

**PLANNING COMMISSION MEETING MINUTES**

**Monday  
February 11, 2019**

The Ontario Planning Commission was called to order at 7:00 pm in the Council Chambers of City Hall. Commission members present were Craig Smith, Cindy McLeran, Max Twombly, John Hall, John Briedenbach, and Richard Newman. Chairman Ralph Poole was excused.

City Staff present were Ex-Officio Adam Brown, City Manager; Dan Cummings, Community Development Director; and Marcy Siriwardene, Planning and Zoning Technician. Ramone Palomo, City Council Ex-Officio, was absent.

The meeting was recorded on tape and the tape is on file at the City Community Development Center. The Agenda for this meeting was emailed on or before February 4, 2019. Copies of the Agenda were available at the City Community Development Center.

Commissioner Twombly led everyone in the Pledge of Allegiance.

**ADOPTION OF AGENDA**

John Hall moved, seconded by Craig Smith, to adopt the agenda as presented. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

**ADOPTION OF MINUTES**

John Briedenbach moved, seconded by John Hall, to adopt the minutes of October 8, 2018. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

There were no unscheduled public appearances.

There were no objections to Planning Commission jurisdiction and no abstentions or ex-parte contact.

There were no Old Business Discussion Items.

**PUBLIC HEARING 2018-10-17AZ**

**ACTION 2018-10-17AZ: A request for Annexation and Rezone of a parcel of land being located at 2819 SW 4th Avenue. If approved, this action will result in the Annexation of 0.46 acres of land into the City of Ontario; and, the rezoning of the subject property from Urban Growth Area Commercial (UGA-C2) to the City General Commercial (C-2) Zone. The property will be removed from the Rural Road Assessment District No. 3 and Ontario Rural Fire District No 7-302. The applicant is H BAR H Properties LLC.**

**II. SUMMARY & BACKGROUND:**

The applicant owns a parcel of land, known as 18S4705C, tax lot 3800. The applicants wish to annex and rezone the property into the City to connect to City Sanitary Sewer and water to further develop the property to its fullest potential. This application, if approved, will result in the annexation of 0.46 acres, plus the right of way for SW 4<sup>th</sup> Avenue, adjacent to the lands, into the City and a rezone of the property from Urban Growth Area Commercial (UGA-C2) to City General Commercial (C-2).

This request for annexation and rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council. The Ontario Municipal Code (OMC) designates the Planning Commission as the decision making body for a request for rezone, without City Council participation. The OMC designates the City Council as the decision making body for a request for annexation, without Planning Commission participation. State Law requires an Ordinance be adopted by the local governing body to accomplish a rezone. The City's governing body is the City Council, and they are the only body that may adopt an Ordinance; therefore, a request for rezone should go before the Council for a final decision. Staff feels that the best procedure is consistency with State law; therefore, this matter needs a recommendation from the Planning Commission, and then will be forwarded to the City Council for their decision.

**III. PREVIOUS PLANNING COMMISSION ACTION:**

Nothing on this request.

**IV. Applicable Ordinance & Comprehensive Plan Criteria and Standards:**

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

**A. Rezone**

1. *Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action:*
  - a. *The zoning map amendment is in conformance with statewide planning goals and guidelines.*
  - b. *The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
  - c. *The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.*
  - d. *A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*
  - e. *The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*
  - f. *The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
  - g. *The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

