

CITY OF ONTARIO
CITY COUNCIL AND HOUSING AUTHORITY
AGENDA
MARCH 17, 2015

Paul S. Leon
Mayor

Alan D. Wapner
Mayor pro Tem

Jim W. Bowman
Council Member

Debra Dorst-Porada
Council Member

Paul Vincent Avila
Council Member



Al C. Boling
City Manager

John E. Brown
City Attorney

Mary E. Wirtes, MMC
City Clerk

James R. Milhiser
Treasurer

WELCOME to a meeting of the Ontario City Council.

- All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.
- Anyone wishing to speak during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time.
- Comments will be limited to 3 minutes. Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.
- In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.
- Remarks from those seated or standing in the back of chambers will not be permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ORDER OF BUSINESS The regular City Council and Housing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

(EQUIPMENT FOR THE HEARING IMPAIRED AVAILABLE IN THE RECORDS MANAGEMENT OFFICE)

CALL TO ORDER (*OPEN SESSION*)

6:00 p.m.

ROLL CALL

Wapner, Bowman, Dorst-Porada, Avila, Mayor/Chairman Leon

CLOSED SESSION PUBLIC COMMENT The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to a maximum of 3 minutes for each speaker and comments will be limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 0113-271-42; 1230-1250 South Archibald Avenue; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Guardian Investment Capital and The Ruth Group; Under negotiation: Price and terms of payment.
- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN 1049-092-11, 1049-092-12, 1049-092-13; 115 South Pleasant Avenue and 610 East Holt Boulevard; City/Authority Negotiator: Al C. Boling or his designee; Negotiating parties: Sea Partners, LLC; Under negotiation: Price and terms of payment.
- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
One (1) case.

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario v. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

In attendance: Wapner, Bowman, Dorst-Porada, Avila, Mayor/Chairman Leon

PLEDGE OF ALLEGIANCE

Mayor pro Tem Wapner

INVOCATION

Pastor Kelvin Moore, Loveland Worship Center

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

The Public Comment portion of the Council/Housing Authority meeting is limited to 30 minutes with each speaker given a maximum of 3 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

SPECIAL CEREMONIES

RECOGNITION OF UNITED PARCEL SERVICE (UPS) COMMUNITY PROJECT – JAY LITTLETON BALL PARK

CONSENT CALENDAR

All matters listed under **CONSENT CALENDAR** will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meeting of the City Council and Housing Authority of February 17, 2015, and the Special Meeting of the City Council and Housing Authority of March 2, 2015, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills February 8, 2015 through February 21, 2015 and **Payroll** February 8, 2015 through February 21, 2015, when audited by the Finance Committee.

3. A CONSTRUCTION CONTRACT FOR SOUND INSULATION OF 99 HOUSES UNDER THE QUIET HOME PROGRAM/PATRIOT CONTRACTING & ENGINEERING, INC.

That the City Council:

- (A) Waive minor deviations in the low bid and award Contract No. P150-1415-02 (on file with the Records Management Department) to Patriot Contracting & Engineering, Inc. of Yorba Linda, California in the amount of \$2,819,000, plus 15% contingency of \$422,850 for a total not to exceed amount of \$3,241,850 to sound insulate 99 houses; and
- (B) Authorize the City Manager, or his designee, to execute the contract, other related documents necessary to implement said contract, and file a Notice of Completion at the conclusion of all construction activities related to this contract.

4. A RESOLUTION TO UPHOLD THE ARBITRATOR'S DECISION ON THE STANLEY LLABAN MATTER

That the City Council adopt a resolution to uphold the arbitrator's decision on the Stanley Llaban matter.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING CERTAIN FINDINGS AND APPROVING AND UPHOLDING THE ARBITRATOR'S NOVEMBER 17, 2014 DECISION REGARDING STANLEY LLABAN.

5. A PROVIDER AGREEMENT FOR THE USE OF ONTARIO FIBER INFRASTRUCTURE TO DELIVER GIGABIT INTERNET, VOICE AND VIDEO SERVICES FOR PARK PLACE/INYO NETWORKS, INC.

That the City Council authorize the City Manager to enter into a provider agreement with Inyo Networks, Inc. of Vallejo, California, for exclusive access of the Ontario fiber distribution system and related infrastructure to provide Gigabit Internet, voice and video services for 432 homes planned in seven tracts in the Park Place community.

