

**AGENDA**  
**CITY COUNCIL - CITY OF ONTARIO, OREGON**  
September 20, 2010, 7:00 p.m., M.T.

**1) Call to order**

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

**2) Pledge of Allegiance**

This Agenda was posted on Wednesday, September 15, 2010, and a study session was held on Thursday, September 16, 2010. Copies of the Agenda are available at the City Hall Customer Service Counter and on the city's website at [www.ontariooregon.org](http://www.ontariooregon.org).

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

**4) Local Contract Review Board Action:**

A) Award Personal Service Contract to Miller Nash, LLP for Legal Services . . . . . 1-5  
B) Award Personal Service Contract to CH2M Hill for City Hall Seismic Assessment . . . . . 6

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

A) Approval of Minutes of Work Session Meeting of 09/02/10 . . . . . 7-8  
B) Approval of Minutes of Regular Meeting of 09/07/10 . . . . . 9-13  
C) Approval of Liquor License Application - Greater Privilege (Full-on Premises Sales) . . . . . 14  
D) Approval of the Bills

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

**7) Old Business**

A) Ordinance #2648-2010: Amend OMC 7-1 re: Nuisance Provisions (1st Reading) . . . . . 15-20  
B) Ordinance #2649-2010: Amend OMC 7-4-8 re: Graffiti Provisions (Final Reading) . . . . . 21-23

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

A) Field Waldo Insurance  
B) Overlay on SE 2<sup>nd</sup> Street from Idaho to SE 5<sup>th</sup> Avenue  
C) Additional Funds for Septage Receiving Facility (Hand-Out)  
D) Discussion Concerning Solicitors and Panhandling (Hand-Out)

**9) Executive Session:**

A) ORS 192.660(2)(e)

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

**11) Adjourn**

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

The City of Ontario does not discriminate in providing access to its programs, services and activities on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, physical or mental disability, or any other inappropriate reason prohibited by law or policy of the state or federal government. Should a person need special accommodations or interpretation services, contact the City at 889-7684 at least one working day prior to the need for services and every reasonable effort to accommodate the need will be made. T.D.D. available by calling 889-7266.

**AGENDA REPORT**  
September 20, 2010

TO: Mayor and City Council  
FROM: Larry Sullivan, City Attorney  
THROUGH: Henry Lawrence, City Manager  
**SUBJECT: Hiring Miller Nash LLP as Consultant**  
DATE: September 13, 2010

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**SUMMARY:**

Attached is the following document:

- September 7, 2010 Letter from Christine M. Masse of Miller Nash LLP

The purpose of this agenda item is for the Council to consider hiring Miller Nash LLP as its attorneys to consult with and represent the City in future negotiations with the Burns Paiute Tribe.

**PRIOR COUNCIL ACTION**

August 26, 2010      The City Council met with Christine M. Masse of Miller Nash LLP in executive session. No action was taken in a public meeting at that time.

**DISCUSSION**

Following the executive session on August 26, 2010, Christine M. Masse was invited to send a representation letter to the City for the Council's consideration, which is attached.

The City may hire Miller Nash LLP to represent it in negotiations with the Burns Paiute Tribe without soliciting proposals from other laws firms if the City follows the procedure in Section 7.1 of the Ontario Financial Policies Manual. This Section exempts personal services contracts from the public bidding process. Personal services contracts include those between the City and attorneys. Section 7.1 allows the City Council to enter into such contracts if sits as a local contract review board and declares the particular contract to be a personal services contract and waives the City's solicitation requirements for the contract.

**STAFF RECOMMENDATION:**

Staff recommends that the Council hire Miller Nash LLP to represent the City in negotiations with the Burns Paiute Tribe.

**PROPOSED MOTIONS:**

1) "I move that the Mayor and City Council, sitting as a local contract review board, declare the Miller Nash LLP representation letter of September 7, 2010 is a personal services contract under Section 7.1 of the Ontario Financial Policies Manual."

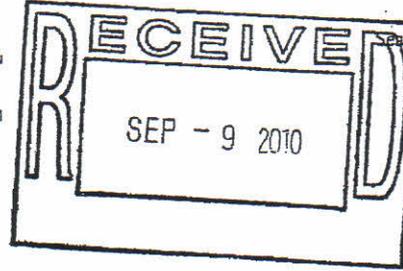
2) "I move that the Mayor and City Council, sitting as a local contract review board, approve the personal services contract with Miller Nash LLP without soliciting proposals from other law firms."



**MILLER NASH**<sup>LLP</sup>  
ATTORNEYS AT LAW

Christine M. Masse, P.C.  
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(206) 777-7427 direct line

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September 7, 2010

**VIA E-MAIL AND U.S. MAIL**

City of Ontario  
Attn: Larry Sullivan  
Attorney at Law  
P.O. Box 220  
Vale, Oregon 97918

Subject: Agreement for Legal Services

Dear Larry:

Miller Nash LLP is pleased to have the opportunity to be of service to the City of Ontario as counsel with respect to the City's interests in the Burns Paiute Tribe's potential economic development in your City. This letter will confirm my discussion with you regarding the engagement of this firm and will describe the basis on which my firm will provide legal services to the City.

**Scope Of Services**

Our client in this matter will be the City. If our engagement is approved, we will advise the City in connection with the City's relationship with the Burns Paiute Tribe and the Tribe's possible economic development in the City.

**Staffing, Fees, And Charges**

I will have primary responsibility for your representation and will utilize other lawyers and paralegals in the firm as I believe appropriate in the circumstances. Specifically, as we discussed, I am not licensed to practice in the State of Oregon and will rely on our Portland and Central Oregon attorneys for support as needed. My administrative assistant is Sherry Bodle. Sherry will also be aware of the status of your matters, so please do not hesitate to contact her if you have any questions.

