance coverage had the potential to double. If it was utilized at least quarterly, it would not be considered vacant and the insurance would not increase. Currently, the insurance coverage ran about \$4500 a year.

Councilor Fugate stated she did not believe Mr. Daniels' numbers covered all the potential expenses. It was probably closer to \$15K, than \$10K.

Councilor Tuttle agreed. He didn't think it could be sprayed for weeds for the amount listed. That was not a good estimate.

LeRoy Cammack moved, seconded by Norm Crume, that the Ontario City Council discontinue subsidizing the operations of the Ontario Golf Course after December 31, 2014. NO VOTE.

Councilor Jones stated with regard to the money that was budgeted for the second half of the fiscal year, if a motion was made to not use that money, then would that money go back? Did the Budget Committee have to identify where that money would go? Councilor Crume couldn't just take that money and put it in the Police Department, right?

Kari Ott, Finance, stated the Golf Course Fund would become an unnecessary fund, which could potentially be put back into the General Fund, if the Council wanted to do that, without any budget consequences. By budget law, that could legally be done. If they opted to keep the fund open to track it, that could also be done. It did not require approval from the Budget Committee to close an unnecessary fund.

Councilor Jones stated with a regards to the motion, what did the motion really mean? They had a budget allocation for \$187,500, and half would be used. There was a motion to discontinue the subsidy. For example, the contract would expire December 31<sup>st</sup> and there was another proposal brought forward in November, or January. Did that money automatically....please explain how the motion read and how would they enforce the motion?

Mr. Sullivan stated the motion accomplished two things. First, it announces that the Council was not going to be renewing the contract with the current contractor under the terms that had been established to this point because that contract required the city to subsidize the course. The motion announced that there wouldn't be any of that kind of subsidy. It continued that if the course was going to be operated at all, by anyone, after January 1, 2015, it would have to be done without any city funds being contributed for that operation.

Councilor Jones asked if a motion could be made in January to subsidize the course? If another plan came before the Council, could another motion be brought forward that the city would subsidize the course for \$93K? Were they leaving the money were it currently was? How long could those funds remain there before they'd be required to put it back into the General Fund? Could it sit there during an entire fiscal year?

Ms. Ott stated they'd want to address that by the end of the year, whether to close the fund or not. Otherwise, it could sit there for the remainder of the [fiscal] year. By June 30<sup>th</sup>, they needed to determine if they were going to close it out or not. If they were not subsidizing the course any longer, it shouldn't be a proprietary fund.

Mayor Cammack stated they might receive some new ideas, or new activities. The city would just not be involved in the financing of it now. There would be a new Council, and they'd have whole new attitudes.

Councilor Jones stated with the motion on the floor, they now had an issue with the contractor exiting. It needed to be on the next Agenda to figure out an exit strategy to make sure the city knew what was going on with the contractor; that the course was closing. There were issues out there today. Would that be a discussion for that evening, or maybe bring that up as part of contract review or negotiations? There were some issues that needed to be discussed with the contractor in regards to his contract coming to an end and to ensure things were in order on both sides. Expectations and an outline or check-off list that...he wanted the Council to direct the City Manager to ensure things were in order. Regardless if the course closed or not, the city needed to have everything in order when Mr. McKinney stepped out of there. There were other issues regarding the management of the course relating to the next few months, that the city needed to review with the contractor, to make sure he fulfilled his contract obligations.

Mayor Cammack stated they needed to vote on the motion to see if it passed. Following that, if it did pass, the next step would be to determine an exit strategy. There were things like equipment purchases scheduled, or the repair of the retaining wall. Those things needed to be discussed with Mr. McKinney, and the Council needed to decide on how they wanted to handle those type of items.

Councilor Jones asked that issue be on the next work session Agenda.

**RETYPED MOTION:**

LeRoy Cammack moved, seconded by Norm Crume, that the Ontario City Council discontinue subsidizing the operations of the Ontario Golf Course after December 31, 2014. Roll call vote: Crume-yes; Fox-no; Fugate-yes; Jones-no; Tuttle-no; Verini-yes; Cammack-yes. Motion carried 4/3/0.

**NEW BUSINESS**

**Resolution #2014-127: GOBHI Stipend 2014 for OPD Training**

Mark Alexander, Police Chief, stated, the Police Department received unexpected stipend training funding from Greater Oregon Behavioral Health, Inc., (GOBHI) to put toward attendance at the National Crisis Intervention Team (CIT) conference in California in October. The Police Department would like to expend those funds. A budget change would be required to do so.

Contact with individuals suffering from mental health issues by law enforcement was on the increase. Communities across the United States were adopting the National Crisis Intervention Team approach. Law Enforcement in Malheur County started working with Lifeways, through Greater Oregon Behavioral Health Inc., to implement such a program. The goal was to develop a training module for those who encountered individuals with mental illness in order to provide better services to them and the community.

Because of the interest and current investment into the implementation of CIT in Malheur County, GOBHI provided a \$750 stipend to help pay for a representative of the Police Department to attend the National CIT Conference in California in October. The stipend would cover approximately half the cost to attend the conference.

The police department did not budget to expend these funds and would like to make an adjustment in order to do so. It was proposed that the budget change for expenditures be recognized within the Police Department's Training line item.

Councilor Crume asked if the budget had the necessary funds to cover the cost difference?

Chief Alexander stated yes, he'd make adjustments to get that done.

Councilor Tuttle reaffirmed it was in Chief Alexander's budget to attend the conference. What would the total cost be, and for how many people?

Chief Alexander stated it wasn't originally. He had money that would be dedicated toward mental health training, which would be used. If he needed to make any other adjustments, he would do that. He would send one person, and it would run approximately \$1,400. The stipend would cover half. That wasn't bad for a national conference.

Councilor Fox's phone went out at 7:22pm.

Norm Crume moved, seconded by Charlotte Fugate, that the Council adopt **Resolution #2014-127, A RESOLUTION ACKNOWLEDGING RECEIPT OF UNANTICIPATED REVENUE FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GENERAL FUND FROM GREATER OREGON BEHAVIORAL HEALTH INC. (GOBHI) TO PUT TOWARD ATTENDANCE AT THE NATIONAL CRISIS INTERVENTION TEAM (CIT) CONFERENCE. NO VOTE.**

Councilor Jones asked Chief Alexander to explain the benefits the department would realize for attendance at the conference.

Chief Alexander stated they were putting a team together with Malheur County and they worked closely with Lifeways and other law enforcement agencies. It was something new to this area, so they believed sending an officer to learn how other agencies were dealing with this, and establishing a training curriculum for our local team, would be invaluable. The national model was a 40-hour training curriculum that they wanted to develop and have in Malheur County. The ultimate goal would be to have every police officer in the county trained. There were only two agencies offered that funding from GOBHI.

**RETYPE MOTION:**

Norm Crume moved, seconded by Charlotte Fugate, that the Council adopt **Resolution #2014-127, A RESOLUTION ACKNOWLEDGING RECEIPT OF UNANTICIPATED REVENUE FUNDS AND APPROPRIATING EXPENDITURES WITHIN THE GENERAL FUND FROM GREATER OREGON BEHAVIORAL HEALTH INC. (GOBHI) TO PUT TOWARD ATTENDANCE AT THE NATIONAL CRISIS INTERVENTION TEAM (CIT) CONFERENCE.** Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Tuttle-no; Verini-yes; Cammack-yes. Motion carried 5/1/1.

**Ordinance #2693-2014: Amend OMC 1-5-3 Whistle Blowers Protection (1<sup>st</sup> Reading)**

Larry Sullivan, City Attorney, stated at the City Council work session on July 17, 2014, the Council discussed with the City Attorney amending City Code Section 1-5-3 to prevent future City Managers from prohibiting communications between city employees and Council members, and to give employees who provide information to Council members whistleblower protection. After that session, the City Attorney researched Oregon's whistleblower law, which appeared in ORS 659A.200 to 659A.224 and was officially called the "Whistleblower Law". ORS 659A.203 in particular addressed the issue raised by the Council in its work session. ORS 659A.203 read as follows:

***659A.203 Prohibited conduct by public employer. (1) Subject to ORS 659A.206, except as provided in ORS 659A.200 to 659A.224, it is an unlawful employment practice for any public employer to:***

*(a) Prohibit any employee from discussing, in response to an official request, either specifically or generally with any member of the Legislative Assembly, legislative committee staff acting under the direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state or any elected auditor of a city, county or metropolitan service district, the activities of:*

*(A) The state or any agency of or political subdivision in the state; or*

*(B) Any person authorized to act on behalf of the state or any agency of or political subdivision in the state.*

*(b) Prohibit any employee from disclosing, or take or threaten to take disciplinary action against an employee for the disclosure of any information that the employee reasonably believes is evidence of:*

*(A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;*

*(B) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or*

*(C) Subject to ORS 659A.212 (2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.*

*(c) Require any employee to give notice prior to making any disclosure or engaging in discussion described in this section, except as allowed in ORS 659A.206 (1).*

*(d) Discourage, restrain, dissuade, coerce, prevent or otherwise interfere with disclosure or discussions described in this section.*

*(2) No public employer shall invoke or impose any disciplinary action against an employee for employee activity described in subsection (1) of this section or ORS 659A.212.*

The Whistleblower Law generally, and ORS 659A.203 in particular, made it an unlawful employment practice for a City Manager to discipline or otherwise discriminate against an employee who communicated with an elected official about city activities. Amending City Code Section 1-5-3 to specifically refer to the Whistleblower Law would help remind City Managers and employees of this, and prevent future City Managers from restricting communications between Council members and employees except in compliance with the law.

As discussed in the July 17, 2014, work session, the City Attorney also recommends deleting the first sentence of Section 1-5-3, because it authorizes the Council in an open meeting to direct the City Manager to hire or fire an employee. This was not authorized under City Charter Section 4.5.

Charlotte Fugate moved, seconded by Ron Verini, that the City Council approve **Ordinance 2693-2014, AN ORDINANCE AMENDING CITY CODE SECTION 1-5-3 TO AUTHORIZE EMPLOYEES TO VOLUNTARILY PROVIDE INFORMATION TO CITY COUNCIL MEMBERS IN ACCORDANCE WITH OREGON'S WHISTLEBLOWER LAW**, on First Reading by Title Only. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Tuttle-yes; Verini-yes; Cammack-yes. Motion carried 6/0/1.

#### PUBLIC COMMENT

Riley Hill, Ontario, stated with regard to Malheur County Poverty to Prosperity, this Council gave the committee \$5,000 and there had been concern by the newspaper on how that money was expending. Most of the money was still in the bank. They had raised \$22K through that effort. Any travel done for the group were paid out of pocket. No money for the project was used for travel. Some money was expended for a grant and some for postage. In the past 12-14 months, they had brought in \$40K for a Regional Achievement Grant, a \$200K grant from the Department of Education; \$10K from the Ford Family; the schools were able to bring in another \$200K; they recently received \$100K Youth Development Grant. Through that, two individuals had been hired as permanent employees, and they had added two classes to the schools. They were working towards a third. The classes were Welding Fabrication, with two classes at 40 students. The Allied Health Care class would begin this fall. They were also in the process for writing a curriculum for Automated Systems. They had checked with various employers with regard to the Automated System classes, and were told they could hire anyone they turned out. He was happy to report that everyone – three school districts, ESD, and TVCC – were on the same wavelength, and were all working very hard. They met weekly, and he was proud to be a part of it. He thanked the City and the County for their individual contributions to get this going. Both entities had stepped up and provided anything requested. It was very much appreciated.