6. EXTENSION OF TOWING SERVICES AGREEMENTS

That the City Council authorize the City Manager to extend the existing towing services agreements with Certified Towing, Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage, Inc.; and United Road Service, DBA Bill and Wags, Inc. for a period not to exceed 15 days.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing.

7. RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES) AND A PUBLIC HEARING TO AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES)

That the City Council:

- (A) Adopt a resolution establishing City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), authorizing the levy of a special tax within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien; and
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services).

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT AND ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE COMMUNITY FACILITIES DISTRICT.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES).

8. A PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION MODIFYING CERTAIN CONDITIONS OF APPROVAL FOR A CONDITIONAL USE PERMIT (FILE NO. PCUP14-025) RELATING TO ALCOHOLIC BEVERAGE SALES AND LIVE ENTERTAINMENT FOR THE JAZZ CAFÉ ONTARIO RESTAURANT

That the City Council adopt a resolution upholding the Planning Commission's decision modifying certain conditions of approval and denying the appeal for Conditional Use Permit (File No. PCUP14-025) for the Jazz Café Ontario located at 1133 West Sixth Street, within the Main Street District Land Use designation of the Mountain Village Specific Plan.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.

Oral presentation.

Public hearing closed.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING PLANNING COMMISSION'S DECISION TO MODIFY CERTAIN CONDITIONS OF APPROVAL RELATED TO ALCOHOLIC BEVERAGE SALES AND LIVE ENTERTAINMENT, IN CONJUNCTION WITH JAZZ CAFÉ ONTARIO RESTAURANT, LOCATED AT 1133 WEST SIXTH STREET, WITHIN THE MAIN STREET DISTRICT LAND USE DESIGNATION OF THE MOUNTAIN VILLAGE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1008-431-23.

9. A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE PROVISIONS OF THE ONTARIO MUNICIPAL CODE TITLE 9 (DEVELOPMENT CODE) REGARDING THE LOCATION AND OPERATION OF MASSAGE ESTABLISHMENTS AND THE OFFERING OF MASSAGE SERVICES

That the City Council introduce and waive further reading of an ordinance approving the Development Code Amendment (File No. PDCA15-001), amending the provisions relating to the location and operation of massage establishments and the offering of massage services.

Notice of public hearing has been duly given and affidavits of compliance are on file in the Records Management Department.

Written communication.

Oral presentation.

Public hearing closed.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE PROVISIONS OF THE ONTARIO MUNICIPAL CODE TITLE 9 (DEVELOPMENT CODE) REGARDING THE LOCATION AND OPERATION OF MASSAGE ESTABLISHMENTS AND THE OFFERING OF MASSAGE SERVICES, AND MAKING FINDINGS IN SUPPORT THEREOF.

STAFF MATTERS

City Manager Boling

COUNCIL MATTERS

Mayor Leon
Mayor pro Tem Wapner
Council Member Bowman
Council Member Dorst-Porada
Council Member Avila

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)
March 17, 2015

ROLL CALL: Wapner __, Bowman __, Dorst-Porada __, Avila __ Mayor / Chairman Leon __.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Wapner __, Bowman __, Dorst-Porada __, Avila __, Mayor / Chairman Leon __

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0113-271-42; 1230-1250 South Archibald Avenue; City/Authority
Negotiator: Al C. Boling or his designee; Negotiating parties: Guardian Investment Capital and
The Ruth Group; Under negotiation: Price and terms of payment.

No Reportable Action Continue Approved

/ / / / / /

Disposition: _____

In attendance: Wapner __, Bowman __, Dorst-Porada __, Avila __, Mayor / Chairman Leon __

- GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN's: 1049-092-11, 1049-092-12, 1049-092-13; 115 South Pleasant Avenue and
610 East Holt Boulevard; City/Authority Negotiator: Al C. Boling or his designee; Negotiating
parties: Sea Partners, LLC; Under negotiation: Price and terms of payment.