**Findings of fact based on the answers and information given in the application made a part hereof:**

- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals. The existing property is zoned UGA Commercial and is proposed to be rezoned to City C-2 General Commercial.
- b. The subject properties are currently zoned UGA Commercial and the request is to rezone to the companion City C-2(General Commercial) Zone that is the same zone as adjacent and nearby properties. The requested zone allows basically the same use as the UGA zone, and is reflected in the Comprehensive Plan. No Comprehensive Plan amendment is necessary for this rezone; therefore, the proposal is consistent with, and conforms to, the Comprehensive Plan.
- c. The applicants have requested annexation into the City of Ontario concurrent with the request for rezone; a City Zone must be applied to the property once within City Limits. The existing zone is not a mistake, and there is no need to demonstrate a change in conditions in the surrounding area; the change in zone is necessary and appropriate.
- d. This request is legally necessary due to the annexation of the property; granting of this request is not a special privilege and no public need has to be demonstrated. The property is commercially designated under the Comprehensive Plan so a commercial zone is the most appropriate for the property.
- e. The property exceeds the size requirements for commercial property, and is rectangular in shape. The property is a residentially developed and meets setback and other size requirements and the proposed future use of Multifamily development meets the zoning use.
- f. The property owner is requesting annexation and rezoning to connect to City Sanitary Sewer and water, which said city systems are available in SW 4<sup>th</sup> Avenue. All City main line exists in SW 4<sup>th</sup> Avenue. City fire and police services will be available upon annexation for the property.

City streets, including curb, gutter, sidewalks are already developed and no addition right of way is required at this time.

- g. Uses allowed by the current zone are basically identical to the proposed zone. No significant difference in allowed uses will occur as a result of the rezone. Allowed uses under city commercial zone designations are no more likely to produce dust, noise, ect. than those under the UGA commercial zone.

**Conclusion:** The proposed rezone is consistent with all applicable criteria and standards.

**B. Annexation:**

1. *10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi- judicial action as set forth*

*in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.*

2. *Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.*

**Findings based on the answers and information given in the application made a part hereof:**

1. The applicants have paid the fees and provided the proper application with signatures.
2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits.
3. The property is currently zoned for Commercial use in the Urban Growth Area; the requested zone, City General Commercial (C-2), is consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and, by providing more Multi- Family residential lands in a highly developable area.

**Conclusion:** All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

**V. SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION**

A request for annexation and rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "**Findings:**" and "**Conclusion:**" for each criterion. **All** of the criteria and standards must be met in order for the request to be recommended for approval.

**VI. SUGGESTED MOTIONS FOR APPROVAL/DENIAL**

A. Approval:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Commercial to City C-2 General Commercial, as set forth in **ACTION 2018-10-17AZ** be

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recommended for **APPROVAL** to the City Council, based on the information, findings and conclusions set forth in Sections I through IV above, subject to the conditions of approval as set forth in Section VII of this report.

### B. Denial:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Commercial to City C-2 General Commercial, as set forth in **ACTION 2018-10-17AZ** be recommended for **DENIAL** to the City Council, based on the information, findings and conclusions stated below:  
State Reasons:

### **VII. CONDITIONS OF APPROVAL:**

1. The approval of the annexation and rezone granted herein is valid for a period of one year from the date the decision of the Council is final; that final decision date shall be the date of expiration of the 21-day period for appeal to LUBA as required by Oregon Revised Statute and as noted in the Notice of Decision for this request.
2. The existing home will be connected to City Sewer and water.
3. The owner will sign a lien causing any unpaid Utility bill to be a lien against the property.

### **DISCUSSION OF 2018-10-17AZ**

Commissioner Smith asked if duplexes were allowed in the C-2 zone.

Dan Cummings, Community Development Director, answered that duplexes were allowed through a Master Plan but by themselves would not be allowed.

Commissioner Briedenbach commented that when driving by, he noticed that they were being demolished.

Mr. Cummings answered that they were being demolished and would pull permits in the city instead of the county.

Commissioner Briedenbach asked if the access would be off of SW 4<sup>th</sup> Avenue or Hwy 201.

Mr. Cummings said that there was only one access and that they were considering purchasing adjoining property and would not access off Hwy 201.

### **APPROVAL OF PLANNING ACTION 2018-10-17AZ**

John Hall moved, seconded by John Briedenbach, to approve Planning Action 2018-10-17AZ and approve Findings of Fact. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

**ACTION 2018-10-19AZ: A request for Annexation and Rezone of a parcel of land being located at 716 SE 13<sup>th</sup> Street. If approved, this action will result in the Annexation of 0.54 acres of land into the City of Ontario; and, the rezoning of the subject property from Urban**

**Growth Area Industrial (UGA I-2) to the City Heavy Industrial (I-2) Zone. The applicant is Charles Oakes, Organizer and property owner is Snake River Ventures LLC.**

**II. SUMMARY & BACKGROUND:**

The applicant owns a parcel of land, known as 18S4711BC, tax lot 1101. The applicants wish to annex and rezone the property into the City for further development of the property and connect to city services. This application, if approved, will result in the annexation of 0.54 plus the right of way for SE 13<sup>th</sup> Street of land into the City and a rezone of the property from Urban Growth Area Industrial (UGA I-2) to City Heavy Industrial (I-2).