#### PUBLIC HEARING

##### Community Development Block Grant Application

It being the date advertised for public hearing on the matter of the Community Development Block Grant Application, the Hearing was declared open. There were no objections to the city's jurisdiction to hear the action, no abstentions, ex-parte contact, and no declarations of conflict of interest.

Kathy Markee, Program Representative, Community in Action, stated the City of Ontario was working with Community in Action to provide opportunities for low and moderate income persons. The city intended to apply for a Community Development Block Grant funds from Business Oregon's Infrastructure Finance Authority. The CDBG funds would be used to provide residential rehabilitation grants to low and moderate income home owners, to make necessary, eligible repairs to their owner-occupied homes. The funds would also be used for program management and grant administration. It was estimated the proposed project would benefit at least 50 persons living in the households, 100% would be for low and moderate income. What had to be done with the CDBG funds, they had to take care of health and safety issues, and critical needs. That would be siding, roofs, painting, etc. So many homeowners in our area had experienced a decrease in the values of their homes, even though they might

be keeping them kept up. With the decrease, it made the homeowners lose much of their equity. The CDBG loan fund was based on the available equity in the home. Therefore, they weren't able to exceed 100% of their debt to value of the home, so many of the homeowners were unable to get their homes fixed or repaired. Under this program, it would be administered differently. Those homes that were not able to get repairs done, based on critical, health, and safety issues, they would now be able to help those people. First, within the city limits of Ontario, then beyond. CinA had officially been invited to apply for the grant.

Councilor Verini stated he had attended his first Community in Action meeting, and these folks were going to be doing great things for this community.

The Hearing was opened for public testimony.

Opponents: None.

Proponents: None.

There being no Proponent and no Opponent testimony, the Hearing was closed.

Mayor Cammack moved, seconded by Charlotte Fugate, that the City Council approve the application for the 2014 Community Development Block Grant from the Oregon Business Development Department for residential rehabilitation projects. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Tuttle-no; Verini-yes; Cammack-yes. Motion carried 6/0/1.

#### **DISCUSSION/INFORMATION ITEM**

##### **Union Pacific Railroad Crossing: Possible Closure on SE 6<sup>th</sup> Avenue**

Mayor Cammack stated this item had been added because there was a possible closure on SE 6<sup>th</sup> Avenue. There had not been time to discuss this at the previous work session, but Dan Cummings would be informing the Council about what they needed to know.

Dan Cummings, City Planner, stated he had been first contacted by Alan Daniels, Economic Development Director, who indicated that Union Pacific requested close SE 6<sup>th</sup> Avenue due to safety issues related to a proposed new business on the East side of the tracks. He then met with Ralph Poole, who was the owner of the property proposed for development. Mr. Poole expressed his opinion, as an owner on both sides of 6<sup>th</sup>, that he had no objections to UPRR's request to close that crossing. Then Mr. Daniels asked what the procedure would be, or what problems could arise, with that closure. Mr. Cummings sent an email to the City Manager and the City Attorney, following his own research in attempting to determine what was what. Previously, he had done research on 5<sup>th</sup> and 6<sup>th</sup> and the city did not have any right-of-way across either crossings. It was only allowed by UPRR. In the past, when both the city and UPRR had searched documents, they were unable to locate any written permit issued for those years ago. The railroad recognized the city *had* a permit because they exist, but permits could be revoked at any time. But, no actual dedicated right-of-way exists across 5<sup>th</sup> or 6<sup>th</sup>.

Following that, he received an email from a UPRR representative, official requesting the closure of the crossing on 6<sup>th</sup> Street, because they could not provide the services needed for the proposed development and keep it safe. The plan was to put a new spur line in front of that entire portion/length. The proposed loading was a high-end fuel, that was hazardous. That was the reason behind the request for closure. He contacted the City Attorney because the city had no right-of-way, and he needed to know the procedure for the closure. Mr. Cummings' concern, as the City Planner, would be to address the Transportation System Plan (TSP) for connectivity, because that area was shown as one of the main streets connecting the town, and pedestrian connectivity. Mr. Sullivan would be presenting the legal standpoint on the procedures, and then he'd be looking for direction on how the city wanted to proceed. He had a few ideas, but he wanted legal input first.

Mr. Sullivan stated under State Statute, the policy was to direct ODOT to close as many grade crossings as possible. The state didn't like grade crossings. The policy implemented a procedure that ODOT, either on its own or at the request of a third-party, including the railroad, could authorize the closure of any railroad crossing. The city had the right to object, but that Statute gave ODOT broad discretion to make a decision. It would have to be done following a public hearing, if one was requested. Klamath County sued ODOT for trying to close a crossing used by a lot of people in the county, but the Court of Appeals, essentially, stated ODOT's decision, as long as it was supported by substantial evidence to close a crossing, would be upheld. It didn't take much to establish that kind of legal standard. If ODOT had a hearing, the city had a right to object, but if ODOT determined that crossing should be closed, the likelihood was that would be the end of it. Because there was another crossing only one block away from the proposed closure, it might be difficult for the city to prove that crossing was necessary or there weren't other means for getting across the tracks. This was being presented to the Council to make them aware that Council wouldn't directly be determining whether or not the crossing was approved or not for closure, but they would have to go through ODOT, and the Council would have to determine if they opposed the crossing.

Mayor Cammack asked how long the spur line would run to the North?

Mr. Cummings stated he had not received any paperwork yet. He had been asked to request the closure. They wanted it on the Council's radar, and then get some direction on how they wanted him to respond to the request. In looking at the connectivity portion of this, his suggestion would be, to at least ask, that if the city elected not to fight the closure, or file an appeal, since they'd be losing 6<sup>th</sup> Street not just to cars, but to pedestrian traffic as well, then maybe they'd grant a 50-60 foot wide right-of-way, on the UPRR property, to connect 5<sup>th</sup> and 6<sup>th</sup> together, as well as hook 5<sup>th</sup> and 4<sup>th</sup> together, which was the extension of Railroad [sic] Lane. Depot Lane went in front of the old Depot, and turning 90° on 4<sup>th</sup>. There was a lot of foot traffic cutting across from 5<sup>th</sup> through the property owned by UPRR, same with 6<sup>th</sup>. He was trying to justify the connectivity portion of the TSP to see if the city could obtain a right-of-way from UPRR. They could ask them to build a street, too, but chances were slim. But, at a minimum, they should seek a right-of-way. It would benefit everyone. While he had not been given a timeline on this, he was told they were "in a hurry", but who knew what that could mean. He had let them know that he would be meeting with all the necessary jurisdictions to learn about the procedure.

Councilor Crume stated maybe they should also ask to acquire a permit designating the city's right to use 5<sup>th</sup>.

Mr. Cummings stated the city had tried several times to get that, but UPRR said no, things were okay as they were. Basically, they didn't want to give anything, so they could take it back whenever they wanted to. He could ask again.

Councilor Fugate stated behind Andrews Seed, weren't there grain towers back there? Was that connected to the railroad?

Mr. Cummings stated all that property with storage buildings on both sides of the tracks, at one time belonged to the railroad. A lot of it had subsequently been leased.

Mayor Cammack suggested that the Councilors drive over and look at the area being discussed, and then bring this issue back to the next work session.

Councilor Fugate asked what type of overpass Mr. Cummings was talking about.

Mr. Cummings stated it wasn't an overpass. If that area was closed, most likely the streets, curbs, gutters, etc. would be removed. Therefore, for public safety, ask UPRR to give the city a right-of-way for pedestrian traffic walking on 6<sup>th</sup>, could turn North, connect with 5<sup>th</sup>, and then make the crossing.

Councilor Fugate also suggested negotiating to have UPRR clean up the crossing on 4<sup>th</sup> [sic]. Maybe clean it up, do some repainting.

Mr. Cummings stated that was actually Idaho Avenue (there was no crossing on 4<sup>th</sup>). He would ask for whatever the Council wanted him to.

Councilor Crume asked Chief Alexander if he knew of any issues that might arise for police, fire, or ambulance service that the closure might impede.

Chief Alexander stated the Fire Department did not use 5<sup>th</sup> or 6<sup>th</sup> for their responses. OPD did, but had no issues with closing 6<sup>th</sup>.

Mayor Cammack thanked everyone for their input, and indicated this would be back for discussion at the next work session.

Mr. Cummings stated his suggestion would be to have staff meet to discuss this action; however, he didn't want to continue without direction from the Council. He would contact the interested parties, letting them know this was being worked on and would keep them posted.

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

Tori Barnett reminded the Council of the Special Meeting next Thursday, that would like to include an Executive Session. It was related to the old City Shop. It would take about 10 minutes.

- ✓ CH2M Hill had submitted a contract amendment for approval, with only two changes. They were asking that an updated Exhibit F be included as the inventory was now current; and to remove any areas where finances were involved. Currently, the cemetery accepted payment at the site, and they wanted that to cease. All transactions would be handled at City Hall.
- ✓ Human Resources was competing the Firefighter negotiations, and anticipated that coming to Council at the next meeting for adoption.
- ✓ The Council had asked if the letter received from DLCD could be run in the paper, but she had been told it was too large and would cost a lot of money. She would put it on the city's website homepage.
- ✓ Sprint had submitted an amendment to their contract for antennas on the water tower at the old city shop. The City Attorney had reviewed the amendment and saw no problem with signing.

Larry Sullivan discussed the franchise fee percentage from Cable One, and suggested the city stay with a 5-year contract and to also ensure all sections were being collected on, not just cable television.

Councilor Jones inquired about Council candidates.

- ✓ Ms. Barnett stated no one had turned in to be certified for name placement on the ballot. The minimum requirements for Council were that a candidate had to be 18 years old, a resident of the City of Ontario for a minimum of one year, and to be a registered voter.

Councilor Jones announced that he would not be rerunning for Council. He thought a lot about it, but unfortunately, or fortunately, he didn't have the time to serve. He asked that the citizens of Ontario to consider the possibility of running for City Council to fill one of the seats. If there weren't enough candidates, or write-ins, it would be by appointment, which would be done by three or four Councilors. That didn't seem the best way to do this. His seat would be vacant, and there was a lot going on.

Councilor Fugate stated Chief Higinbotham had reported on a fire that occurred on the island, with a building being burnt down, possibly by vagrants. Was that area patrolled by the police?

✓ Mayor Cammack stated that area was out of city limits.

Ms. Barnett stated she had distributed a hand-out which outlined everything attributed to North Park Boulevard to date.

**ADJOURN**

Norm Crume moved, seconded by Charlotte Fugate , that the meeting be adjourned. Roll call vote: Crume-yes; Fox-out; Fugate-yes; Jones-yes; Tuttle-yes; Verini-yes; Cammack-yes. Motion carried 6/0/1.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
LeRoy Cammack, Mayor

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

**AGENDA REPORT – OLD BUSINESS**

September 2, 2014

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Tori Barnett, Interim City Manager

**SUBJECT: ORDINANCE 2693-2014: AN ORDINANCE AMENDING CITY CODE SECTION 1-5-3 TO AUTHORIZE EMPLOYEES TO VOLUNTARILY PROVIDE INFORMATION TO CITY COUNCIL MEMBERS IN ACCORDANCE WITH OREGON'S WHISTLEBLOWER LAW – Second and Final Reading**

DATE: August 25, 2014

---

**SUMMARY:**

Attached is the following document:

- Ordinance 2693-2014: Amending City Code Section 1-5-3 to Authorize Employees to Voluntarily Provide Information to City Council Members.