No Reportable Action Continue Approved

/ / / / / /

Disposition: _____

**CITY OF ONTARIO
CLOSED SESSION REPORT**

City Council // Housing Authority // Other // (GC 54957.1)
March 17, 2015
(Continued)

In attendance: Wapner __, Bowman __, Dorst-Porada __, Avila __, Mayor / Chairman Leon __

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION: *One (1) case.*

No Reportable Action	Continue	Approved
----------------------	----------	----------

/ /	/ /	/ /
-----	-----	-----

Disposition: _____

In attendance: Wapner __, Bowman __, Dorst-Porada __, Avila __, Mayor / Chairman Leon __

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION: *City of Ontario vs. City of Los Angeles, Los Angeles World Airports, and Los Angeles Board of Airport Commissioners, RIC 1306498.*

No Reportable Action	Continue	Approved
----------------------	----------	----------

/ /	/ /	/ /
-----	-----	-----

Disposition: _____

Reported by: _____
City Attorney / City Manager / Executive Director

CITY OF ONTARIO

Agenda Report
March 17, 2015

**SECTION:
CONSENT CALENDAR**

**SUBJECT: A CONSTRUCTION CONTRACT FOR SOUND INSULATION OF 99 HOUSES
UNDER THE QUIET HOME PROGRAM**

RECOMMENDATION: That the City Council:

- (A) Waive minor deviations in the low bid and award Contract No. P150-1415-02 (on file with the Records Management Department) to Patriot Contracting & Engineering, Inc. of Yorba Linda, California in the amount of \$2,819,000, plus 15% contingency of \$422,850 for a total not to exceed amount of \$3,241,850 to sound insulate 99 houses; and
- (B) Authorize the City Manager, or his designee, to execute the contract, other related documents necessary to implement said contract, and file a Notice of Completion at the conclusion of all construction activities related to this contract.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Pursue City's Goals and Objectives by Working with Other Governmental Agencies
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Federal Aviation Administration (FAA) and Los Angeles World Airports (LAWA) awarded sound insulation grants to fund the specified work under the proposed contract. Additional funding from the sale of Part 150 land will be used to supplement the project costs. The adopted Fiscal Year 2014-15 Quiet Home Program budget includes appropriations to implement the contract; therefore, there will be no impact to the City's General Fund.

BACKGROUND: City staff solicited bids for a 99-house sound insulation project as part of Contract No. P150-1415-02 under the Quiet Home Program. On February 12, 2015, three bids were received. The project architect, The Jones Payne Group, estimated the cost of construction at \$3,255,188. The bid results are summarized as follows:

STAFF MEMBER PRESENTING: Brent Schultz, Housing & Municipal Services Director

Prepared by: Ivette Iraheta
Department: Housing

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

3

<u>Company</u>	<u>Location</u>	<u>Bid Amount</u>
Patriot Contracting & Engineering, Inc.	Yorba Linda, CA	\$2,819,000
G and G Specialty Contracting, Inc.	Gilbert, AZ	\$3,192,102
NSA Construction Group, Inc.	Tarzana, CA	\$3,570,000

City staff and the project architect reviewed all bid submittals and determined that Patriot Contracting and Engineering, Inc. ("Patriot") is the lowest responsive and responsible bidder to perform the specified sound insulation work. FAA has issued a letter of concurrence to award the contract to Patriot. The three bids ranged from 13% below architect's probable cost to 9% above the architect's probable cost of construction.