Our fees will be based primarily on the billing rate for each attorney and paralegal devoting time to this matter. Our billing rates for attorneys currently range



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from \$195.00 per hour for new associates to \$500.00 per hour for senior lawyers. Time devoted by paralegals is charged at billing rates ranging from \$125.00 to \$230.00 per hour. These billing rates are subject to change from time to time, and the adjusted rates will apply to all services performed thereafter. Currently, my rate is \$350.00 per hour. As we discussed, I am willing to provide you a ten percent discount from that rate, as well as from the rates of any other attorneys who may work on your case.

Each month we will issue you a statement describing the work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services for you. We will include on our statements separate charges for performing services such as messenger and delivery service, computerized research, travel, and filing fees. Fees and expenses of others (such as consultants, appraisers, and local counsel) generally will not be paid by us but will be billed directly to you.

As is our usual practice in connection with matters like yours, we will require an advance fee deposit of \$1,000 before we undertake to represent you. Those funds will be deposited in our client trust account, and we will draw against those funds to satisfy our monthly statements, copies of which will be sent to you for your information. Upon depletion of the advance fee deposit, we will so advise you, and you agree to pay all further statements upon receipt. A check for the advance fee deposit may be made payable to Miller Nash LLP and sent to me.

To enable us to represent you effectively, you agree to cooperate fully with us in all matters relating to our representation and to fully and accurately disclose to us all facts and documents that may be relevant to the matter or that we may otherwise request. You also will make yourself and others reasonably available to us as may be necessary from time to time.

### **Conflict-Of-Interest Issues**

You are aware that the firm represents many other companies, governments, tribes, and individuals. It is possible that during the time that we are representing you, some of our present or future clients will have disputes or transactions with you. We reserve the right to represent or to undertake to represent in the future existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters are directly adverse to you. The foregoing shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic



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nature that if known to such other client could be used in any such other matter by such client to your material disadvantage.

### **Conclusion Of Representation—Retention And Disposition Of Documents**

Unless previously terminated, our representation will terminate upon our sending you our final statement for services rendered in this matter. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

Please let me know if you have any questions or comments on the matters set forth in this letter. We are pleased to have this opportunity to be of service to you and to work with you.

Very truly yours,

MILLER NASH LLP

Christine M. Masse, P.C.

cc: Henry Lawrence, City Manager

SEADOCS:424151.1



# CITY OF ONTARIO

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m e m o r a n d u m

**To:** City Council  
**FROM:** Yorick de Tassigny, Facilities Manager  
**DATE:** SEPTEMBER 13, 2010

**SUBJECT:** City Hall preliminary seismic assessment

In 2005, the legislature passed Oregon Senate Bill 2 that directed the Department of Geology and Mineral Industries to conduct a statewide seismic needs assessment of schools and emergency facilities using rapid visual screenings (RVS) in accordance with FEMA-154. This bill provides the first step in a statewide pre-disaster mitigation strategy. City Hall was evaluated as part of this process and the final RVS score places the facility in a category of buildings having a very high collapse potential.

In a secondary step to their pre-disaster mitigation strategy for emergency facilities, the State of Oregon's Office of Emergency Management (OEM) has made available, through its Seismic Rehabilitation Grant Program (SRGP), \$7.5 million for seismic-related activities that include structural improvements, architecture and engineering services and project management. There is a \$1.5 million cap per project with no match requirements. Only portions of the building directly related to emergency services are eligible for funding.

In order to meet the application requirements, the city needs to have completed a preliminary engineering assessment with a cost estimate for all measures identified. Having reviewed the final RVS score for the building, staff deemed it appropriate to hire a firm well versed in FEMA's Tier 1 evaluation methodology. Staff selected CH2M Hill of Boise based on their extensive experience in completing these types of assessment and recommended a partnership with the local engineering firm CK3 to reduce cost by taking advantage of their proximity to the facility. This arrangement was put in place expeditiously in order to meet an application deadline of October 15, 2010.

Staff is requesting that the City Council, acting as the Local Contract Review Board, declare that the contract for the seismic evaluation of City Hall is a Personal Services contract that is exempt from the competitive bidding process so that the city may enter into an agreement with CH2M Hill for the completion of a preliminary seismic assessment of City Hall.

A copy of the CH2M Hill's fee proposal, along with the RVS reports, is attached to this memorandum.

Proposed Motions:

- 1) I move that the City Council, acting as the Local Contract Review Board, declare that the contract for the seismic evaluation of City Hall is a Personal Services contract that is exempt from the competitive bidding process.
- 2) I move that the City Council waive all solicitation requirements for the personal services contract for the seismic evaluation of City Hall.

**SPECIAL COUNCIL MEETING/STUDY SESSION MINUTES  
September 2, 2010**

The special meeting for Ontario City Council was called to order by Mayor Joe Dominick at 2:00 p.m. on Thursday, September 2, 2010, in the Council Chambers of City Hall. Members present were Joe Dominick, Charlotte Fugate, John Gaskill, Susann Mills, David Sullivan and Ron Verini. Norm Crume was excused.

Members of staff present were Henry Lawrence, Tori Barnett, Rachel Hopper, Larry Sullivan, Chuck Mickelson, Mark Alexander and Alan Daniels.

Also present: Larry Myers, Argus Observer.

**NEW BUSINESS**

**Resolution #2010-141: FAA Grant #3-41-0044-009 Part 1 – Runway, Taxiway, and Apron Rehabilitation and Runway Lighting for Ontario Airport**

Alan Daniels, Airport Manager, stated the Council was being asked to accept this FAA Grant to be used as part of the City's matching funds for the Connect Oregon III Airport Improvement Project to be funded by the Oregon Department of Transportation. In February, 2009, the Council accepted an FAA Grant for Project #3-41-0044-008 for \$124,168 thru Resolution #2009-104; in July, 2009, the Council approved the contract with Kimley-Horn for \$60,030 for Project Design Start-up and the contract with USKH for independent review of the Kimley-Horn Pricing; in November, 2009, the Council approved the Connect Oregon 3 Application and the ODOT Connect Oregon Agreement #24941 dated July 8, 2009, which allowed the City to begin the project prior to accepting the Connect Oregon Grant; in March, 2010, the Council approved the contract increase with Kimley-Horn from \$60,030 to \$124,168 for additional project design work.