There have been no changes to the proposed ordinance since First Reading.

**PREVIOUS COUNCIL ACTION:**

08-18-2014 Council approved proposed Ordinance #2693-2014 on First Reading.

**RECOMMENDATION:**

Staff recommends that the City Council adopt Ordinance 2693-2014.

**PROPOSED MOTION:**

I move that the City Council adopt Ordinance 2693-2014, AN ORDINANCE AMENDING CITY CODE SECTION 1-5-3 TO AUTHORIZE EMPLOYEES TO VOLUNTARILY PROVIDE INFORMATION TO CITY COUNCIL MEMBERS IN ACCORDANCE WITH OREGON'S WHISTLEBLOWER LAW, on Second and Final Reading by Title Only.

ORDINANCE NO. 2693-2014

AN ORDINANCE AMENDING CITY CODE SECTION 1-5-3 TO AUTHORIZE  
EMPLOYEES TO VOLUNTARILY PROVIDE INFORMATION TO CITY COUNCIL MEMBERS  
IN ACCORDANCE WITH OREGON'S WHISTLEBLOWER LAW

- WHEREAS,** City Code Section 1-5-3 is intended to implement Section 4.5 of the City Charter by establishing a chain of command within the administrative service and by prohibiting City Council members from interfering with that chain of command; and
- WHEREAS,** The first sentence of City Code Section 1-5-3 conflicts with Section 4.5 of the City Charter and should be stricken; and
- WHEREAS,** Some City managers have broadly construed Section 1-5-3 to authorize them to restrict employees from voluntarily communicating directly with City Council members about factual matters pertaining to the City without obtaining the City manager's permission; and
- WHEREAS,** As authorized by ORS 659A.200 to 659A.224, Oregon's Whistleblower Law, City employees are allowed to voluntarily communicate with City Council members about City business, and any restriction on their doing so may be an unlawful employment practice.

**NOW THEREFORE,** the Common Council for the City of Ontario ordains as follows:

Section 1. Section 1-5-3 of the Ontario City Code is amended by adding those portions that are underlined and by deleting those portions that are stricken:

**1-5-3 Council interference with ~~appointments or removals~~ administrative service**

~~Except by formal action at an open meeting, neither the Council nor any of its members shall direct the appointment of any person to, or his removal from, office by the City Manager or any of his subordinates.~~ Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. A Council member may request factual information directly from any employee about any City activity, and the City Manager shall not restrict employees from voluntarily providing that information in accordance with ORS 659A.200 to 659A.224, Oregon's Whistleblower Law.

**PASSED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:  
NAYS:  
ABSENT:

**APPROVED** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

\_\_\_\_\_  
LeRoy Cammack, Mayor

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

**AGENDA REPORT**  
September 2, 2014

TO: Mayor and City Council

FROM: Greg Smith, Malheur County Economic Development Director

THROUGH: Tori Barnett, MMC, Interim City Manager

**SUBJECT: REQUEST FOR APPROVAL OF BUSINESS LOAN FUND: 2R'S ELECTRIC, LLC (ERNIE'S ELECTRIC) - ROY AND MARGE SCOTT**

DATE: August 25, 2014

---

**SUMMARY:**

The City of Ontario Revolving Loan Fund is being asked to assist the Bank of Eastern Oregon in a real estate transaction and the establishment of a line of credit. Borrowers Roy and Marge Scott, representing 2R's Electric LLC (Ernie's Electric), located at 450 South Oregon Street, Ontario, seek \$77,750.00. After careful review, the Loan Committee and Loan Officer found the character of the Borrower and Guarantors to be acceptable.

**BACKGROUND:**

The Borrower is a long established pump and electric motor repair and installation shop. The business has been established in the same location since the 1940's. In 2008, the previous owner retired and sold the business to Roy Scott and Randy Jones. Randy Jones passed away a short time after, thus leaving Roy Scott as the sole owner. The business is seasonal in nature with the majority of the workload coming in the spring and summer months.

Use of Funding:	
Real Estate Restructure	<u>\$250,000</u>
Total	\$250,000

Sources of Funding:	
Bank of Eastern Oregon	\$172,250
City of Ontario RLF	<u>\$ 77,750</u>
Total	\$250,000

***\*Note, the Bank of Eastern Oregon has already approved their portion of this financing.***

**FINANCIAL IMPLICATIONS:**

The loan will have a fixed rate of 6%, with a loan original fee of 1.5%. An amortization schedule of 240 months will be followed with a balloon payment due after 120 months.

The following collateral shall be used to secure this credit:

- A second Deed of Trust on real estate located at 435 and 475 South Oregon Street. The Bank of Eastern Oregon will hold the first deed of trust.
- A UCC – 1 filing on all inventory will be secured with the Secretary of State of Oregon. This lien shall be senior to all other liens.
- A Personal Guarantee from both Roy Scott and Marge Scott.
- Life insurance in the minimum amount necessary to secure this credit shall be obtained on Roy Scott.

With regard to Capacity, Cash Flow, and Credit, the Loan Committee and Loan Officer found these areas of the Borrower and Guarantors to be acceptable.

**RECOMMENDATION:**

The City of Ontario Business Loan Fund recommends that this loan request be approved.

**PROPOSED MOTION:**

I move the City Council approve the Business Loan Fund request submitted by Roy and Marge Scott, representing 2R's Electric LLC (Ernie's Electric), in the amount of \$\$77,750.00 at a rate of 6%, and a loan fee of 1.5%, subject to the above-referenced collateral being established.

**AGENDA REPORT**  
September 2, 2014

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Tori Barnett, Interim City Manager

**SUBJECT: RESOLUTION 2014-128: A HOUSEKEEPING RESOLUTION CONCERNING THE ECONOMIC AND COMMUNITY ENHANCEMENT SMALL GRANT FUND**

DATE: August 25, 2014

---

**SUMMARY:**

Attached is the following document:

- Resolution 2014-128: A Housekeeping Resolution Concerning The Economic And Community Enhancement Small Grant Fund.

**BACKGROUND:**

Resolution 2012-115, dated June 19, 2012, made a minor amendment to the eligibility requirements for the City's Economic And Community Enhancement Small Grant program through the Business Loan Fund. Resolution 2012-115 incorrectly referred to several prior resolutions as remaining in full force and effect when they had in fact been repealed by Resolution 2010-102, dated January 19, 2010. As a housekeeping measure, the Council should clarify that Resolution 2012-115 did not reinstate those repealed resolutions.

**RECOMMENDATION:**

Staff recommends that the City Council enact Resolution 2014-128.

**PROPOSED MOTION:**

I move that the City Council approve Resolution #2014-128, A HOUSEKEEPING RESOLUTION CONCERNING THE ECONOMIC AND COMMUNITY ENHANCEMENT SMALL GRANT FUND.

**RESOLUTION 2014-128**

**A HOUSEKEEPING RESOLUTION CONCERNING THE ECONOMIC AND COMMUNITY  
ENHANCEMENT SMALL GRANT FUND**

**WHEREAS,** Resolution 2012-115, dated June 19, 2012, made a minor amendment to the eligibility requirements for the City's Economic And Community Enhancement Small Grant program; and

**WHEREAS,** Resolution 2012-115 also incorrectly referred to several prior resolutions as remaining in full force and effect when they had in fact been repealed by Resolution 2010-102, dated January 19, 2010; and

**WHEREAS,** As a housekeeping measure, a resolution should be passed clarifying that Resolution 2012-115 did not reinstate those repealed resolutions.

**NOW, THEREFORE, BE IT RESOLVED** by the Ontario City Council as follows:

Resolution No. 87-103, dated March 2, 1987, Resolution No.00-128, dated October 16, 2000, and Resolution No. 00-133, dated November 6, 2000, were repealed by Resolution 2010-102, and were not reinstated by Resolution 2012-115.

**EFFECTIVE DATE:** Immediately upon passage.

**Passed and adopted** by the Ontario City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

Ayes:

Nays:

Absent:

**Approved** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTESTED:

\_\_\_\_\_  
LeRoy Cammack, Mayor

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

**AGENDA REPORT**  
September 2, 2014

TO: Mayor and City Council

FROM: Anita Zink, Human Resource Manger

THROUGH: Tori Barnett, Interim City Manager

**SUBJECT: RESOLUTION 2014-129: APPROVING A NEW COLLECTIVE BARGAINING AGREEMENT WITH LOCAL 3464, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

DATE: August 25, 2014

---

**SUMMARY:**

Attached are the following documents:

- Resolution 2014-129
- Collective Bargaining Agreement with Local 3464, International Association of Firefighters

**BACKGROUND:**

The City's last collective bargaining agreement with the union employees in the fire department expired on June 30, 2014. The City Council has designated negotiators to negotiate a new agreement with the union employees' bargaining unit, Local 3464 of the International Association of Firefighters. The City Council has been periodically briefed in executive session on the status of negotiations. The negotiators have tentatively agreed on the terms of a new two-year agreement from July 1, 2014, through June 30, 2016, subject to the approval of the City Council. The terms of the proposed Collective Bargaining Agreement conform with the terms discussed with the Council in executive session.

**RECOMMENDATION:**

Staff recommends adopting Resolution 2014-129.

**PROPOSED MOTION:**

I move that the Mayor and City Council adopt Resolution 2014-129, A RESOLUTION APPROVING A COLLECTIVE BARGAINING AGREEMENT WITH LOCAL 3464, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, FOR A TERM FROM JULY 1, 2014 THROUGH JUNE 30, 2016.

**RESOLUTION 2014-129**

**A RESOLUTION APPROVING A COLLECTIVE BARGAINING AGREEMENT  
WITH LOCAL 3464, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,  
FOR A TERM FROM JULY 1, 2014 THROUGH JUNE 30, 2016**

**WHEREAS,** The collective bargaining agreement between the city and the union employees in the fire department expired on June 30,2014; and

**WHEREAS,** A tentative agreement has been reached between the city's negotiators and the collective bargaining unit of the union employees, Local 3464, International Association of Firefighters, for a new two year term, from July 1, 2014 to June 30, 2016; and

**WHEREAS,** It is in the best interest of the city and the taxpayers to approve the proposed agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Ontario City Council as follows:

1. The Collective Bargaining Agreement between the City of Ontario and Local 3464, International Association of Firefighters, a copy of which is attached hereto and incorporated herein as Exhibit A, is hereby approved.
2. The Mayor and Interim City Manager are authorized and directed to sign the Collective Bargaining Agreement on the City's behalf.

**EFFECTIVE DATE:** Immediately upon passage.

**Passed and adopted** by the Ontario City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

Ayes:

Nays:

Absent:

**Approved** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTESTED:

\_\_\_\_\_  
LeRoy Cammack, Mayor

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

COLLECTIVE BARGAINING AGREEMENT

between

City of Ontario, Oregon  
and  
Local 3464, International Association of Firefighters



July 1, 2014 through June 30, 2016

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**AGREEMENT OF  
CITY OF ONTARIO, OREGON  
AND  
LOCAL 3464, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS PREAMBLE**

This Agreement is entered into by and between the City of Ontario, hereafter referred to as the "City," and the International Association of Firefighters, Local 3464, hereafter referred to as the "Union."