This request for annexation and rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council. The Ontario Municipal Code (OMC) designates the Planning Commission as the decision making body for a request for rezone, without City Council participation. The OMC designates the City Council as the decision making body for a request for annexation, without Planning Commission participation. State Law requires an Ordinance be adopted by the local governing body to accomplish a rezone. The City's governing body is the City Council, and they are the only body that may adopt an Ordinance; therefore, a request for rezone should go before the Council for a final decision. Staff feels that the best procedure is consistency with State law; therefore, this matter needs a recommendation from the Planning Commission, and then will be forwarded to the City Council for their decision.

**III. PREVIOUS PLANNING COMMISSION ACTION:**

Nothing on this request.

**IV. Applicable Ordinance & Comprehensive Plan Criteria and Standards:**

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

**A. *Rezone***

- 1. Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi- judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action:**
  - a. The zoning map amendment is in conformance with statewide planning goals and guidelines.*
  - b. The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
  - c. The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.*
  - d. A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*

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- e. *The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*
- f. *The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
- g. *The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

**Findings of fact based on the answers and information given in the application (see applicant's narrative) made a part hereof:**

- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals.
- b. The subject properties are currently zoned UGA Industrial (I-2) and the request is to rezone to the companion City I-2 (Heavy Industrial) Zone that is the same zone as adjacent and nearby properties. The requested zone allows basically the same use as the UGA zone, and is reflected in the Comprehensive Plan. No Comprehensive Plan amendment is necessary for this rezone; therefore, the proposal is consistent with, and conforms to, the Comprehensive Plan.
- c. The applicants have requested annexation into the City of Ontario concurrent with the request for rezone; a City Zone must be applied to the property once within City Limits. The existing zone is not a mistake, and there is no need to demonstrate a change in conditions in the surrounding area; the change in zone is necessary and appropriate.
- d. This request is legally necessary due to the annexation of the property; granting of this request is not a special privilege and no public need has to be demonstrated. That being said, the applicant is wanting to improve the property and there is a need for improving and redeveloping this area as the applicant wishes to do.
- e. The subject property is adequate in size and shape for the proposed use to be rezoned from UGA Industrial to City I-2 Heavy Industrial.
- f. The property owner of tax lot 1101 proposes future development and is requesting annexation and rezoning for timely redevelopment of the property in the near future. City Water and Sewer is available adjacent to the property on the west in SE 13<sup>th</sup> Street and sewer and water services are extended to this property. Applicant will connect existing building to these services. City fire and police services will be available upon annexation for the property. Additional right of way for SE 13<sup>th</sup> Street will be a requirement of this annexation process and will be granted to the City prior to final approval of the Annexation order. City streets, including curb, gutter, sidewalks and public utilities will be deferred under a Deferred Improvement Agreement (DIA) being recorded prior to or concurrent with final approval of this action **for a term not to exceed 4 years**. This will give the applicant time to work with other property owners north of these lands to get a street design done that will work with all the properties.

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- g. Uses allowed by the current zone are basically identical to the proposed zone. No significant difference in allowed uses will occur as a result of the rezone. Requirements in the OMC applicable to uses in the commercial zone will ensure that impacts from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land are minimized.

**Conclusion:** The proposed rezone is consistent with all applicable criteria and standards.

### **B. Annexation:**

1. *10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.*
2. *Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.*

### **Findings based on the answers and information given in the application made a part hereof:**

1. The applicants have paid the fees and provided the proper application with signatures.
2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits by annexing the right of way of SE 13<sup>th</sup> Street along the Industrial lands to City Industrial lands.
3. The property is currently zoned for Industrial use in the Urban Growth Area; the requested zone, City Heavy Industrial (I-2), is consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and, by providing more potentially developable industrial lands in a highly developable area.