During the winter of 2007, the City of Ontario applied for Connect Oregon II funds for the runway rehabilitation and apron rehabilitation/expansion project for the Ontario Municipal Airport. While waiting to be moved into a funded position on the Connect Oregon 2 project, the City reapplied for the same project under the Connect Oregon 3 funding cycle.

The City has been notified that the grant request had been funded under the Connect Oregon 3 funding cycle; however, had not yet received the paperwork from the Oregon Department of Transportation to formally accept the grant.

The overall project budget approved by the Connect Oregon 3 Grant was approximately \$4,457,970. This Connect Oregon 3 grant award was for a total of \$3,566,376, or 80% of the overall project budget, which left the City's matching portion a total of \$891,594, or 20%, of the total project budget.

With respect to the City's \$891,594 Connect Oregon 3 match, the City had leveraged FAA grant funds that would amount to approximately 95% of the total City match, or \$847,014. The FAA grant funding would be issued in several smaller project grants over the course of the project.

The City had already accepted one FAA grant for this project in the amount of \$124,168 which was used to start the engineering work thru Kimley-Horn. The City spent \$6,550 of its required match thru that project.

The City was awarded a second FAA grant for this project in the amount of \$168,913 which would be used to continue design work thru Kimley-Horn. The City would spend \$8,890 of its required match on this project.

The final FAA grant, anticipated to be \$553,933, would come some time after January 2011, and the remaining City match of \$29,140 would be requested from the General Fund contingency at that time to complete that piece of the project.

The \$168,913 in FAA grant revenue was proposed to be budgeted within the City's Grant Fund with the required \$8,890 in City matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. This would bring the total project budget to \$177,803, and was proposed to the Council thru Resolution 2010-147. Mr. Daniels would manage the grant project and those costs were not reimbursable thru this grant project.

Additionally, acceptance of this grant would continue to reinforce the City's commitment to the overall project which was anticipated to cost the General Fund Contingency an additional \$29,140 prior to the completion of the project.

Ronald Verini moved, seconded by Susann Mills, to adopt Resolution #2010-141, A RESOLUTION ACCEPTING THE FAA IMPROVEMENT PROJECT GRANT #3-41-0044-009, A GRANT AGREEMENT PORT 1 FOR RUNWAY, TAXIWAY AND APRON REHABILITATION AND RUNWAY LIGHTING FOR A PROJECT AT THE ONTARIO MUNICIPAL AIRPORT. Roll call vote: Crume-out; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**Resolution #2010-147: Accept FAA Grant #3-41-0044-009 for Airport Improvements**

Alan Daniels, Airport Manager, stated the City of Ontario applied for and had been awarded an FAA Grant in the amount of \$168,913 to be used on FAA Project #3-41-0044-009, a project continuing the design work for the larger \$4,457,970 Airport Improvement Project. This would allow funding to continue project design work paid for by the previous FAA Grant Project #3-41-0044-008. It was anticipated that a third FAA Grant would be awarded to continue to help meeting a majority of the City's match requirement as this overall project continued toward completion.

In February, 2009, the Council accepted an FAA Grant for Project #3-41-0044-008 for \$124,168; in July, 2009, the Council approved a contract with Kimley-Horn for \$60,030 for Project Design Start-Up; also in July, 2009, the Council approved a contract with USKH for an independent review of the Kimley-Horn pricing; and in March, 2010, the Council approved a contract increase with Kimley-Horn from \$60,030 to \$124,168 for additional project work designs.

This is the second FAA project grant awarded to go toward the completion of the larger overall airport improvement project that the City has sought funding for from both the FAA and the Oregon Department of Transportation thru its Connect Oregon grant program.

The \$168,913 in FAA grant revenue was proposed to be budgeted within the City's Grant Fund with the required \$8,890 in City matching funds being reallocated from General Fund Contingency to a General Fund transfer to the Grant Fund. This would bring the total project budget to \$177,803. Additionally, Mr. Daniels would manage the grant project and those costs were not reimbursable thru this grant project.

David Sullivan moved, seconded by Charlotte Fugate, to adopt Resolution #2010-147, A RESOLUTION ACKNOWLEDGING RECEIPT OF FAA GRANT PROJECT #3-41-0044-009 FOR THE ONTARIO MUNICIPAL AIRPORT, AND FURTHER APPROVING A REALLOCATION OF GENERAL FUND EXPENDITURES, AND APPROVING REVENUE AND EXPENSE BUDGETS WITHIN THE GRANT FUND. Roll call vote: Crume-out; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-yes; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**ADJOURN**

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

ATTEST:

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

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

**COUNCIL MEETING MINUTES  
September 7, 2010**

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

Members of staff present were Henry Lawrence, Tori Barnett, Larry Sullivan, Mark Alexander, Rachel Hopper, Chuck Mickelson, and camera operator Delaney Kee.

Susann Mills led everyone in the Pledge of Allegiance.