The purpose of this Agreement is to set forth the full and complete agreement between the parties on wages, hours, and other conditions of employment, and the rights and procedures of adjustment or settlement of grievances or disputes, which shall be in accordance with the terms of this contract.

**ARTICLE 1 – RECOGNITION**

1.1 Recognition.

The City recognizes the Union as the exclusive bargaining representative for all full-time, paid fire suppression, inspection and prevention employees; excluding all non-career firefighters (members of the Ontario Volunteer Firefighters' Association), management and confidential employees, and contract employees on the Regional HazMat Team.

1.2 New Classifications.

New classifications may be developed within the fire services by the City, and a wage scale assigned. The City shall forward the new classification and wage scale to the Union for its review. If the parties cannot agree, the contract may be reopened on the wage scale for the new classification.

1.3 Probation.

Appointments are made for a probationary period of one year. This probationary period can be extended by the Fire Chief if, in his/her opinion, the employee has not satisfactorily completed his probation. The probationary period shall be a part of the examining process to determine the qualifications of the candidate. During this probationary period, an employee may be disciplined, suspended, or discharged without appeal, and serves at the pleasure of the City.

A promotional appointment shall be made for a probationary period of one year. During this probationary period, if the Fire Chief believes~~st~~ the employee is not qualified to hold the position

to which the employee has been appointed, he will be returned to the last position held without right of appeal.

## **ARTICLE 2 – NON-DISCRIMINATION**

### **2.1 Protected Classes.**

This Agreement shall be applied equally to all members of the bargaining unit regardless of race, sex, age, color, religion, national origin, disability which can be reasonably accommodated in the fire service, marital status or political affiliation, and the parties shall not discriminate on any such basis in setting terms and conditions of employment.

### **2.2 Union Activities.**

Employees shall have the right to join and participate in the activities of the Union for the purpose of representation in matters related to wages, hours and working conditions. Employees shall have the right to refuse to join or participate in the activities of the Union. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.

## **ARTICLE 3 – UNION SECURITY/DUES CHECKOFF**

### **3.1 Dues Deduction.**

The City, when so authorized and directed in writing by an employee member of the Union on an authorized form approved by the City and the Union, will deduct regular Union dues and assessments from the wages of the employee. Neither the City nor the Union will be held liable for check off or remittance errors, and the parties will cooperate in making proper adjustments for errors as soon as practicable.

### **3.2 Fair Share.**

Any employee, who thirty (30) days after the employee's date of hire is not a member of the Union and chooses to remain a non-member of the Union, shall proportionately and fairly share in the cost of the collective bargaining process. The cost per bargaining member shall be fixed proportionately at the amount of dues uniformly required by each member of the bargaining unit to defray the cost of services rendered in negotiating and administering this Agreement. Such amount

shall be deducted monthly as a condition of employment, from the compensation of each non-member, and remitted monthly in the aggregate to the Union.

### 3.3 Religious Objections.

Any individual employee who objects to the payment in lieu of dues on bona fide religious tenets or teachings of a church or religious body of which the employee is a member shall inform the District and the Union of the objection. The employee will meet with the representatives for distribution of a contribution of an amount of money equivalent to regular Union membership dues, initiation fees, and assessments, if any, to the non-religious charity or other charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish written proof to the City that such has been accomplished, as appropriate.

### 3.4 Indemnification.

The Union will indemnify, defend and hold the City harmless from all suits, actions, and claims against the City or persons acting on behalf of the City, whether for damages, compensation, reinstatement or any combination thereof, arising from the application of this Article. In the event that any part of this Article shall be declared invalid or that the monthly service fee should be ordered reimbursed to any non-member, the Union and its members shall be solely responsible for such reimbursement.

### 3.5 Bulletin Board.

The City agrees to allow suitable wall space in the fire stations, for bulletin boards, not to exceed 3' x 4', to be used by the Union for the posting of notices and bulletins relating to the Union.

The Union shall limit its posting or Union notices and bulletins to such bulletin board, which shall be used only for the following Union notices and bulletins:

- a. Recreation and social affairs of the Union
- b. Union meetings
- c. Union elections
- d. Reports of Union committees
- e. Rulings or policies of the International Union
- f. Communications from the Union to the bargaining unit
- g. Other related items

### 3.6 Use of Facilities.

The City agrees to the reasonable use of the fire stations for purpose of holding Union meetings. Such meetings may be held after approval by the City of reasonable request to the City Manager, or his designee, and must conform to City policy governing such use. Such use shall be consistent with the operating needs of the fire service and not in conflict with any prior scheduled use of the building. The Union shall not use City owned or purchased vehicles, equipment, supplies, facilities or services for Union business without prior written authorization, or without complying with City arrangements related to reimbursement.

## **ARTICLE 4 – MANAGEMENT RIGHTS**

It is recognized that an area of responsibility must be reserved so that the City can serve the public effectively. Except to the extent expressly abridged by specific provision of this Agreement, it shall be recognized that the responsibilities of management are exclusively functions to be exercised by the City and are not subject to negotiation or the grievance procedure. By way of illustration and not limitation of the following are listed as such management functions:

### 4.1 Financial and Personnel Management.

The determination of the City's financial, budgetary, accounting and organization policies and procedures. The City retains the right to establish and revise periodically job descriptions, work rules, and rules of conduct.

### 4.2 Policies and Rules.

All employees shall comply with published rules. Changes or additions to the rules shall be provided to the Union at the time issued. Violations shall be grounds for appropriate discipline. The continuous overseeing of personnel policies and procedures and programs promulgated under any ordinance or administrative policy of the City establishing and revising personnel rules and regulations not inconsistent with any other term of this Agreement.

### 4.3 General Supervision.

The management and direction of the work force including, but not limited to, the right to determine the methods, processes, and manner of performing work; the determination of the duties and qualifications to be assigned or required and determination of job classification; the right to discipline and discharge for just cause; the right to lay off for lack of work or funds; the right to

abolish positions or reorganize within the Department; the right to purchase, dispose, and assign equipment or supplies; and the right to determine staffing requirements of the apparatus.

4.4 Overtime Assignments.

The City has the right to schedule overtime as required in the manner most advantageous to the City and consistent with the requirements of municipal employment in the public interest.

4.5 Subcontracting.

The City agrees to comply with the Public Employee Collective Bargaining Act (PECBA) before contracting out work which reduces the regular hours of work of employees, or which reduces the size of the bargaining unit.

4.6 Prevailing Practices.

Hours, wages and working conditions enumerated by Oregon law enjoyed by the employees at the present time which are not included in this Agreement and which constitute employment relations and mandatory subjects of bargaining under the PECBA shall remain in force for the life of the Agreement unless changed by mutual consent. The parties recognize the City's full right to direct the work force and issue rules and regulations, and establish procedures; nevertheless, the City will meet and confer with the Union concerning any amendments and consider any points of view the Union may express before any modification is adopted. If a change is made in a mandatory subject of bargaining, the City will provide notice and bargain as required by the PECBA.

4.7 Fire Department SOP/SOG Manual.

The City agrees to furnish each employee of the bargaining unit with a current electronic copy of the SOP/SOG Manual. The Union shall have the right to meet and consult with the City in the formation and modification of the SOP/SOG Manual, subject to the Public Employee Collective Bargaining Act. Said manual shall be considered as a supplemental document to this Agreement and by reference is incorporated herein.

**ARTICLE 5 – SENIORITY LAYOFF AND RECALL**

5.1 Seniority.

The Union shall provide the City with a seniority list ranking all employees as of the signing of the Agreement. "Seniority" shall mean the length of continuous service as an employee of the

City Fire Department, computed from the date of the employee's last hire date. Where two (2) employees have the same hire date, the employee whose application was first received shall be deemed the senior employee.

Seniority shall be terminated if an employee:

- a. Resigns;
- b. Is discharged for just cause;
- c. Is laid off and fails to respond to a written notice of recall;
- d. Is laid off work for a period of time greater than 12 months or a period of time equal to the employee's seniority, whichever is shorter;
- e. Is retired.

### 5.2 Layoff.

In the event of reduction in work force, layoffs shall be made by classification in the following manner:

- a. Probationary employees with less than one (1) year service with the Department shall be laid off first.
- b. Any employee who is to be laid off who has advanced to the present position and classification from a previous classification may elect to displace the least senior employee in the previous classification.
- c. No regular employees shall be laid off while there are probationary employees still employed within the bargaining unit. As used in this section, "Probationary Employee" means an employee who has not achieved status.

### 5.3 Eligibility Lists.

For a period of one (1) year following the date of layoff, an employee shall be classified as on layoff status and the employee's name will be maintained on the "layoff eligible" list by the City. The names on said list are in the reverse order of their layoff. If the employee notifies the City at the end of the one (1) year period or sooner that he/she no longer wishes to continue on layoff status, then the employee's name shall be removed from the layoff eligible list and he/she shall be deemed terminated. An employee in layoff status shall promptly inform the City of any change of address. He/she shall be deemed terminated if a letter mailed to his/her last address recorded with the City is returned unclaimed.

5.4 Recall.

Recall of employees to active employment shall be made in order of their names on the layoff eligible list, unless that employee has been deemed terminated or the employee does not report for work within fourteen (14) days of written notice of recall. No person shall be hired to fill any position within the bargaining unit except as provided in this Article as long as any employee remains on layoff status.

**ARTICLE 6 – HOURS OF WORK AND OVERTIME**

6.1 Overtime.

The City shall pay overtime using the applicable hourly rate multiplied by one and one-half for overtime hours worked, in accordance with the Fair Labor Standards Act (FLSA). For the calculation of overtime, paid leaves count as hours worked. Paid leaves are: vacation, sick, and holiday.

6.2 Work Cycle.

The normal work cycle shall be defined as twenty-four (24) consecutive days. The normal required work schedule shall be twenty-four (24) hours of continuous regular duty, followed by forty-eight (48) hours of continuous off duty time, subject to recall for emergency duty and drills as determined and directed by the Fire Chief. The parties work cycle is pursuant to the FLSA “7k” exemption as noted in Section 6.3.

6.3 Unscheduled Overtime.

Except as otherwise provided in this Agreement, employees shall be paid overtime at the rate of one and one-half their regular rate of hourly pay for work performed in excess of the required regular duty as set forth in Section 6.2 of this Article. Additionally, Firefighters shall be paid overtime and in accordance with the requirements of the Fair Labor Standards Act, based on the agreed twenty-four (24) day work period, as long as it is applicable. The City will pay overtime at the prescribed rate for work performed in excess of one hundred eighty-two (182) hours of regular duty. When an employee has not performed one hundred eighty-two (182) hours of regular duty and is not scheduled for that amount of hours in the twenty-four (24) day work period including any authorized leave, vacation, or sick leave; the employee may elect to work at the straight time rate filling positions other than sick leave, vacations, or unfilled

permanent positions in addition to the employee's regularly scheduled hours per work period. The City shall not pay more than the rate of pay for the position being filled.