**Conclusion:** All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

### **V. SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION**

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A request for annexation and rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "**Findings:**" and "**Conclusion:**" for each criterion. **All** of the criteria and standards must be met in order for the request to be recommended for approval.

### **VI. SUGGESTED MOTIONS FOR APPROVAL/DENIAL**

#### A. Approval:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Industrial (I-2) to City I-2 Heavy Industrial, as set forth in **ACTION 2018-10-19AZ** be recommended for **APPROVAL** to the City Council, based on the information, findings and conclusions set forth in Sections I through IV above, subject to the conditions of approval as set forth in Section VII of this report.

#### B. Denial:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Industrial to City I-2 Heavy Industrial, as set forth in **ACTION 2018-10-19AZ** be recommended for **DENIAL** to the City Council, based on the information, findings and conclusions stated below:

### **VII. CONDITIONS OF APPROVAL:**

1. The approval of the annexation and rezone granted herein is valid for a period of one year from the date the decision of the Council is final; that final decision date shall be the date of expiration of the 21-day period for appeal to LUBA as required by Oregon Revised Statute and as noted in the Notice of Decision for this request.
2. The owner of the property dedicated to the City of Ontario the required additional 10 feet of right of way along SE 13<sup>th</sup> Street for 30 feet of right of way adjacent to the west of this property as measured from the sectional line/centerline of the street.
3. The owner shall sign a Deferred Improvement Agreement (DIA) to defer street improvements to **not exceed 4 years** and cause it to be recorded prior to the final recording of the Ordinance authorizing the Annexation and rezoning.
4. The existing buildings shall be connected to City sewer and water service.
5. The owner will sign a lien causing any unpaid Utility bill to be a lien against the property

### **DISCUSSION OF 2018-10-19AZ**

Commissioner Briedenbach asked about the I-2 zone and what was planned.

Mr. Cummings said that it would mainly be manufacturing. More heavy industrial was needed and they were putting in a small manufacturing company which was not marijuana related.

Commissioner Hall asked about street improvements.

Mr. Cummings answered that all the city could make them do is a half street improvement (a heavy half street would be required).

Commissioner McLeran asked about scheduled improvements on 5<sup>th</sup> Avenue.

Mr. Cummings commented that it would only be for sidewalks through a grant for 2020 or 2021 and that it would start at the water tank and curve to 13<sup>th</sup>. It would be designed in 2019.

**APPROVAL OF PLANNING ACTION 2018-10-19AZ**

Cindy McLeran moved, seconded by John Hall, to approve Planning Action 2018-10-19AZ and approve Findings of Fact. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

**ACTION 2018-11-20AZ: A request for Annexation and Rezone of a parcel of land being located at 1987 NW 11<sup>th</sup> Street. If approved, this action will result in the Annexation of 1.01 acres of land into the City of Ontario; and, the rezoning of the subject property from Urban Growth Area Industrial (UGA I-1) to the City Light Industrial (I-1) Zone. The applicant is Charles Oakes, Organizer and property owner is HEVN LLC.**

**II. SUMMARY & BACKGROUND:**

The applicant owns a parcel of land, known as 17S4733C, tax lot 3001. The applicants wish to annex and rezone the property into the City for further development of the property and to connect to City Sanitary Sewer and Water as they further develop the property to its fullest potential. This application, if approved, will result in the annexation of 1.01 Acres plus the right of way for NW 20<sup>th</sup> Avenue, into the City and a rezone of the property from Urban Growth Area Industrial (UGA I-1) to City Light Industrial (I-1).

This request for annexation and rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council. The Ontario Municipal Code (OMC) designates the Planning Commission as the decision making body for a request for rezone, without City Council participation. The OMC designates the City Council as the decision making body for a request for annexation, without Planning Commission participation. State Law requires an Ordinance be adopted by the local governing body to accomplish a rezone. The City's governing body is the City Council, and they are the only body that may adopt an Ordinance; therefore, a request for rezone should go before the Council for a final decision. Staff feels that the best procedure is consistency with State law; therefore, this matter needs a recommendation from the Planning Commission, and then will be forwarded to the City Council for their decision.