**AGENDA**

Ronald Verini moved, seconded by Susann Mills, to adopt the Agenda as presented. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**CONSENT AGENDA**

John Gaskill moved, seconded by Norm Crume, to approve Consent Agenda Item A: Approval of Minutes of regular meeting of 08/16/2010; Item B: Proclamation: Alcohol and Drug Recovery Month-September 2010; Item C: Resolutions #2010-110C and #2010-111C: Corrections to Resolutions #2010-110 and #2010-111; and Item D: Approval of the Bills. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

Mayor Dominick read the Proclamation into the record:

- WHEREAS,** recovery from substance use disorders is possible through a variety of treatment resources and recovery support programs; and
- WHEREAS,** thousands of people across the United States are living happy, healthy, and productive lives in recovery; and
- WHEREAS,** stress can contribute to substance use disorders, and finding a positive outlet for dealing with stress is crucial as people continue to face stressful situations in their lives. Nearly half of Americans reported that their stress levels had increased over the past year in 2008, with as many as 30% rating their stress levels as extreme; and
- WHEREAS,** in 2008, an estimated 23.1 million people of every age, race, ethnicity, and socioeconomic status needed treatment for substance dependence or abuse in the United States; and
- WHEREAS,** substance use disorders are a treatable, yet serious health care problem, and our community must take steps to address it; and
- WHEREAS,** educating our community about how substance use disorders affect all people in the community, including public safety officials, the workforce, older adults and families, is essential to combat misconceptions associated with addiction.

**NOW, THEREFORE, BE IT RESOLVED,** that I, Joe Dominick, Mayor of the City of Ontario, do hereby proclaim September 2010 as

**National Alcohol and Drug Recovery Month**

and encourage the citizens of Ontario to join in this observance with appropriate programs, activities, and ceremonies supporting this year's theme "Join Voices for Recovery: Now More Than Ever!"

**NEW BUSINESS**

**Resolution #2010-139: Approve Agreement with ODOT for East Idaho Railroad Underpass Rehabilitation and Reconstruction Planning and Preliminary Engineering**

Chuck Mickelson, Public Works Director, stated this resolution approved an agreement with the Oregon Department of Transportation for \$292,150 of federal funding for the East Idaho underpass. The underpass was constructed in 1937 and there were a number of deficiencies including limited truck clearance, poor drainage, spalling of concrete, exposed rebar, erosion caused from runoff from adjacent properties, inadequate lighting, etc. This initial funding would identify all the issues with the existing facility, identify options for replacement or upgrade and develop cost estimates for the various alternatives to be utilized for future funding requests. An Oregon federal appropriations request was submitted in February 2009 to Senators Wyden and Merkley. The application requested \$500,000 and Congress ultimately approved \$292,150.

In 2001, ODOT and Ontario entered into agreement No. 697 where Ontario accepted maintenance responsibility for North Oregon Street, West Idaho including the underpass, Southwest 2<sup>nd</sup> Street and Southwest 4<sup>th</sup> Avenue; ODOT agreed to pay the City \$490,000 for future maintenance of these facilities; agreement superseded prior agreements made in 1975 and 1979; all right, title and interest in the above mentioned streets shall be transferred to Ontario upon completion of the Yturri Beltline, the agreement addressed various other elements including underpass lighting system maintenance, traffic signal maintenance, signage, snow removal and power costs for signals.

Since the early 1990's ODOT and Ontario had been discussing various transportation related issues within and adjacent to the City. During this period of time, ODOT reconstructed East Idaho, rebuilt the overpass over I-84, reconstructed the freeway ramps leading to East Idaho, constructed the Yturri Beltline bypass around the city, reconstructed the North Oregon overpass and ramps, constructed an overpass over the railroad on Southwest 18<sup>th</sup> Avenue, and other miscellaneous projects. As noted above, in 2001 Ontario formally agreed to take maintenance and operational responsibility for West Idaho, the railroad underpass, Southwest 2<sup>nd</sup> Street, Southwest 4<sup>th</sup> Avenue and North Oregon Street.

The railroad underpass was the gateway or entry to Ontario. While this 1937 structure was functional for moving traffic and carrying rail cars, there were a number of deficiencies as noted above. If this agreement was accepted by the City Council, the first step would be to select an engineering firm in cooperation with ODOT to identify all the issues (structural, institutional, environmental, legal etc) associated with the underpass and the surrounding properties. The agreement with the engineering firm would be with ODOT rather than the city. This limited the administrative burden of dealing with the federal procurement and reporting process.

Once an engineering firm was selected the full scope of the project would be negotiated. There were numerous options that would need to be considered due to the limited right of way and other physical constraints. Public input and environmental reviews would be solicited in the initial phase. Options would be identified and shared with the decision makers. Following the selection of the preferred option, detailed design would commence with construction following as funding became available.

The City of Nampa, Idaho had an underpass crossing under the Union Pacific Rail Road nearly identical to Ontario's although it was a two-lane facility with pedestrian pathways on both sides of the underpass similar to Ontario's. The underpass was widened a number of years ago to four lanes. A single sidewalk was constructed to replace the dual tunnel like crossings that previously existed. A pedestrian bridge was constructed to allow pedestrians to cross from north to south. The Nampa project cost about \$18 million a number of years ago.

I have utilized \$22 million as the overall project cost due to inflation, complexity, etc. This type of project normally would take several years to bring it to conclusion with the planning, funding, railroad negotiations, etc.

This phase of the project was fully funded by the federal government. There would be significant staff time involved in undertaking this project. Future costs were unknown at this time. Failure to accept the agreement would result in the City not receiving funds for this portion of the project.

Ronald Verini moved, seconded by Charlotte Fugate, to adopt Resolution #2010-139, A RESOLUTION APPROVING A LOCAL AGENCY AGREEMENT BETWEEN THE OREGON DEPARTMENT OF TRANSPORTATION AND THE CITY OF ONTARIO FOR THE EAST IDAHO RAILROAD UNDERPASS REHABILITATION AND RECONSTRUCTION PLANNING AND PRELIMINARY ENGINEERING. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**Resolution #2010-140: Approval of Water Distribution Master Plan Update Addendum #1 and Sanitary Sewer Master Plan Update Addendum #1**

Chuck Mickelson, Public Works Director, stated Keller and Associates developed the addendums to the master plans during 2008. A technical review committee comprised of staff members, some members of the Public Works Committee and the City Council met periodically to review the process and provide guidance. The primary purpose of the master plan updates was to address the expansion of the Urban Growth Area and the Urban Reserve Area. Proposed routing for water and sewer pipelines was identified within the addendum. Additionally, potential street layouts were identified for collectors and arterials in the Urban Reserve area.