- a. 40-Hour Personnel. Employees may be assigned a forty (40) hour work week when to do so is necessary due to the regular, or a special assignment, or for training. Forty (40) hour personnel will be compensated for hours worked in excess of forty (40) hour work week. The hourly rate of pay will be computed by dividing the monthly wage by 173.33.
- b. Rounding. Any portion of an hour worked shall be considered one-quarter (1/4) hour for the purpose of computing overtime.
- c. Call Back. An employee recalled for reasons other than weekly drills on a day off shall be paid a minimum of two (2) hours pay at the overtime rate.
- d. FLSA Compliance. Any term of this Agreement or practice of the City, which is found inconsistent with the FLSA, shall be modified and brought into conformance.

#### 6.4 Shift Trades.

Upon approval of the Fire Chief or his designee, the City will allow employees to exchange shifts without limit (except probationary personnel) so long as the person working the time is qualified to perform the duties of the position. Approval of an exchange must be given in advance, and should be requested at least the shift worked prior to the exchange (3 calendar days). Approved trades must be recorded on a shift exchange request form. Pay back of the trade is an employee responsibility.

#### 6.5 Attendance at Drills.

Personnel will be required to attend 50% of the night training drills (extra ordinary circumstances will be dealt with on a case-by-case basis by the Chief or his/her designee). The department may require other special training classes unless excused by a chief officer; in addition, the City may mandate attendance by all personnel when the subject of training is mandated by law or regulation and/or is necessary to maintain a license. Attendance at night drill meetings usually will be limited to two (2) hours per drill, but may be longer when necessary.

#### 6.6 Pager Response.

If issued by the City, firefighters may be required to insure their pager is on and in good working order, and to carry a pager when in the Ontario area. Firefighters shall respond to call backs initiated by incident command whenever<sup>30</sup> the firefighter is reasonably available. Being

engaged in the performance of work on a second job does not, in and of itself, render a firefighter unavailable, although other circumstances could do so.

## ARTICLE 7 – HOLIDAYS

### 7.1 Designated Holidays.

Shift personnel who work on the following holidays shall receive holiday pay:

- (1) New Year's Day
- (2) Martin Luther King's Day
- (3) President's Day (3rd Monday in February)
- (4) Memorial Day (last Monday in May)
- (5) Independence Day
- (6) Labor Day (first Monday in September)
- (7) Veteran's Day (November 11th)
- (8) Thanksgiving Day
- (9) Day after Thanksgiving
- (10) Christmas Day

The time span of designated holidays for 56-hour shift personnel shall be the 24-hour period beginning at 7:00 a.m. of the holiday. For 40-hour shift personnel, it shall begin at midnight of the holiday.

### 7.2 Holiday Pay.

Employees who work on a holiday shift shall be paid at the rate of two times the employee's hourly wage for the hours worked on the holiday. An employee's hourly wage is set forth in Article 24.

## ARTICLE 8 – VACATION

### 8.1 Rate of Accrual.

Vacation time for regular employees shall accrue as follows:

<u>56-Hour Shift Personnel:</u>	<u>Monthly</u>	<u>Annual</u>
1- 60 months of employment	14 hours	168
61 – 120 months of employment	19 hours	228
121 – 180 months of employment	24 hours	288
181 – 240 months of employment <sub>31</sub>	26 hours	312

241+ months of employment	28 hours	336
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40-Hour Shift Personnel:

1 – 60 months of employment	11 hours	132
61 – 120 months of employment	14 hours	168
121 – 180 months of employment	17 hours	204
181 – 240 months of employment	18 hours	216
241+ months of employment	19 hours	228

Vacation time accrues at the end of each month worked. Vacation time accrued during one calendar year shall be taken during the following calendar year.

8.2 Carryover.

An employee may carry over unused vacation time equivalent to the annual vacation allowance earned by the employee in the preceding calendar year. Carryover of vacation accrual may not exceed one (1) year's accrual without prior approval of the City Manager. No employee may accrue more than double that employee's annual vacation accrual rate.

8.3 Maximum Consecutive Vacation Time Off Per Year.

Employees will not take more than three (3) weeks consecutive vacation without approval of the City Manager.

8.4 Scheduling Vacation Time Off.

Vacation time shall be scheduled by mutual agreement between the firefighters and the Chief, or his/her designee, based on the efficient operating needs of the City and availability of relief. The bargaining unit shall be allowed one member of the assigned shift force to be off on vacation or holiday per shift, except during periods of employee illness or injury over five (5) consecutive days. Employees shall be allowed vacation time off when qualified relief is available as specified below. Vacation time shall be administered as follows:

- a. Firefighters should turn in a written vacation request at least two weeks prior to desired time off. Less than two weeks' notice will not be cause for vacation denial, however granted time off will be strictly at the discretion of the Fire Chief.
- b. In January each firefighter will have the opportunity to sign-up for (2) two shifts of planned vacation based on seniority at the start of the vacation year calendar. This is to allow firefighters some long-term vacation planning.

- c. Once each firefighter has had the opportunity to sign-up for two shifts of planned vacation based on their seniority, firefighters will be allowed to request additional vacation on a first come basis at any time during the vacation calendar year.
- d. Request for vacation shall be approved or denied (with cause) in writing within one week of receipt of request. If request is denied because relief personnel are not available at the time of request, firefighter may elect to keep the request open pending relief personnel availability, or may seek a shift exchange.
- e. All vacations will be posted on a yearly calendar. The calendar will be posted in the staff office and accessible to all career and qualified on-call non-career shift relief personnel.
- f. All vacation relief shall be filled with qualified Ontario on-call non-career firefighters from the shift relief/qualified stand-by list. Career overtime to fill one of these positions will only be the last resort measure as approved by the Chief. The on-call non-career firefighter shall have equal opportunity for relief work rotating through the list.
- g. If a qualified on-call non-career firefighter takes a one week block of vacation from his/her normal full time job for the purpose of working for Ontario Fire Department, he/she will be allowed the opportunity to work as many relief shifts as practical during that week.
- h. Shift relief should be scheduled prior to approval of vacation time. If no on-call non-career shift relief can be found for a planned vacation, the vacation can be approved with the department filling in with career personnel if necessary at the time of relief, if a qualified on-call non-career shift relief is still not available.
- i. Efforts should be made not to schedule two on-call non-career shift relief firefighters on the same day unless one qualified on-call non-career firefighter has more than one year experience as working shift relief with the department.

#### 8.5 Prorated Payoff of Vacation.

In the event a non-probationary firefighter terminates his/her employment, or is terminated due to death, retirement, or disability, the firefighter or the firefighter's beneficiary shall receive full pay for all unused vacation time from the preceding year and for all unused vacation time from the current year.

**8.6 Application of Carry Over Cap.**

Vacation shall not be accrued in excess of the amount provided for in this Article. There shall be no pay in lieu of taking vacation, except:

- a. In those extraordinary situations in which it is not possible for the firefighter to take the vacation time due to operational reasons and not due to the firefighter's failure to schedule the time off, subject to the approval of the Chief the firefighter may be permitted to accrue additional vacation under terms of an agreement or plan to take time off.
- b. In the case of termination as set forth in Article 8.5.

**ARTICLE 9 – SICK LEAVE**

**9.1 Accrual.**

Firefighters shall accrue one shift per month (24 hours) during the first year of service and sixteen (16) hours per month thereafter, up to a maximum of 1280 hours.

**9.2 Utilization.**

- a. Sick leave is provided as an insurance against an employee's illness and inability to work; in no sense is it a right which the employee may use for any purpose other than actual illness or accident causing personal disability, or otherwise as specifically authorized in Article 9.2(b). Abuse of sick leave shall be cause for discipline up to dismissal.
- b. An employee eligible for sick leave may be granted such leave for the following reasons:
  - (1) Illness of the employee or physical incapacity of the employee due to illness or injury.
  - (2) Medical and dental appointments during working hours. Use of sick leave for scheduled medical and dental appointments require prior approval of the employee's supervisor and will be granted on a case-by-case and non-precedent setting basis, based upon operational needs of the City.
  - (3) As family medical leave due to "serious health condition," as defined in Oregon and federal law, of a parent, parent-in-law, spouse or a child of the employee, to the extent permitted by law.

- (4) To care for a child or spouse in the employee's household when such care is necessary due to illness or injury, provided that the employee shall make arrangements for another caregiver and return to work as soon as possible.
- c. Temporary employees and probationary employees with less than three months service will not be allowed sick leave. However, probationary employees with less than one year of service shall be eligible to earn sick leave on the basis of one full duty day for each full month of service.
- d. Under no circumstances shall the City grant an employee sick leave with pay for time off from City employment caused by sickness or injury resulting from employment other than with the City of Ontario.

### 9.3 Notice of Illness.

An employee who cannot perform his/her assigned duties due to illness or physical incapacity shall inform the Lieutenant Duty Officer of the fact and the reason therefore as soon as possible. Failure to do so within a reasonable time may be cause for denial of sick leave with pay. (For purposes of clarification, "reasonable time" may be construed to be not later than one (1) hour prior to scheduled time for reporting for duty.)

The City does not require a physician's note as a regular practice, although the Chief or his/her designee may require verification of illness by the employee's doctor. The Chief, or his/her designee, may require verification of the member's fitness to return to work by the employee's physician or a physician designated by the City prior to permitting an employee to return to work following an injury or illness. If the City requires the employee to be seen by the City's physician, it shall be at the City's expense. The City may require medical examination and verification to the extent authorized by the Family Medical Leave Act and pertinent regulations.

### 9.4 Coordination of Leaves Under FMLA.

FMLA leave shall run concurrently with all leave and vacation and any other leave of absence under this Agreement.

### 9.5 Sick Leave Buy Out

At the time of separation, employees with fifteen (15) or more years of service will be paid for unused sick leave at a rate of 15 percent up to the maximum of twelve hundred eighty (1280) hours. This will not apply to anyone terminated for cause.

## ARTICLE 10 – VACATION/SICK LEAVE CONVERSION

When an employee transfers from a 40-hour to a 56-hour schedule, the vacation and sick leave balance shall be multiplied by 1.5, and benefits thereafter will be accrued and used on the 56-hour basis. When an employee is transferred from a 56-hour to a 40-hour schedule, the balances shall be multiplied by .67 to obtain the proper accrual amount, and benefits will thereafter be accrued and used on the 40-hour basis. Conversion shall not be made for temporary, short-term transfers.

## ARTICLE 11 – OTHER LEAVES OF ABSENCE

### 11.1 Requests for Extended Leave.

Requests for leaves of absence under this section shall be in writing on a form provided by the City. The form shall contain the name of the employee, the effective date of the absence, the number of days of absence, the purpose of the absence, and the signature lines for the City and Union officials. The purpose of the request form will be to eliminate misunderstanding as to the purpose, dates, and length of absence.

### 11.2 Criteria and Procedure for Extended Leave of Absence.

The City will consider a written application for leave of absence without pay not to exceed one (1) year if the City finds there is reasonable justification to grant such leave and that the work of the department will not be seriously handicapped by the temporary absence of the employee. The City may terminate or cancel such leave by thirty (30) days written notice mailed to the address given by the employee on his/her written application for such leave. Such leave shall not be approved for an employee for the purpose of accepting employment outside the service of the City and confirmation that the employee has accepted permanent employment or entered into full-time business or occupation may be treated by the City as a resignation.