**III. PREVIOUS PLANNING COMMISSION ACTION:**

Nothing on this request.

**IV. Applicable Ordinance & Comprehensive Plan Criteria and Standards:**

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

**A. Rezone**

**1. Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi- judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action:**

- a. *The zoning map amendment is in conformance with statewide planning goals and guidelines.*
- b. *The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
- c. *The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.*
- d. *A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*
- e. *The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*
- f. *The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
- g. *The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

**Findings of fact based on the answers and information given in the application (see applicant's narrative) made a part hereof:**

- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals.
- b. The subject properties are currently zoned UGA Industrial (I-1) and the request is to rezone to the companion City I-1 (Light Industrial) Zone that is the same zone as adjacent and nearby properties. The requested zone allows basically the same use as the UGA zone, and is reflected in the Comprehensive Plan. No Comprehensive Plan amendment is necessary for this rezone; therefore, the proposal is consistent with, and conforms to, the Comprehensive Plan.
- c. The applicants have requested annexation into the City of Ontario concurrent with the request for rezone; a City Zone must be applied to the property once within City Limits. The existing zone is not a mistake, and there is no need to demonstrate a change in conditions in the surrounding area; the change in zone is necessary and appropriate.
- d. This request is legally necessary due to the annexation of the property; granting of this request is not a special privilege and no public need has to be demonstrated. That being said, the applicant wants to improve the property and there is a need for improving and redeveloping this area as the

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applicant wishes to do. Also in this area the majority of the lands within the City limits zoned Light Industrial is already developed therefor creating a need for more Light Industrial lands with the City limits

- e. The subject property is adequate in size and shape for the proposed use to be rezoned from UGA Industrial to City I-2 Heavy Industrial.
- f. The property owner of tax lot 3001 proposes future development and is requesting annexation and rezoning for timely redevelopment of the property in the near future. City Water is within 150 feet of the site and Sewer is available 400 feet from the site and the main lines will be extended at time of building permits and development of the property other than agricultural use with no buildings. Applicant will connect existing building to these services or remove the existing structure if the main lines are not extended. City fire and police services will be available upon annexation for the property.  
Additional right of way for NW 20<sup>th</sup> Avenue will be a requirement of this annexation process and will be granted to the City prior to final approval of the Annexation order.  
City streets, including curb, gutter, sidewalks and public utilities will be constructed at time of building permits being issued. Agricultural use with no buildings will not require the construction of the City services.
- g. Uses allowed by the current zone are basically identical to the proposed zone. No significant difference in allowed uses will occur as a result of the rezone. Requirements in the OMC applicable to uses in the commercial zone will ensure that impacts from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land are minimized.

**Conclusion:** The proposed rezone is consistent with all applicable criteria and standards.

### **B. Annexation:**

1. *10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi-judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.*
2. *Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.*

### **Findings based on the answers and information given in the application made a part hereof:**

1. The applicants have paid the fees and provided the proper application with signatures.

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2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits along its east boundary.
3. The property is currently zoned for Industrial use in the Urban Growth Area; the requested zone, City Light Industrial (I-1), is consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and, by providing more potentially developable industrial lands in a highly developable area.

**Conclusion:** All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

### **V. SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION**

A request for annexation and rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "**Findings:**" and "**Conclusion:**" for each criterion. **All** of the criteria and standards must be met in order for the request to be recommended for approval.

### **VI. SUGGESTED MOTIONS FOR APPROVAL/DENIAL**

#### A. Approval:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Industrial (I-1) to City I-1 Light Industrial, as set forth in **ACTION 2018-11-20AZ** be recommended for **APPROVAL** to the City Council, based on the information, findings and conclusions set forth in Sections I through IV above, subject to the conditions of approval as set forth in Section VII of this report.