When developing master plans, population growth and additional commerce was usually the reason that utility systems were expanded and roadways extended. Keller, with the guidance of the staff and technical review committee, selected the EcoNorthwest population projections for utilization in this report. EcoNorthwest projected an annual population growth of 1.6% for Ontario. The base year was 2005. Members of the PWC challenged this growth rate as being unrealistic. During the development of the addendums, the United States went into a deep recession and growth essentially stopped. Ontario was no exception. In order to secure loans and grants for construction however, master plans needed to be developed and or updated periodically and growth was normally the driving factor for expansion. Ontario was also in the position of having demands on the water system that were unique. Heinz and SRCI used well over 50% of the water that the city produced. A change in demand by either the prison or Heinz would have a far greater impact on the system than modest residential growth. Residential use was about 35% so a population increase had limited impact on the system demands.

A master plan was a guide or roadmap for future construction projects. The biennial budget and capital improvement planning efforts determined when capital projects would be built. Rather than going back and changing the population projections in the water and sewer addendums due to the recession, the Public Works Committee met on May 20, 2010 and agreed that a preamble to the reports was acceptable since the 2010 census was underway. When the 2010 census results were available, staff would review the tables and make modifications as appropriate.

The Public Works Committee approved the following Master Plans to be recommended to the City Council for adoption: Water Distribution Master Plan Update Addendum No. 1; Sanitary Sewer Master Plan Update Addendum No. 1; and Ontario 2008 Urban Reserve Area Traffic Circulation System Expansion Study dated February 2009 (to also include the Safe Routes to School) – This plan must be incorporated into the City's comprehensive plan and must be approved by DLCD.

In June 2007, the Council adopted the 2007-2009 Biennial Budget, including Projects 0809-2, Master Plan Updates, and 0809-16, Upgrade Aerial Photo of City's UGB, for a combined total of \$110,000. In March, 2008, the Council approved Resolution 2008-107 authorizing the City's contracting officer to enter into an agreement with Keller and Associates to update the City's mapping, water distribution, wastewater collection and transportation master plans. The Council approved Resolution 2008-108 authorizing a supplemental budget in the amount of \$30,000 for the update to the City's mapping, water distribution, wastewater collection and transportation master plans. There were no financial implications to adopting the master plans. Any capital improvements that were required would go through the budgeting process. Adoption of the master plans provided guidance for future expansion of the City's water and sewer utilities.

John Gaskill moved, seconded by Charlotte Fugate, to adopt Resolution #2010-140, A RESOLUTION APPROVING THE WATER DISTRIBUTION MASTER PLAN UPDATE ADDENDUM #1 DATED APRIL 2010 AND THE SANITARY SEWER MASTER PLAN UPDATE ADDENDUM #1 DATED APRIL 2010. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**Ordinance #2649-2010: Amend OMC 7-4-8 re: Graffiti Issues (1<sup>st</sup> Reading)**

Mark Alexander, Interim Police Chief, stated the Police Department wanted to amend Ontario Municipal Code Section 8, Chapter 4, Title 7, by making the crime of unlawfully applying graffiti a Class A civil violation rather than a Class B misdemeanor. The active ordinance had remained unchanged since its creation in 1996.

Many times, police officers were able to gather enough information through informants, intelligence, or evidence to strongly believe that a suspect has committed an act. The information could fall short of a standard that would enable the officer to file a criminal complaint; however, the standard might be at a level that would enable the officer to file a violation.

In Oregon, the standard of proof was less for a violation because a person convicted of a violation could not be sentenced to jail; however, a person convicted of a crime could be sentenced to jail. Therefore, the state would provide an attorney to someone charged with a crime if that person could not afford one.

In order for the government to convict someone of a violation, it must be proven by a "preponderance of the evidence" that the defendant committed the act, which meant an officer would have to convince the Municipal Judge that it was more likely than not the defendant committed the act. In order to be convicted of a misdemeanor, the government had to prove "beyond a reasonable doubt", which was a much higher standard of proof and meant that the Jury or Judge had to be convinced beyond a moral certainty.

Some years ago the majority of penalties associated with city ordinance violations were changed from crimes to violations. The city did this mainly to save costs by not having to provide indigent attorneys. Some sections of the code were not changed during the transition and continued to be listed as a misdemeanor crime. Ontario Municipal Code 7-4-8, which provided the penalty for unlawfully applying graffiti, was one of those. Presently the penalties for violations within the city were a Class A violation- fine not to exceed \$720; Class B violation-fine not to exceed \$360; Class C violation-fine not to exceed \$180; and a Class D violation-fine not to exceed \$90. By reducing the unlawful application of graffiti to a violation, the department believed that it could successfully resolve additional graffiti cases. The court would continue to have the authority to order restitution for the victim.

Ron Verini moved, seconded by Charlotte Fugate, to adopt Ordinance #2649-2010, AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 8, TO CHANGE THE ACT OF UNLAWFULLY APPLYING GRAFFITI FROM A CRIME TO A VIOLATION, on First Reading by Title Only. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

**PUBLIC HEARING**

**Resolution #2010-142: Golf Course Supplemental Budget**

It being the date advertised for public hearing on the matter of Resolution #2010-142, the Mayor declared the hearing 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.

Rachel Hopper, Finance Director, stated in June, 2009, the City Council adopted the 2009-11 Biennial Budget which included a Golf Fund Budget with a single-year operating budget and a large golf fund contingency set aside to revisit the golf fund needs following one year of city staff operations. The City has completed one year of City-run operations at the golf course and the Golf Fund budget was compared to first year actual revenues and expenses by Staff, resulting in the drafting of a supplemental budget. The City's Budget Committee reviewed by the proposed budget and passed a motion to recommend the Council adopt the Golf Fund Supplemental Budget. Due to the amount of change in the Golf Fund exceeding 20% of the original Golf Fund Budget, a formal Supplemental Budget was now before the Council to review and act upon following a public hearing.