### 11.3 Return From Extended Leave.

Any employee who is granted a leave of absence without pay under this article and who for any reason fails to return to work at the expiration or termination of said leave of absence shall be considered as having resigned his/her position with the City, and his/her position shall be declared vacant unless the employee prior to expiration of his leave of absence or prior to the termination date has furnished evidence that he/she is unable to work by reason of sickness, physical disability, or other legitimate reason beyond his/her control, and seeks an extension of leave for such reason.

Such a request for extension shall be in writing. An extension shall be granted only for a specified period of time, and only if the City determines that the request is reasonable and justified, and that the extension may be granted without unduly handicapping the operation of the department.

11.4 Required Court Appearances.

Leave of absence with pay shall be granted for an appearance before a court, legislative committee, judicial or quasi-judicial body as a witness in response to a subpoena or other order by proper authority compelling his/her attendance under penalty described by law in connection with the employee's officially assigned duties, including the time required for travel to court and return to the City Hall/Fire Station. Employee shall be required to seek all fees due for such duty and turn the fees over to the City. Firefighters will be paid the straight time rate for time spent at court appearances which do not constitute "hours of work" and which are not controlled by and do not benefit the City. When the appearance is for the City and where the City is a party in the litigation, overtime rate shall be paid and the appearance shall be deemed hours of work.

11.5 Jury Duty.

Employees shall be granted leave with pay for service upon a jury, provided that the employee is required to seek all fees due for such jury duty and turn the fees over to the City. Upon being excused from jury duty for any day, an employee shall immediately contact the Lieutenant Duty Officer or the Fire Chief for assignment for the remainder of his/her regular work day. Mileage and expenses paid for jury duty will be retained by the employee so long as the employee provides his/her own transportation for such jury duty service.

11.6 Election Days.

Employees shall be granted reasonable time off, with pay, to vote on any election day, if due to scheduling of work, they would not otherwise be able to vote.

11.7 Military Leave With or Without Pay.

Military leaves with or without pay shall be in accordance with Oregon Revised Statutes and federal law.

11.8 Bereavement Leave.

A leave of absence with pay for up to one (1) 24 hour shift in any calendar year may be granted an employee when a death in the employee's immediate family requires the absence of an employee to attend services. Should circumstances require an employee to be absent longer than one (1) 24 hour shift, the excess may be charged against accumulated sick leave. Immediate

family means the immediate family of the employee or of the spouse, and is intended to include parents, children, grandparents, stepchildren, siblings and members of the employee's household. For funerals not otherwise covered above, if an employee must lose work due to his/her service as a pallbearer, he/she shall be reimbursed for such lost work at the employee's straight time hourly rate up to a maximum of four hours pay. Exceptions may be made at the discretion of the Fire Chief or his/her designee.

## **ARTICLE 12 – PARENTAL/FAMILY MEDICAL LEAVES**

Parental and family leave shall be granted as required by Oregon and federal law regulations, and as provided for in the City personnel policy.

## **ARTICLE 13 – HEALTH AND INSURANCE BENEFITS**

### **13.1 New Employees.**

New Employees (of the bargaining unit) will be eligible for Health and Insurance benefits the first of the month following 60 days from hire. Furthermore, the Health and Insurance benefits will discontinue the last day of the month of the termination date.

### **13.2 Health Insurance**

Effective July 1, 2014, and for the term of the agreement, the City will provide full-time employees and their dependents CIS HDHP-2 plan with HSA, including prescription (RX) and Alternative Care, herein referred to as "HDHP" plan. A summary of the HDHP plan is attached as Appendix B.

Effective July 1, 2014, and for the term of this Agreement, the City will pay the full premiums (100%) for health, dental and vision insurance.

Effective upon implementation of the CIS HDHP-2 plan on January 1, 2013, the City will establish a Health Saving Account (HSA) for each employee and contribute to each employee's H.S.A. in the following manner:

- a. For all full-time employees hired after January 1, 2013, the City will pay \$208.33 per month to the employee's H.S.A account if employee only coverage or \$333.33 for employee's with one (1) or more covered dependents.

An employee will receive the initial monthly payment upon the first month of plan eligibility for the employee.

- b. Part-Time Employees. Part-time employees shall not be eligible for any health insurance coverage.
- c. For employees who do not have a choice to participate in an H.S.A account because of coverage under Medicare, Tricare/VA or Indian Health Services, the City will make available a comparable benefit, subject to IRS and plan regulations.

### 13.3 Life Insurance.

The City shall furnish to all employees a \$20,000 term life insurance policy for each employee at no cost to the employee. The insurance is to be equal to or greater than that required by the state of Oregon.

### 13.4 Dental Insurance.

The City shall furnish Blue Cross or comparable dental insurance for all employees and dependents.

### 13.5 Vision Care.

The City shall provide Blue Cross or comparable Vision Care coverage.

### 13.6 Workers' Compensation.

The City provides for salary continuation in the event of a work related injury. Occasionally, the City's insurance carrier will issue a workers' compensation check directly to the employee. If an employee receives compensation from the City's workers' compensation carrier for an on-the-job injury, the employee must not cash the check, but must endorse and remit each check to the City through Human Resources as soon as possible after receiving the check. The employee may elect to use accrued sick leave and/or vacation time to make up the difference between time loss benefits paid and the employee's net wage (less taxes).

It is equally important that the employee's supervisor tells Human Resources that such an injury has occurred as there are special rules in processing an employee's benefit check if the employee has been injured on the job (the amount of sick leave deducted for each day off the job is one example).

## **ARTICLE 14 – PERS RETIREMENT**

The City agrees to continue to participate in the Public Employee Retirement System and to pick up the employee's contribution.

## **ARTICLE 15 – UNIFORMS AND EQUIPMENT**

The City will provide required uniforms, safety equipment, and uniform boots. Any and all badges, patches, and ornaments required by the City will be furnished by the City. Uniforms will be maintained by the employees at their expense. Turnouts will be cleaned by employees at City facilities.

## **ARTICLE 16 – DISCIPLINE**

Discipline shall be for just cause. Appeals of discipline under the grievance article of this contract shall be exclusive.

## **ARTICLE 17 – GRIEVANCE PROCEDURE**

### 17.1 Definition and Step Procedure.

A grievance for the purpose of this Agreement is defined as a dispute regarding the meaning or interpretation of a particular clause of this Agreement or an alleged violation of this Agreement. Notwithstanding this Article, the parties may at any time agree to mediate any dispute; however, the parties declare this Article to be the exclusive means for resolution of disputes which cannot be resolved within the Fire Department, and neither the Union nor its members, nor the City and its officials shall involve any other third party without mutual agreement. A grievance shall be resolved through the following procedure:

Step 1: In cases involving a complaint by an employee or employees, the representative of the Association or the aggrieved employee or employees, with or without the presence of the representative of the Association, shall present the complaint, within ten (10) calendar days after the grievant knew or in the exercise of reasonable diligence should have known of the event giving rise to the grievance, to the Fire Chief on the Grievance Form. The Fire Chief shall respond in writing to the grievant within ten (10) calendar days from the receipt of such grievance.

Step 2: If the grievance remains unsettled after Step 1, the grievance shall be submitted to the City Manager. If the grievance is not satisfactorily resolved within five (5)

working days after being received by the City Manager, only the Union may notify the City Manager of the Union's intent to arbitrate.

Step 3: Arbitration: If the grievance is not settled with Step 2, or not resolved through mutual mediation, the Associate shall file a notice of intent to arbitrate the grievance with the City Manager within ten (10) working days of the date the decision of the City Manager is due. The parties shall request a list of seven (7) arbitrators from the Oregon Employment Relations Board. Within 10 ten working days or as mutually agreed, after receipt of the list, the parties shall select an arbitrator by the method of alternately striking names. The Association shall strike the first name, the City shall strike the second name and so on, with the exception of disciplinary cases, wherein the order of striking names shall be reversed, with the remaining person being the arbitrator. The cost of the arbitrator shall be borne equally by the parties. Each party shall be responsible for costs of presenting its own case to arbitration.

#### 17.2 General Grievance Provision.

Any time limits specified in the grievance shall be strictly construed; however, they may be waived or extended by mutual prior written consent of the parties. Unless an extension of the time periods described above is mutually agreed to in writing, a grievance shall be advanced to the next step in the event the grievant or the Union fails to comply with the time periods. In such event, if the City fails to comply with the time periods, the grievance shall automatically advance to the next step. A grievance may be terminated at any time upon receipt of a signed statement from the Union or employee that the matter has been resolved. The arbitrator shall be asked to render a decision within thirty (30) days of the termination of the hearing. The decision of the arbitrator shall be final and binding on both parties. Nothing in this article shall restrict the City and the Union from jointly or mutually agreeing to changes in the prescribed procedures.

#### 17.3 Arbitrator's Authority.

The grievance arbitration procedure shall be limited to the issues regarding the meaning, interpretation or application of the Agreement, or any alleged violation of its terms. The arbitrator may interpret this Agreement and apply it to a particular case under consideration, but shall have no authority to add to, subtract from or modify the terms of the Agreement, and shall be limited solely to the issue presented. Disputes related to matters involving a loss of pay for employees may carry an award of back pay in whole or in part as may be determined by the arbitrator. In the event a decision relating to discipline is challenged through the grievance procedure, the arbitrator shall

determine whether the employee in fact engaged in the conduct alleged as a basis for discipline and whether the City's decision that just cause supported the discipline imposed was reasonable.

## **ARTICLE 18 – DRUG AND ALCOHOL POLICY**

The City and the Union have agreed to follow the drug and alcohol policy as outlined in the City's Personnel Policy Manual.

## **ARTICLE 19 – OUTSIDE EMPLOYMENT**

Outside employment must:

- a. Be compatible with the employee's City duties, including off-duty response.
- b. Not affect the employee's job performance; and
- c. Not be a discredit to the City.

If an employee is employed outside the City, and it is deemed by the Fire Chief that such employment is in violation of this Article, such employee shall be subject to discipline.

## **ARTICLE 20 – EDUCATION ALLOWANCE**

The City shall pay expenses associated with employee attendance at fire and/or medical related schools, courses, workshops, seminars and conference which an employee is directed to attend or which an employee elects to attend voluntarily with prior written authorization of the City.

This includes the cost of tuition and required course related books and supplies. Wages will be paid for attendance at schools and courses only when attendance is directed and required by the City as a requirement of employment. The employee must satisfactorily complete the course, workshop, seminar or conference. If the course is graded, satisfactory completion means obtaining a passing grade. In the event an employee does not complete a course, the employee shall be responsible for all costs associated therewith.

If the employee is on shift, the City will permit the employee to attend local courses, workshops, seminars or conferences during work time so long as attendance does not interfere with the employee's performance of essential job functions. The City may cover a shift with volunteers in order to enable the on-shift firefighters to attend mandated training.

## **ARTICLE 21 – PHYSICAL EXAMINATIONS AND FITNESS TESTING**

### **21.1 Medical Exams.**

The City shall pay the medical cost of any physical examination conducted by a physician selected by the City to confirm the employee is presently able to perform the functions of the job of firefighter. Any medical examination shall be conducted during off duty time. The City may request an exam for cause, as determined by the City, at any time. The City shall schedule a medical exam for each employee at least biannually. The City shall test members' fitness using job related tests which demonstrate the ability to perform essential functions of the job, including a treadmill test in any case deemed appropriate by the City's physician. Employees may be required to release medical records of all health care providers to the City's physician. The physician will disclose to the City medical facts relevant to a determination that an employee is not fit for full duty; the Fire Chief shall disclose such a report to the firefighter and otherwise only on a need-to-know basis.