#### B. Denial:

2. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Industrial to City I-1 Light Industrial, as set forth in **ACTION 2018-11-20AZ** be recommended for **DENIAL** to the City Council, based on the information, findings and conclusions stated below:

### **VII. CONDITIONS OF APPROVAL:**

6. The approval of the annexation and rezone granted herein is valid for a period of one year from the date the decision of the Council is final; that final decision date shall be the date of expiration of the 21-day period for appeal to LUBA as required by Oregon Revised Statute and as noted in the Notice of Decision for this request.

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7. The owner of the property dedicated to the City of Ontario the required additional 17.50 feet of right of way along NW 20<sup>th</sup> Avenue for 30 feet of right of way (60 feet both sides) adjacent to the north of this property.
8. The owner shall extend all City services and construction NW 20<sup>th</sup> Avenue to city standards upon any building permit requested or continuing use of existing buildings.
9. The existing buildings shall be connected to City sewer and water service or removed from the property prior to recording of the final Ordinance approving annexation.
10. The owner will sign a lien causing any unpaid Utility bill to be a lien against the property

**DISCUSSION OF 2018-11-20AZ**

Commissioner Hall asked Mr. Cummings to show him where the city limits were.

Mr. Cummings showed him the city limits.

Commissioner Hall wanted to know where the water and sewer would come from.

Mr. Cummings showed him on the map where the water and sewer would come from.

Adam Brown, City Manager, asked if there were any legal restraints on the time between readings.

Mr. Cummings answered that once the public hearing process was completed through the first reading, the second reading would not be a public hearing and could be adopted when it was set up the way the city wanted it to be set up and wouldn't be adopted or recorded until it had been resolved.

Commissioner McLeran asked what the intent was to develop.

Mr. Cummings said that it would be either a marijuana grow site or manufacturing but not a dispensary.

**APPROVAL OF PLANNING ACTION 2018-11-20AZ**

Craig Smith moved, seconded by Richard Newman, to approve Planning Action 2018-10-19AZ and approve the Findings of Fact. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

**ACTION 2018-12-21AZ: A request for Annexation and Rezone of a parcel of land being located at corner of SE 10<sup>th</sup> Street and SE 5th Avenue. If approved, this action will result in the Annexation of 16.1 acres of land into the City of Ontario; and, the rezoning of the subject property from Urban Growth Area Commercial (UGA-C2) to the City General Heavy Commercial (C-2H) Zone. The applicant is H2MK LLC.**

**II. SUMMARY & BACKGROUND:**

The applicant owns a parcel of land, known as 18S4710D1, tax lots 1200,1300,1301,1302,1303,1305 and 1310. The applicants wish to annex and rezone the property into the City to have the property ready for further development of the property to its fullest potential. This application, if approved, will result in the annexation of 16.1 acres, with right of way adjacent to the lands, into the City and a rezone of the property from Urban Growth Area Commercial (UGA-C2) to City General Heavy Commercial (C-2H).

This request for annexation and rezone needs a recommendation for approval or rejection from the Planning Commission to the City Council. The Ontario Municipal Code (OMC) designates the Planning Commission as the decision making body for a request for rezone, without City Council participation. The

OMC designates the City Council as the decision making body for a request for annexation, without Planning Commission participation. State Law requires an Ordinance be adopted by the local governing body to accomplish a rezone. The City's governing body is the City Council, and they are the only body that may adopt an Ordinance; therefore, a request for rezone should go before the Council for a final decision. Staff feels that the best procedure is consistency with State law; therefore, this matter needs a recommendation from the Planning Commission, and then will be forwarded to the City Council for their decision.

**III. PREVIOUS PLANNING COMMISSION ACTION:**

Nothing on this request.