The proposed resolution would reduce the General Fund Administrative Overhead Department Contingency by \$142,291 and increase transfers to the Golf Fund by the same amount, leaving a General Fund contingency balance of \$1,947,103. The resolution further approved a modified Golf Fund Budget in both revenues and expenses summarized as follows:

Account Number	Account Name	Adopted FY 09-11 Budget	Proposed Change	Revised FY 09-11 Budget
<b>GENERAL FUND</b>				
ADMINISTRATIVE OVERHEAD EXPENSE				
	TRANSFERS	290,508	142,291	432,799
	CONTINGENCY	2,089,394	(142,291)	1,947,103
<b>GOLF FUND</b>				
REVENUE				
	TOTAL REVENUE	617,401	133,188	750,589
EXPENSE				
	PAYROLL RELATED EXPENSES	137,150	143,425	280,575
	MATERIALS & SUPPLIES	202,514	157,500	360,014
	CAPITAL	125,000	(25,000)	100,000
	CONTINGENCY	152,737	(142,737)	10,000
	TOTAL EXPENSE	617,401	133,188	750,589

The proposed supplemental budget took into consideration estimated ending revenues and expenses from 2009-10, and projected revenue and expenses for 2010-11, assuming a similar level of service at the course. The City's Budget Committee met on August 24, 2010 and reviewed the proposed budget and passed a motion recommending the Council adopt the supplemental budget and to increase the transfer from the General Fund to the Golf Fund.

The Mayor opened the hearing for public testimony.

Opponents: None.  
Proponents: None.

There being no Proponent and no Opponent testimony, the Mayor declared the hearing closed.

Susann Mills moved, seconded by John Gaskill, to adopt Resolution #2010-142, A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE GOLF FUND AND AUTHORIZING A REALLOCATION OF EXPENDITURES WITHIN THE GENERAL FUND ADMINISTRATIVE OVERHEAD DEPARTMENT TO REDUCE CONTINGENCY AND INCREASE GENERAL FUND TRANSFERS TO THE GOLF FUND. Roll call vote: Crume-yes; Fugate-yes; Gaskill-yes; Mills-yes; Sullivan-out; Verini-yes; Dominick-yes. Motion carried 6/0/1.

#### **EXECUTIVE SESSION**

An executive session was called at 8:04 p.m. under provisions of ORS 192.660(1)(e). The Council reconvened into regular session at 8:56 p.m.

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

- Neighborhood Watch Program meeting scheduled for Thursday, September 16, 2010, beginning at 6:30 p.m. at the Nazarene Church in Ontario.
- Neighborhood public meeting at the Calvary Church on Thursday, September 9, 2010, beginning at 7:00 p.m. to discuss a proposed LID for the extension of services on Nadine Drive and/or Alameda Drive.
- Keeping Our Kids Safe workshop being held at Nyssa High School on Friday, September 17, 2010, beginning at 6:00 p.m.
- Annual Ontario Air Fare on September 11, 2010. Breakfast would be served for \$6 per person; \$1 to get into the Air Fare. Breakfast starts at 8:00 a.m.
- September 17, 2010, Ontario High School's first home football game, 7:30 p.m. kick-off!

#### **ADJOURN**

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

ATTEST:

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Joe Dominick, Mayor

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Tori Barnett, MMC, City Recorder

**CONSENT AGENDA**  
SEPTEMBER 20, 2010

TO: Mayor and City Council

FROM: Mark Alexander, Intrim Police Chief

THROUGH: Henry Lawrence, City Manager

**SUBJECT: LIQUOR LICENSE APPLICATION – GREATER PRIVILEGE (Full-On-Premises Sales)**

DATE: September 10, 2010

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**SUMMARY:**

Peggy J. Stout, owner/manager of Spuds N Suds, has completed the “Greater Privilege” application process for “Full On-Premises Sales, Commercial Establishment” liquor license through the Oregon Liquor Control Commission. Spuds N Suds is located at 227 South Oregon Street, Ontario, Oregon.

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

**BACKGROUND:**

Criminal Record process was completed on owner/manager of Spuds N Suds, Peggy J. Stout, which returned clear. The application forms have been filled out appropriately and required fees have been paid. All Permit requirements have been met.

Ms. Stout currently holds a Limited On-Premises Sales / Off-Premises Sales license for Spuds N Suds, which only permits the sell of beer and wine. The greater privilege will allow for on-premises hard liquor sales.

**RECOMMENDATION:**

I have completed a review of this application information in accordance with the City of Ontario’s ordinance regulating this license. I recommend that we approve the application for Greater Privilege – Full On-Premises Sales for Commercial Establishment.

**AGENDA REPORT**  
September 20, 2010

TO: Mayor and City Council

FROM: Mark Alexander, Police Captain

Through: Henry Lawrence, City Manager

**SUBJECT: ORDINANCE #2648-2010: AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, OF THE NUISANCE PROVISIONS, ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS, on First Reading by Title Only**

DATE: September 13, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance #2648-2010

The Police Department would like to amend Municipal Code Chapter 1, Title 7, by adding three weeds to the list of noxious weeds and changing all reference to a 14-day abatement period to a 10-day abatement period.

**PREVIOUS COUNCIL ACTION:**

In December of 2009, the Council amended the Nuisance Ordinance to include a list of noxious weeds and to shorten the period for a nuisance abatement from 14 to 10 days.

During a Council Worksession on September 2, 2010, staff tabled this proposed ordinance change in order to gain further information before proceeding.

**BACKGROUND:**

The 2009 changes to the Municipal Code came about as a result of recommendations of a staff committee looking at all city nuisances. The committee recognized that by only allowing the city to abate weeds that exceeded ten inches in height we would be unable to abate some very noxious low growing weeds.