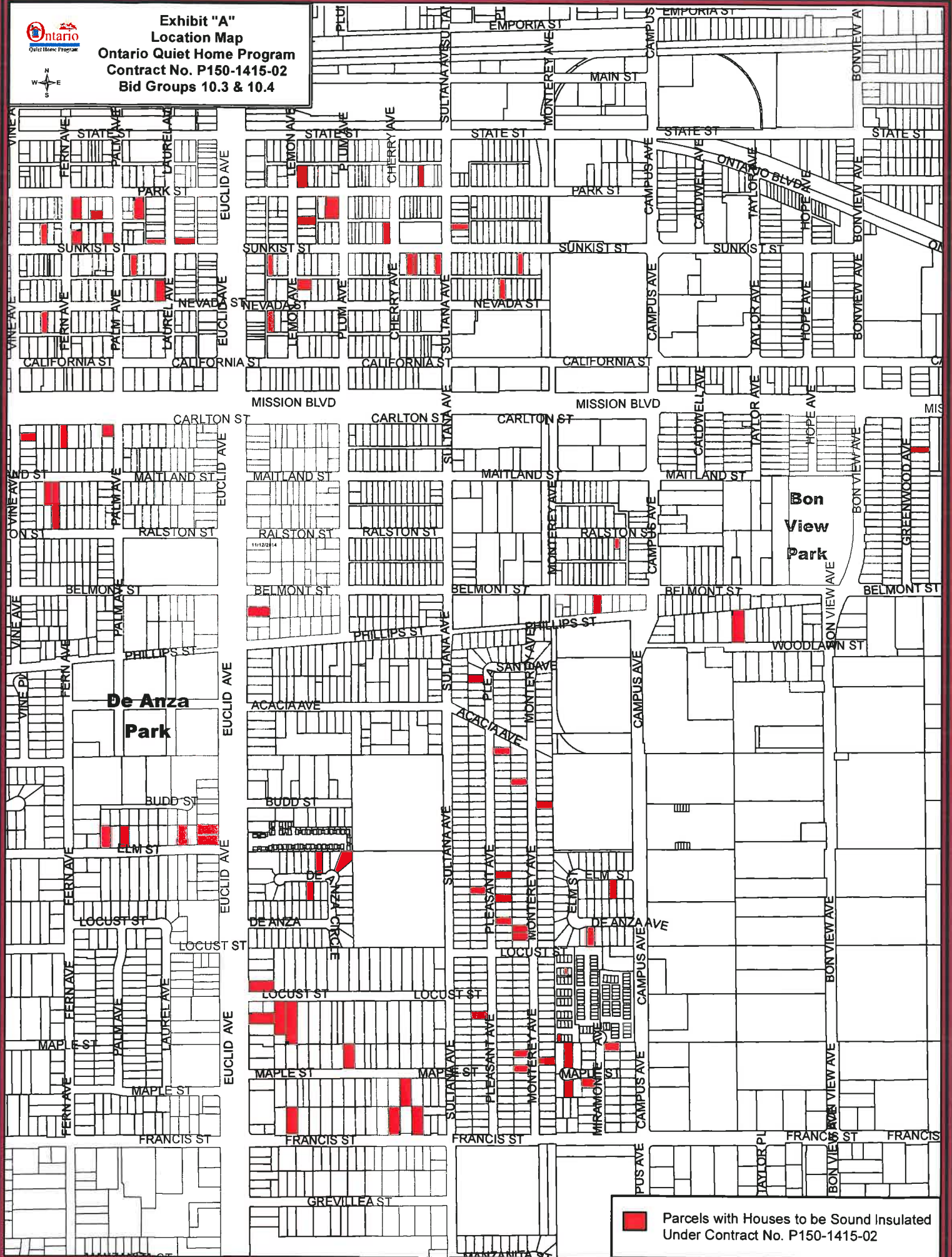
Patriot staff and subcontractors are experienced in sound insulation work in the region and also have past experience working on the City of Ontario's program. Based on the bid analysis, Patriot's pool of experienced tradesmen, knowledge of the housing stock, their proximity to City of Ontario, as well as their long standing business relationships to vendors may be contributing to their competitive advantage in obtaining favorable rates/pricing for this project. References were checked and found to be satisfactory. Patriot has listed two certified Disadvantaged Business Enterprise (DBE) firms for the project, for a total of 14% participation, which contributes towards achieving the overall annual DBE goal of 3.2%. The contractor is required to maintain an office and a warehouse in the City of Ontario for the duration of the contract. Construction work is anticipated to start by the spring of 2015 and be completed by summer 2015.


The houses in this project are located throughout neighborhoods generally bounded on the north by State Street, on the south by Francis Street, on the west by Vine Avenue, and on the east by Greenwood Avenue. A location map is provided on Exhibit "A." Sound insulation work includes installation of acoustic doors and windows, air conditioning/heating ventilation systems, attic insulation, vent baffles and other noise reducing improvements. These improvements help enhance the quality of life of the homeowners, eliminate certain health and safety conditions, and enhance the energy efficiency of the homes. Safety is improved by installing new electrical panels, smoke detectors, carbon monoxide detectors, acoustic windows that meet emergency egress requirements and removing unsafe electrical wiring from sound insulation work areas. Energy efficiency benefits include the incorporation of SEER (Seasonal Energy Efficiency Ratio) 14 rated condensing units, 90% efficiency-rated force air units, and Energy Star windows with heat-resistant glass coating. All sound insulation and related work is done at no cost to the homeowners.

To date, the program has sound insulated 1,500 homes and expended over \$36 million in construction funds, using FAA and LAWA sound insulation grants. After completion of this construction project, the program will have sound insulated approximately 1,600 homes.