**IV. Applicable Ordinance & Comprehensive Plan Criteria and Standards:**

The proposed development must comply with applicable provisions of the OCC (City of Ontario Zoning Ordinance as set forth in the Ontario City Code), and the City of Ontario Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

**A. Rezone**

**1. Section 10B-20-30 REQUIRED FINDINGS, DECISION CRITERIA. In preparing findings to support a quasi-judicial zoning map amendment decision, the following findings shall be addressed except when alternatives are set forth or where a required findings clearly does not apply to the current action:**

- a. *The zoning map amendment is in conformance with statewide planning goals and guidelines.*
- b. *The zoning map amendment is in conformity with the acknowledged comprehensive plan.*
- c. *The applicant has demonstrated a mistake or error in the original zone designation or the applicant has demonstrated a change in physical, social or market conditions generally affecting the area which make the proposed change appropriate.*
- d. *A public need is demonstrated for this zoning at this location and is not the granting of a special privilege for a single property or small group of properties.*
- e. *The property effected by the change is adequate in size and shape to facilitate its use and development as permitted under the new zoning classification.*
- f. *The property effected by the proposed change of zone is properly related to streets and public facilities and with services adequate to meet the demands of the uses allowed in the new zone.*
- g. *The proposed zoning map change will not result in adverse effects upon surrounding properties or surrounding uses from dust, noise, vibration, odor, heat, glare, lighting, or discharges into the air, water or land.*

**Findings of fact based on the answers and information given in the application made a part hereof:**

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- a. The City of Ontario Municipal Code Implements policies contained in the City of Ontario Comprehensive Plan, which conforms to the Statewide Planning Goals; if a proposed rezone meets all criteria and standards contained in the OMC, the request will be consistent with Comprehensive Plan Policies and therefore conform to the Statewide Planning Goals. The existing property is zoned UGA Commercial and is proposed to be rezoned to City C-2H General Heavy Commercial.
- b. The subject properties are currently zoned UGA Commercial and the request is to rezone to the companion City C-2H (General Heavy Commercial) Zone that is the same zone as adjacent to the South and nearby properties. The requested zone allows basically the same use as the UGA zone, and is reflected in the Comprehensive Plan. No Comprehensive Plan amendment is necessary for this rezone; therefore, the proposal is consistent with, and conforms to, the Comprehensive Plan.
- c. The applicants have requested annexation into the City of Ontario concurrent with the request for rezone; a City Zone must be applied to the property once within City Limits. The existing zone is not a mistake, and there is no need to demonstrate a change in conditions in the surrounding area; the change in zone is necessary and appropriate.
- d. This request is legally necessary due to the annexation of the property; granting of this request is not a special privilege and no public need has to be demonstrated. The property is commercially designated under the Comprehensive Plan so a commercial zone is the most appropriate for the property.
- e. The property exceeds the size requirements for commercial property, and is rectangular in shape and can easily meet any development large or small.
- f. The property owner is requesting annexation and rezoning to have the property ready for future development. All City main line exists in SE 5<sup>th</sup> Avenue and SE 10<sup>th</sup> Street. City fire and police services will be available upon annexation for the property.

City streets, including curb, gutter are already developed along SE 10<sup>th</sup> Street and sidewalk will be developed along the portions being developed with a building permit and no addition right of way is required at this time. Paving exists along SE 5<sup>th</sup> Avenue and Curb, Gutter and sidewalk will be developed under a deferred development agreement.

- g. Uses allowed by the current zone are basically identical to the proposed zone. No significant difference in allowed uses will occur as a result of the rezone. Allowed uses under city commercial zone designations are no more likely to produce dust, noise, ect. than those under the UGA commercial zone.

**Conclusion:** The proposed rezone is consistent with all applicable criteria and standards.

**B. Annexation:**

1. *10B-45-10 INITIATION OF ACTION. When a person, authorized by statute, wishes to extend the city's boundaries, an application on forms supplied by the city shall be filed with the Planning Director and which include: annexation consent forms, by the property owners, and by tenants if required by law or court decision; request for a change in zoning map designation, or plan change if required; request for other quasi-judicial action if required; fees, and other exhibits and requirements for a quasi- judicial action as set forth in this Title. All land use actions associated with the annexation shall be consolidated, as feasible, and one fee paid.*
2. *Oregon Revised Statute 222.125: Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold*

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*an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.*

### **Findings based on the answers and information given in the application made a part hereof:**

1. The applicants have paid the fees and provided the proper application with signatures.
2. The property is annexable because it lies inside the Urban Growth Boundary and is contiguous with current city limits.
3. The property is currently zoned for Commercial use in the Urban Growth Area; the requested zone, City General Heavy Commercial (C-2H), is consistent with contiguous property.
4. Findings from preceding sections of this report are herein included by this reference. A change to the comprehensive plan map or text is not necessary to annex the property; however, the annexation of the property must be consistent with all applicable Comprehensive Plan Policies.
5. Annexation would benefit the city by increasing tax revenue, and, by providing more Heavy Commercial lands in a highly developable area.