The police department consulted with the County Weed Department and developed a list of eight noxious weeds, which at that time were growing within the city. The City Ordinance Officer has identified three additional noxious weeds within the city, which we believe should be specifically mentioned on the list.

The three noxious weeds are:

Purple Loosestrife, scientific name of *Lythrum salicaria*

Yellow Starthistle, scientific name of Centaurea Solstitialis L  
Rush Skeleton weed, scientific name of Chondrilla juncea

The ordinance allows the Council to change the noxious weed list by resolution, however because other changes to the ordinance were proposed the changes to the noxious weed list have been included by ordinance.

In December 2009, staff recommended to the Council that the time given a property owner to abate a nuisance be extended from 10 to 14 days, to allow the Ordinance Department the opportunity to notice a property owner by posting the property and not mailing a certified letter. In practice we have not done this and do not plan to. The interest in not mailing a certified letter was only financial and upon reflection may cause the City problems when trying to prove that notice was served.

In truth the period to abate usually extends days as the Ordinance Officer attempts to contract with someone to abate the nuisance. Ten days has historically given the property owner enough time to receive the notice and take action.

The police department recommends that any reference to a 14-day period to abate a nuisance under Title 7, Chapter 1, be changed back to a ten-day period. The police department also recommends that Sub 2 of the abatement procedure be removed and all notices either be personally served or served by certified mail.

**FINANCIAL IMPLICATIONS:**

There will be no financial impact as a result of this ordinance.

**RECOMMENDATION:**

Staff recommends the Mayor and Council adopt Ordinance #2648-2010.

**PROPOSED MOTION:**

I move the Council adopt Ordinance #2648-2010, **AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 1, ADDING NEW PROVISIONS AND REPEALING OTHER PROVISIONS**, on first reading by title only.

ORDINANCE NO. 2648-2010

**ORDINANCE #2648-2010, AN ORDINANCE AMENDING THE NUISANCE PROVISIONS OF CHAPTER 1 OF TITLE 7 OF THE ONTARIO MUNICIPAL CODE, ADDING NEW PROVISIONS, AND REPEALING OTHER PROVISIONS**

**WHEREAS,** the City Council of Ontario is authorized through its legislative authority to define nuisances within the City of Ontario; and,

**WHEREAS,** the City Council of Ontario has an interest in providing a clean, safe, and healthy City for its residents; and,

**WHEREAS,** in order to accomplish this mission, there must be a procedure to abate nuisances of those properties by owners who will not or cannot abate the nuisance themselves.

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

**Section 1.** Section 7-1-2 of the Ontario City Code is hereby amended by adding those portions, which are underlined, and by deleting those portions, which are stricken:

(M) Noxious Weeds. Any of the following noxious weeds:

- a) Puncturevine (Tribulus terrestris);
- b) Kochia (Kochia scoparia);
- c) Russian thistle (Salsola kalil aka tumbleweed);
- d) Prickly lettuce (Lactuca serriola) aka Chinese lettuce;
- e) Field bindweed (Convolvulus arvensis) aka morning glory;
- f) Hoary cress (Lepidium draba) aka white top;
- g) Scotch thistle (Onopordum acanthium);
- h) Canada thistle (Cirsium arvense)
- i) Rush Skeleton weed, (Chondrilla juncea);
- j) Purple Loosestrife, (Lythrum Salicaria); and
- k) Yellow Starthistle, (Centaurea Solstitialis L)

**Section 2.** Section 7-1-4 of the Ontario City Code is hereby amended by adding those portions, which are underlined, and by deleting those portions, which are stricken:

7-1-4 Abatement procedure.

(A) Notice to Abate.

1. For an initial violation of the nuisance provisions of the City Code, the City Manager or the City Manager's designee shall cause a written notice to be served either personally on the property owner or the person responsible, or by registered or certified mail to the address of the

property owner noted in the Malheur County Tax Assessor's office for tax notices to be sent. If the property has a structure on it, notice may also be posted on the property. For service by mail, service shall be complete upon deposit in the mail. Notice shall be deemed sufficient if it complies with the procedure set forth herein, whether or not the property owner or person responsible receives actual notice.

2. ~~For any additional violations of the same nuisance prohibition on the same property caused by the same person responsible within twelve (12) months of the date of the initial notice, the City shall not be required to personally serve or mail a written notice against the person responsible. Service of a notice of a second or subsequent violation may be done by posting notice on the property.~~

3. The initial notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists.

(b) A direction to abate the nuisance within ten (10) ~~fourteen (14)~~ days from the date of the notice.

(c) A description of the nuisance, a citation to the section(s) of the City Code which are violated, and a description of the corrective action required.

(d) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible and assessed as a lien on the property.

(e) A statement that failure to abate a nuisance may result in a fine.

(f) A statement that the person responsible may appeal from the notice to abate by giving notice to the City Manager or his designee within ten (10) ~~fourteen (14)~~ days from the date of the notice.

~~(g) A statement that the City is not required to provide a written notice of a second or subsequent nuisance violation within a twelve (12) month period, and that notice of a second or subsequent violation may be done by posting notice on the property.~~

4. Upon completion of service of an abatement notice as provided herein, the persons serving the notice shall execute and file certificates stating the date and place of service.

(B) Abatement by Person Responsible.

1. Within ten (10) ~~fourteen (14)~~ days of the date of the notice, the person responsible shall remove the nuisance or show that no nuisance exists, or deliver a written notice of appeal to the City Manager. A written notice of appeal shall specify the basis for the appeal.

2. The Ontario Municipal Court shall conduct a hearing on the appeal of the abatement notice at which the City's designee and the appellant may call witnesses and present evidence. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The Ontario Municipal Court shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

(C) Abatement by City.

1. If within the time allowed, the nuisance has not been abated by the person responsible, the City may cause the nuisance to be abated.