### **21.2 Periodic Agility and Fitness Tests.**

The department shall administer the annual fitness/agility tests to applicants and to fire suppression personnel in accordance with established Standard Operating Procedures and Guidelines.

The ability to pass the test is a job requirement and an employee still unable to do so after 30 days shall not be permitted to work until he/she passes the test. Time may be traded or charged to vacation to the extent permitted as scheduled vacation under the department vacation scheduling practices.

## **ARTICLE 22 – FUTURE WAGE ADJUSTMENTS**

The parties recognize that further "catch-up" adjustments may be warranted, and in future years, intend to consider the City's ability to pay. Subject to limited ability to pay, the parties intend that the City will devote its best efforts to fund COLA and catch-up adjustments of a total of 6% on the base wages per year until Ontario top step firefighters are paid to within 95% of the average of the top step firefighter wage (base wage comparison) in the Cities of: Astoria, Baker City, Canby, Jackson County FD 3, Hermiston, La Grande, Lebanon, North Bend, Pendleton, Redmond, St. Helens, and The Dalles. These wage adjustments are reflected in Article 24 for this contract period. Parties may also rely upon statutory comparators, including ORS 243.746, for collective bargaining.

## ARTICLE 23 – INCENTIVES

There shall be monthly incentives paid under this agreement for tasks in the job descriptions as follows:

Intermediate EMT	1.1% base monthly salary	\$50.00 approx
NFPA FF-2	1.1% base monthly salary	\$50.00 approx
NFPA Instructor I	0.55% base monthly salary	\$25.00 approx
NFPA Instructor II	0.55% base monthly salary	\$25.00 approx
NFPA Pumper Operator	0.55% base monthly salary	\$25.00 approx
State of Oregon HazMat	0.55% base monthly salary	\$25.00 approx
Wildland Interface Engine Boss	0.55% base monthly salary	\$25.00 approx
Wildland Interface Strike	0.55% base monthly salary	\$25.00 approx
Team/Task Force Leader		

The certificates and/or licenses for above are obtained through the State of Oregon Department of Human Services or the Department of Public Safety Standards and Training. They must be maintained to continue to receive the applicable incentive pay.

## ARTICLE 24 – WAGES

### 24.1 Wage Adjustment.

- a. Effective and retroactive to July 1, 2014, the salary scale will adjusted across the board by 1.5% (one and one-half percent)
- b. Effective and retroactive to January 1, 2015, the salary scale will be adjusted across the board by 1% (one percent)
- c. Effective July 1, 2015, the salary scale will be adjusted across the board by 1.5% (one and one-half percent)
- d. Effective January 1, 2016, the salary scale will be adjusted across the board by 1% (one percent)

24.2 Longevity Pay.

Employees within the following tiers will be paid the additional incentive. The tiers are not cumulative.

121-180 months of employment 2% base monthly wage

181-240 months of employment 3% base monthly wage

241+ months of employment 4% base monthly wage

“Months of employment” is defined as the continuous term of service as a bargaining unit member, including approved paid/unpaid leaves.

See Wage Schedule in Appendix A.

**ARTICLE 25 – OTHER COMPENSATION**

25.1 Lieutenant Duty Officer Out of Class Pay.

When firefighters are assigned by management to “Lieutenant Duty Officer”, the employee will receive 6% (base monthly wage calculation) for all hours worked in the assignment. The Lieutenant Duty Officer assignment is similar to a lead officer and is limited to first level supervision. The assignment does not equate to a management level Lieutenant or supervisor, as under the collective bargaining act. In the absence of the Lieutenant Duty Officer, the next available full-time career firefighter will work out of class during the absence of the Lieutenant Duty Officer assigned for that time period based on seniority.

25.2 Hazmat Coordinator.

When a Firefighter is assigned to the Hazmat Coordinator assignment, the employee will receive an additional 4% base wage monthly, prorated if less than a month assignment.

**ARTICLE 26 – MISCELLANEOUS MATTERS**

26.1 Amendments.

This agreement may be amended, altered, or added to only by written agreement of both parties.

## 26.2 Savings Clause.

If any provision of this Agreement is or becomes in contravention of the laws, or regulations of the United States or State of Oregon, the provision shall be suspended by the appropriate provision of the law or regulation so long as it is in force and effect, but all other provisions to this Agreement shall continue in full force and effect. The provision being in contravention of such laws or regulations shall be renegotiated, as applicable under PECBA, by the parties in order that there will be no such contravention. If the parties are unable to renegotiate, the matter will be settled as a grievance at Step IV and the arbitrator shall have authority to award a new provision.

## 26.3 Term of Agreement.

This Agreement shall be effective as of July 1, 2014, and except as amended or modified, shall remain in full force and effect until June 30, 2016. The parties acknowledge retroactive wage adjustments in Article 24.1

- a. This Agreement shall be automatically renewed from year to year thereafter unless either the Union or the City desires to amend or renegotiate this Agreement and so notifies the other party in writing by February 1, 2016.
- b. The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control, as provided in Article 4 relating to management rights. For items not otherwise covered in this Agreement and which are not subject to mandatory bargaining, or items not covering "employee relations" as defined in ORS 243.650(7) which include but are not limited to: matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment, the parties agree that the City Personnel Policy Manual shall govern.

**ARTICLE 27 – EXECUTION**

This Agreement has been ratified by the bargaining unit and the City Council, and is signed on behalf of the parties on the dates indicated below:

FOR THE CITY OF ONTARIO, OREGON

FOR IAFF LOCAL 3464

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Secretary/Treasurer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
City Recorder

**APPENDIX A**

**Wage Schedule**

Effective July 1, 2014		1.5%	
------------------------	--	------	--

Step	Length of Service	Monthly	Hourly
Step 0	(0-1 Years) 0-12 Months	\$3,891	\$16.8703
Step 1	(1-5 Years) 13-60 Months	\$4,431	\$19.2096
Step 2	(5+ Years) 61+ Months	\$4,574	\$19.8287

Effective January 1, 2015		1%	
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Step	Length of Service	Monthly	Hourly
Step 0	(0-1 Years) 0-12 Months	\$4,008	\$17.3764
Step 1	(1-5 Years) 13-60 Months	\$4,564	\$19.7858
Step 2	(5+ Years) 61+ Months	\$4,711	\$20.4236

Effective July 1, 2015		1.5%	
------------------------	--	------	--

Step	Length of Service	Monthly	Hourly
Step 0	(0-1 Years) 0-12 Months	\$4,128	\$17.8977
Step 1	(1-5 Years) 13-60 Months	\$4,701	\$20.3794
Step 2	(5+ Years) 61+ Months	\$4,852	\$21.0363

Effective January 1, 2016		1%	
---------------------------	--	----	--

Step	Length of Service	Monthly	Hourly
Step 0	(0-1 Years) 0-12 Months	\$4,128	\$17.8977
Step 1	(1-5 Years) 13-60 Months	\$4,701	\$20.3794
Step 2	(5+ Years) 61+ Months	\$4,852	\$21.0363

**APPENDIX B**

**Health Plan Summary**

# CIS Benefits Program

Summary of High Deductible Health Plans (HDHP) w/HSA Options  
Effective January 1, 2013



cis benefits  
www.cisbenefits.org

These medical plans are insured by CIS, but administered by Regence BlueCross BlueShield (BCBS) of Oregon. This means that CIS, not Regence BCBS, pays for your covered medical services and supplies.

Deductibles and Co-Insurance Maximums	HDHP-1	HDHP-2
Deductible per calendar year	\$1,500 Single/\$3,000 Family	\$2,500 Single/\$4,000 Family
Maximum out-of-pocket per calendar year Category 1 & 2 - Preferred and Participating Provider Category 3 - Non-Preferred Provider	\$2,300 Single/\$5,050 Family	\$3,300 Single/\$6,050 Family
<b>Benefit Features</b>	<b>Provider Benefit Category 1 &amp; 2</b>	<b>Provider Benefit Category 3</b>
<b>Preventive Care Services</b>	<b>Deductible Waived – Plan Pays</b>	
Routine well-baby care, physical examinations, health screenings, and immunizations	100%	60%
<b>Professional Services</b>	<b>After Deductible - Plan Pays</b>	
Office visits for illness or injury, mental/behavioral health or substance use disorder ( <i>primary care, specialist or urgent/immediate care center</i> )	80%	60%
Laboratory, radiology, and diagnostic procedures	80%	60%
Maternity care	80%	60%
Therapeutic injections including allergy shots	80%	60%
Chiropractic care	<i>Available as a rider (see back)</i>	
<b>Hospital/Facility Services</b>	<b>After Deductible - Plan Pays</b>	
Inpatient, outpatient and ambulatory services	80%	60%
Emergency room care ( <i>including professional charges</i> )	80%	
Inpatient/outpatient surgery and surgeon fees	80%	60%
Inpatient mental/behavioral health & substance use disorder	80%	60%
<b>Other Services</b>	<b>After Deductible - Plan Pays</b>	
Ambulance	80%	
Inpatient/outpatient rehabilitation – 77 outpatient visits/year	80%	60%
Home health care - limited to 130 visits/year	80%	60%
Hospice – 14 respite days/lifetime	80%	60%
Skilled nursing facility – 120 inpatient days/year	80%	60%
Habilitation services- neurodevelopmental limited to children through age 17	80%	60%
Durable medical equipment and supplies	80%	60%
<b>Prescription Medication Benefit</b>	<b>Pharmacy or Mail Order program (limited to 90-day supply) After Deductible – Plan Pays</b>	
Individual/Family deductible per calendar year	Combined with medical deductible	
Out-of-pocket Individual/Family maximum per year	Combined with medical out-of-pocket maximum	
Generic, preferred and non-preferred drugs	80%	
<i>Exception: Specific value-based generic drugs are covered at 100%, and specific preferred drugs are covered at 80% with the deductible waived. These value-based medications are designated as preventive for: asthma, diabetes, high blood pressure, high cholesterol or tobacco cessation. For a current list visit <a href="http://www.regencerox.com">www.regencerox.com</a></i>		

**This is a summary only. Any errors or omissions are unintentional. Once enrolled, employees can view their Plan Booklets online at the claims administrator's or carrier's website.**

04/12/13

Other services provided by Regence BlueCross BlueShield	Preferred Provider Benefit Category 1 Plan Pays	Non-Preferred Provider Benefit Category 2 & 3 Plan Pays
<b>Weight Management and Obesity Treatment – Turning Point Program</b> - <i>Weight management and obesity treatment, includes health coaching, integrated care coordination, up to four (4) nutritional counseling visits.</i> - <i>Bariatric surgery may be covered to treat morbid obesity – participant must meet participation requirements</i>	100% (deductible waived)  \$1,000 copay then 80% after deductible	100% (deductible waived)  \$1,000 copay then 80% after deductible
Case and Disease Management	Provided by Regence BCBS as part of the medical plan	
Special Beginnings Program	Provided by Regence BCBS as part of the medical plan	
Regence Health Coach – weight management and nutrition, tobacco cessation, exercise and fitness, stress management and improved sleep.	Provided by Regence BCBS as part of the medical plan	
BlueCard Program (Out of Area Services) – access hospital and physicians when outside the four-state area Regence services (Oregon, Idaho, Utah and Washington) as well as receive care in 200 countries around the world.	Provided by Regence BCBS as part of the medical plan	

### Additional Plan Riders

The following benefits can be added to all High Deductible Plans for an additional cost. These riders are selected on a group level, not the individual employee level.