**Conclusion:** All criteria and standards applicable to a request for annexation have been met. The property may be annexed.

### **V. SUMMARY CONCLUSIONS AND PLANNING COMMISSION DECISION**

A request for annexation and rezone of property may be recommended for approval or denial by the Planning Commission to the City Council if all applicable decision criteria and standards are found met, or able to be met through appropriate conditions of approval. In this case, findings must be made by the Planning Commission that the specific criteria are either met, able to be met through conditions of approval, or not met; options and discussion are provided under "**Findings:**" and "**Conclusion:**" for each criterion. **All** of the criteria and standards must be met in order for the request to be recommended for approval.

### **VI. SUGGESTED MOTIONS FOR APPROVAL/DENIAL**

#### A. Approval:

1. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Commercial to City C-2H General Heavy Commercial, as set forth in **ACTION 2018-12-21AZ** be recommended for **APPROVAL** to the City Council, based on the information, findings and conclusions set forth in Sections I through IV above, subject to the conditions of approval as set forth in Section VII of this report.

#### B. Denial:

3. I move that the request for Annexation of the subject properties into the City of Ontario, and the request for Rezone of the subject properties from UGA Commercial to City C-2H General Heavy Commercial, as set forth in **ACTION 2018-12-21AZ** be recommended for **DENIAL** to the City Council, based on the information, findings and conclusions stated below:  
State Reasons:

**VII. CONDITIONS OF APPROVAL:**

11. The approval of the annexation and rezone granted herein is valid for a period of one year from the date the decision of the Council is final; that final decision date shall be the date of expiration of the 21-day period for appeal to LUBA as required by Oregon Revised Statute and as noted in the Notice of Decision for this request.
12. Any new development shall be connected to City sewer and water, along with any street improvements not in place along the development envelope established on the building site plan at the time of building permit.
13. The owner will sign a lien causing any unpaid Utility bill to be a lien against the property.

**DISCUSSION OF 2018-12-21AZ**

Commissioner Briedenbach asked if the property had been buffered out for a marijuana facility.

Mr. Cummings answered that part of the property was buffered out but part of it could be used for a dispensary. A partition was in the process for Malheur Council on Aging.

Commissioner Hall asked if the green and pink colors on the map were currently within the City of Ontario city limits.

Mr. Cummings commented that any solid color was already within city limits.

Commissioner Briedenbach asked about a small piece of property that was outside city limits.

Mr. Cummings said that it was owned by Sizzlers and that he didn't understand what had happened in the past with it but that it would hopefully be cleaned up in the future.

Mr. Hanigan discussed fire hydrant locations.

Mr. Cummings commented on the Rural Fire Board and their lack of funds in the future and ways to resolve it.

Commissioner McLeran asked about whether a traffic study would need to be completed for 5<sup>th</sup> Avenue.

Mr. Cummings answered that a traffic study had already been done in the past and that other issues would be addressed when a permit was pulled in the future.

**APPROVAL OF PLANNING ACTION 2018-12-21AZ**

John Briedenbach moved, seconded by Richard Newman, to approve Planning Action 2018-12-21AZ and approve Findings of Fact. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

There was discussion of when the next Planning Commission would be. Affordable housing type subdivisions were discussed and were necessary to fit a need in the community.

**MOTION TO ADJOURN**

John Hall moved, seconded by Cindy McLeran, to Adjourn. Roll call vote: Smith-yes; McCleran-yes; Twombly-yes; Hall-yes; Briedenbach-yes; Newman-yes; Poole-out. Motion carried 6/1/0.

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Max Twombly  
Vice-Chairman

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Attest: Marcy Siriwardene  
Planning & Zoning Technician