2. The officer charged with abatement of the nuisance shall have the right, at reasonable times, to enter into or upon property, in accordance with law, to investigate or cause the removal of a nuisance.

3. The City Manager or his designee shall keep an accurate record of the expense incurred by the City in physically abating the nuisance, including incidental expenses set forth in Subsection (E) below.

(D) Joint Responsibility. If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

(E) Assessment of Costs.

1. The cost, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupancy of the property and shall become due and payable to the City of Ontario within ten (10) calendar days of the bill being issued. A minimum administrative fee of not less than one hundred dollars (\$100.00) shall be imposed for each abatement notice issued. The City Council may by resolution change the minimum fee from time to time. The term "incidental expense" shall include, but not be limited to personnel costs, both direct and indirect; attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work, and the costs of any required printing and mailing. The City Manager or his designee, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

(a) The total cost of abatement, including incidental expenses.

(b) That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice.

(c) That if the person, responsible objects to the cost of the abatement as indicated, he may file a notice of objection with the City Manager or his designee not more than ten (10) fourteen (14) days from the date of the notice. Objections shall be heard by the Ontario Municipal Court and shall be limited to the question of whether the amount of the abatement assessment is reasonable.

2. If the costs of the abatement are not paid within thirty (30) days from the date of the notice or thirty (30) days from the date of the Ontario Municipal Court's decision on objections, the City may cause the assessment to be filed as a lien in the Malheur County Deed records against the property of any property owner who was served with the initial notice of abatement pursuant to Section 7-1-4(A)1 set forth above.

3. The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate of six percent (6%) per annum, or at such other rate as may be fixed by resolution of the City Council. The interest shall commence thirty (30) days from the date of the notice.

4. An error in the name of the person responsible or property owner shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

(F) Separate Violations. The requirements to abate a nuisance are not a penalty for violating the Code but are an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement by the person responsible of a nuisance within ten (10) fourteen (14) days of the date of notice to abate, or within ten (10) days of the determination by the Ontario Municipal Court upon an appeal therefrom, will excuse the person responsible from the imposition of any fine.

(G) Summary Abatement. The procedure provided by subsections (A) through (F) is not exclusive but is in addition to procedure provided by other law and the City Manager or other officer delegated responsibilities therefore, may proceed summarily to abate a health or other

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

AYES:

NAYS:

ABSENT:

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

ATTEST:

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

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

**AGENDA REPORT**  
September 20, 2010

To: Mayor and City Council

FROM: Mark Alexander, Police Captain

Through: Henry Lawrence, City Manager

Subject: **ORDINANCE #2649-2010: AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 8, TO CHANGE THE ACT OF UNLAWFULLY APPLYING GRAFFITI FROM A CRIME TO A VIOLATION (Final Reading)**

DATE: September 13, 2010

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**SUMMARY:**

Attached is the following document:

- Ordinance #2649-2010

The Police Department would like to amend Ontario Municipal Code Section 8, Chapter 4, Title 7, by making the crime of unlawfully applying graffiti a Class A civil violation rather than a Class B misdemeanor.

**PREVIOUS COUNCIL ACTION:**

September 7, 2010 Council passed Ordinance #2649-2010 on first reading.

**BACKGROUND:**

There are times police officers are able to gather enough information through informants, intelligence, or evidence to strongly believe that a suspect has committed an act. The information may fall short of a standard that will enable the officer to file a criminal complaint; however, the standard may be at a level that would enable the officer to file a violation.

In Oregon, the standard of proof is less for a violation because a person convicted of a violation cannot be sentenced to jail, however, a person convicted of a crime can be sentenced to jail. Therefore, the state will provide an attorney to someone charged with a crime if that person cannot afford one.

In order for the government to convict someone of a violation, it must be proven by a “preponderance of the evidence” that the defendant committed the act. This means that an officer would have to convince the trier of fact (Municipal Judge) that more likely than not the defendant committed the act.

By reducing the unlawful application of graffiti to a violation, the department believes that we can successfully resolve additional graffiti cases. The court will continue to have the authority to order restitution for the victim.

**FINANCIAL IMPLICATIONS:**

There will be no financial impact as a result of this ordinance.

**RECOMMENDATION:**

Staff recommends the Mayor and Council adopt Ordinance #2649-2010.

**PROPOSED MOTION:**

I move the Council adopt Ordinance #2649-2010, **AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4, SECTION 8, TO CHANGE THE ACT OF UNLAWFULLY APPLYING GRAFFITI FROM A CRIME TO A VIOLATION**, on second and final reading by title only.

**ORDINANCE NO. 2649-2010**

**AN ORDINANCE AMENDING ONTARIO MUNICIPAL CODE TITLE 7, CHAPTER 4,  
SECTION 8, CHANGING THE ACT OF UNLAWFULLY APPLYING GRAFFITI  
FROM A CRIME TO A VIOLATION**

**WHEREAS,** the City Council of Ontario through its legislative authority regulates conduct and by way of municipal ordinances; and

**WHEREAS,** the City Council of Ontario strives to provide law enforcement services as economically and efficiently as possible; and

**WHEREAS,** the City Council of Ontario believes that the public's safety will be better served if the act of unlawfully applying graffiti were a Class A violation rather than a Class B Misdemeanor.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Ontario, Oregon, that Ontario City Code Section 7-4-8 be amended by adding the underlined and eliminating the strikethrough language:

7-4-8 Penalty.

A violation of Section 7-4-2 of this chapter shall be a Class ~~B~~ misdemeanor **A Violation** as prescribed in the Ontario Municipal Code, Section 1-4-1 ~~(B)~~ **(A)** ~~Upon conviction for unlawfully possessing a graffiti implement the Court shall impose a mandatory minimum fine of two hundred dollars (\$200.00).~~

**APPROVED AND ADOPTED** by the Common Council of the City of Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote.

AYES:

NAYS:

ABSENT:

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

ATTEST:

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

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