#### Alternative Care Rider

Chiropractic, Naturopath and Acupuncture	Subject to deductible then covered at 80%, any provider - Maximum allowance \$1,000 per person per calendar year.
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#### Vision Service Plan (VSP)

	VSP Provider 12/12/24	VSP Provider 24/24/24	Non-VSP Provider
Benefit Frequency for Exam and Lenses Benefits reset annually on January 1 <sup>st</sup>	<b>Covered <u>every</u> calendar year</b>	<b>Covered <u>every other</u> calendar year<sup>1</sup></b>	<b>Matches VSP plan selected</b>
Eye Exam	Covered at 100%	Covered at 100%	Up to \$71
Single Lenses	Covered at 100%	Covered at 100%	Up to \$51
Bifocal Lenses	Covered at 100%	Covered at 100%	Up to \$77
Trifocal Lenses	Covered at 100%	Covered at 100%	Up to \$100
Lenticular Lenses	Covered at 100%	Covered at 100%	Up to \$125
Contacts	\$166 allowance for contacts lenses and exam, fitting and evaluation (in lieu of lenses); subject to same benefit frequency as lenses.		Up to \$166
Frames	\$120 allowance <b>every other year</b> ; 20% off the amount over allowance		100% up to \$66
Safety Glasses Rider	<b>Can be added to both vision plans for an additional cost</b>		

<sup>1</sup> Children 18 and under are eligible for annual exams and lenses replacement.

**This is a summary only. Any errors or omissions are unintentional. Once enrolled, employees can view their Plan Booklets online at the claims administrator's or carrier's website.**

HDHP w/HSA Options

# Discussion/Information /Hand-Out Items

City Council Meeting  
September 2, 2014

# Public Works Updates

August 28, 2014

- **Water System**

- Offer has been made to a new water wastewater operator
- Updates on meeting with State of Oregon on Sanitary Survey
- CMMS training for staff

- **Wastewater**

- Continued work on machine guarding and aerators
- Tier 2 sampling this week
- CMMS training for staff

- **Streets and Roads**

- Preparation for chip seal work including flushing , trimming, and vehicle maintenance in anticipation of this week's program
- Chip Seal to begin 8 25 14 thru 9 5 14
- CMMS training for staff
- Traffic control Supervisor Training for department head

- **Parks and Cemetery**

- Porta-Potty installed and operational at both parks
- CMMS training for staff

## MALHEUR COUNTY COURT MINUTES

AUGUST 13, 2014

County Court met with Judge Dan Joyce presiding and Commissioner Don Hodge present. Staff present was Administrative Officer Lorinda DuBois and County Counsel Stephanie Williams.

Also present was Larry Meyer of the Argus Observer.

### FAIRGROUNDS SOLAR PROJECT

Roger Findley and Fair Manager Janeen Kressly met with the Court regarding the solar project at the fairgrounds. Mr. Findley explained several new developments since meeting with the Court last. There was an increased cost of \$2400 with the Nuance contract due to a necessary change in panels; Nuance has agreed to split the cost increase in half with Mr. Findley and Mr. Findley will not be passing the increased cost onto the County. The new design should be more efficient and generate more KWHs per year.

Mr. Findley was able to buy hazard insurance for the solar arrays for the 15 year period with the assistance of Nuance Energy Group and contract costs reductions.

The solar project has a deadline of October 18, 2014. Idaho Power says the solar arrays have to be on-line, meaning connected to the grid. Oregon PUC says they consider the project complete when the local electrical inspector gives approval; regardless of whether Idaho Power has connected to the grid or not. Mr. Findley expressed concern about the project completion timeline as there are several variables involved that are out of his control. Mr. Findley reviewed Idaho Power's involvement in the project timeline with the Court.

Commissioner Hodge briefly discussed with Mr. Findley the financing, amortization, and tax credits of the project. It was discussed that there is not a routine maintenance agreement for the equipment and that the Fair will be responsible for ensuring that the maintenance is done. The Nuance warranty was also discussed; it was requested that Nuance assign the warranty to the County; Mr. Findley will follow-up with Nuance with the request.

It was decided that there was an urgency in getting the contract documents signed for the project; Ms. Kressly agreed to hold a Special Meeting of the Fair Board to review/approve the contract with Mr. Findley. The Court agreed to continue the County Court session to Friday, August 15th at 9:30 a.m. for completion of the project contract documents.

### COURT MINUTES

Judge Joyce moved to approve Court Minutes of August 6, 2014 as written. Commissioner Hodge seconded and the motion passed.

### SHERIFF'S OFFICE - VACANCY

Lieutenant Rob Hunsucker met with the Court and advised of a staff vacancy in the dispatch center. Lieutenant Hunsucker will proceed with efforts to fill the vacancy.

### CROSSING PERMITS

Commissioner Hodge moved to approve Crossing Permit #40-14 to Qwest-Track Utilities to provide service to a customer on Alameda Drive #863; and Crossing Permit #41-14 to AT&T Corp. for maintenance work to access and replace a vault on Stanton Blvd. #762. Judge Joyce seconded and the motion passed. The original permits will be kept on file at the Road Department.

Court was recessed until August 15th.

Court continued on August 15, 2014 at 9:30 a.m. with Judge Joyce presiding and Commissioner Don Hodge present. Staff present was Administrative Officer Lorinda DuBois and County Counsel Stephanie Williams.

### FAIRGROUNDS SOLAR PROJECT

Fair Manager Janeen Kressly, Roger Findley and Attorney Charles Oakes met with the Court regarding the solar project at the fairgrounds. Ms. Kressly explained that the Fair Board had approved the Contract of Sale with Mr. Findley. Ms. Williams presented the agreements with Idaho Power and the County.

Commissioner Hodge moved to approve Oregon Solar Photovoltaic Pilot Program Energy Sales Agreement: Project Name: Malheur County Fairgrounds #3: Project Number: 90001315 with Idaho Power; Oregon Solar Photovoltaic Pilot Program Energy Sales Agreement: Project Name: Malheur County Fairgrounds #2: Project Number: 90001313 with Idaho Power; and, Oregon Solar Photovoltaic Pilot Program Energy Sales Agreement: Project Name: Malheur County Fairgrounds #3: Project Number: 90001306 with Idaho Power. Judge Joyce seconded and the motion passed. Copies of the agreements will be returned for recording.

Commissioner Hodge moved to approve Contract of Sale with Roger Findley for financing and acquisition of a solar panel electrical system for use by the Malheur County Fair. Judge Joyce seconded and the motion passed. See instrument # \*\*\*\*\*

### EMPLOYMENT AGREEMENT AMENDMENT - WILLIAMS

Judge Joyce moved to approve First Amendment to Temporary Employment Agreement for Registered Nurse between Malheur County and Judy Williams Recorded with the Malheur County Clerk as Instrument Number 2014-2211. Commissioner Hodge seconded and the motion passed. See instrument # \*\*\*\*\*

### COURT ADJOURNMENT

Court was adjourned.

**RESOLUTION 2014-130**

**A RESOLUTION SUSPENDING THE IMPOSITION OF SYSTEM  
DEVELOPMENT CHARGES UNTIL \_\_\_\_\_**

- WHEREAS,** Since 2008, the City has been collecting system development charges (SDCs) under its current version of City Code Title 8, Chapter 13; and
- WHEREAS,** Advisers have told the City Council that the imposition of SDCs are hurting the City's economic development efforts; and
- WHEREAS,** The City Council has determined that it is in the best interest of the City to suspend the imposition of SDCs until \_\_\_\_\_ to give the City the opportunity to determine the effect that the imposition of SDCs and their suspension has had on the City's economic development efforts.

**NOW, THEREFORE, BE IT RESOLVED** by the Ontario City Council as follows:

- 1) The City shall suspend the collection of SDCs after the effective date of this resolution, and shall refund any SDCs received by the City after July 1, 2014. The City shall retain any SDCs received prior to that date.
- 2) This resolution shall have no effect on the use of SDCs received by the City prior to July 1, 2014, and does not repeal or amend any prior resolutions concerning SDCs.
- 3) City staff shall continue to calculate the amount of SDCs the City would have collected from developers but for the suspension, and shall report that amount to the City Council when requested to do so by the Council.
- 4) By no later than \_\_\_\_\_, the subject of the suspension of SDCs shall be placed back on the agenda of the City Council to determine whether the suspension of SDCs was an effective economic development tool and whether the suspension should be continued, made permanent, or allowed to lapse.
- 5) Unless amended or repealed by the Council, this resolution shall lapse on \_\_\_\_\_, and the City shall thereafter resume collecting SDCs.

**EFFECTIVE DATE:** Immediately upon passage.

**Passed and adopted** by the Ontario City Council this \_\_\_\_ day of \_\_\_\_\_, 2014.

Ayes:

Nays:

Absent:

**Approved** by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
LeRoy Cammack, Mayor

ATTESTED:

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

## **Chapter 12 WATER AND SEWER ASSESSMENTS; ANNEXATIONS**

### **8-12-1 Definitions.**

For purposes of this Chapter a classification of areas to be annexed shall be as follows:

**DIVERSE OWNERSHIP AREA:** Any general area of land to be considered for annexation in which title to not less than fifty percent (50%) of the area, excluding public right of way, is held by two (2) or more individuals, firms, or corporations. For purposes of this Chapter the term "individual" shall include both a husband and wife, or other joint owners of individual lots, panels, or tracts of land.

**DEVELOPMENT AREA:** Any general area of land to be considered for annexation in which title to over fifty percent (50%) of the area, excluding public right of way, is held by one individual, firm, or corporation. For purposes of this Chapter the term 'individual' shall include both a husband and wife, or other joint owners of individual lots, parcels, or tracts of land.

**EXEMPTION:** Any area of land to be considered for annexation containing one acre or less, excluding public right of way, shall be considered a diverse ownership area.

### **8-12-2 Consideration for annexation, improvements.**

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

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

Title 8 - PUBLIC WAYS AND PROPERTY

Chapter 12 WATER AND SEWER ASSESSMENTS; ANNEXATIONS

**10. If the area to be annexed will be in a City zone designated for commercial or industrial use, the area shall conform to the City zoning requirements, including but not limited to the parking, landscaping and signage requirements imposed on properties in that zone designation. If the Planning Director determines that imposing one or more of those requirements on the property owner(s) at the time of annexation will cause an undue financial burden on the owner(s) and will not provide a substantial benefit to the City at the time of annexation, the Planning Director, with City Council approval, may enter into a written agreement with the property owner(s) to bring the area into compliance in stages over a period not to exceed three years from the date of annexation. Notice of the agreement shall be recorded in the County deed records and shall be binding on the heirs and successors of the property owner(s). Remedies for noncompliance shall include an injunction prohibiting all use of the area until it is brought into compliance with the City zoning requirements, as well as for specific performance and for other civil remedies for contract breach, including an award of reasonable attorney fees and court costs to the prevailing party. Any structures in an area subject to a zoning compliance agreement with the Planning Director shall not be subject to the nonconforming use provisions of City Code Section 10A-05-35.**

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

(Ord. No. 2667-2012, § 4, 4-2-2012)