Exhibit "A"
Location Map
Ontario Quiet Home Program
Contract No. P150-1415-02
Bid Groups 10.3 & 10.4



 Parcels with Houses to be Sound Insulated
Under Contract No. P150-1415-02

CITY OF ONTARIO

Agenda Report
March 17, 2015

**SECTION:
CONSENT CALENDAR**

SUBJECT: A RESOLUTION TO UPHOLD THE ARBITRATOR'S DECISION ON THE STANLEY LLABAN MATTER

RECOMMENDATION: That the City Council adopt a resolution to uphold the arbitrator's decision on the Stanley Llaban matter.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner

FISCAL IMPACT: There is no fiscal impact as a result of this action.

BACKGROUND: A Special City Council Meeting was held on March 2, 2015 to review the advisory decision of Arbitrator David Weinberg in the Stanley Llaban matter. The City Council reviewed the arbitration administrative record, listened to statements from both parties, and unanimously voted to uphold the arbitrator's advisory arbitration decision.

STAFF MEMBER PRESENTING: Jacob Green, Assistant City Manager

Prepared by: Lupe Marquez
Department: Human Resources

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, MAKING CERTAIN FINDINGS AND APPROVING AND UPHOLDING THE ARBITRATOR'S NOVEMBER 17, 2014 DECISION REGARDING STANLEY LLABAN.

WHEREAS, the City Council of the City of Ontario ("City Council") is authorized, pursuant to that certain Consolidated Memorandum of Understanding July 1, 2014 – June 30, 2018 – Ontario Police Officers Association (the "MOU"), to review and approve personnel decisions of hearing officers regarding employees of the City; and

WHEREAS, Stanley Llaban ("Appellant") was employed as a Police Officer in the Police Department of the City of Ontario; and

WHEREAS, Appellant was the subject of disciplinary action by the City; and

WHEREAS, Appellant caused to be filed a grievance concerning said disciplinary action; and

WHEREAS, on November 17, 2014, the hearing officer hearing such disciplinary matter rendered his decision, making certain findings of fact, conclusions of law, upholding the disciplinary action, and denying Appellant's grievance; and

WHEREAS, pursuant to Government Code Section 54957, by letter dated December 29, 2014, the City notified Appellant's legal counsel, in writing, of Appellant's right to have the City Council hear the matter in closed session, which right was invoked by Appellant; and

WHEREAS, on March 2, 2015, the City Council conducted a duly noticed public meeting, at which time, the Appellant, the Appellant's representative, City staff, and the City staff's representative were all present and afforded the opportunity to be heard and to make legal arguments in closed session; and

WHEREAS, on March 2, 2015, the City Council heard, read, and considered all of the evidence, including the verbal testimony and legal arguments of Appellant and City staff, as well as the entire administrative record, which itself consisted of, among other written evidence, the hearing officer's written decision; and

WHEREAS, all other prerequisites to this Resolution have taken place.

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

SECTION 1. That the City Council hereby approves and upholds the hearing officer's November 17, 2014 written decision, and adopts as its own all of the findings of fact and conclusions of law contained therein. Said written decision is hereby incorporated by reference into this Resolution, as though fully set forth herein.

SECTION 2. Based upon said findings of fact and conclusions of law, the City Council hereby finds, based on a preponderance of the evidence, that the disciplinary action was for "just cause" and was reasonable.

SECTION 3. That City staff is hereby directed to provide a written copy of this Resolution to the Appellant, including an affidavit of mailing.

SECTION 4. The Mayor of the City shall sign this Resolution and the City Clerk shall attest and certify to the passage and adoption thereof.

SECTION 5. This Resolution shall take effect on March 17, 2015.

PASSED, APPROVED, AND ADOPTED this 17th day of March 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 17, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held March 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

March 17, 2015

SECTION: CONSENT CALENDAR

SUBJECT: A PROVIDER AGREEMENT FOR THE USE OF ONTARIO FIBER INFRASTRUCTURE TO DELIVER GIGABIT INTERNET, VOICE AND VIDEO SERVICES FOR PARK PLACE

RECOMMENDATION: That the City Council authorize the City Manager to enter into a provider agreement with Inyo Networks, Inc. of Vallejo, California, for exclusive access of the Ontario fiber distribution system and related infrastructure to provide Gigabit Internet, voice and video services for 432 homes planned in seven tracts in the Park Place community.

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Operate in a Businesslike Manner**

Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: This agreement facilitates a revenue stream to the City from provider access of Ontario fiber distribution system. Construction of Fiber to the Home (FTTH) in the New Model Colony is funded through development impact fees; operations are to be funded through fiber access fees. Inyo Networks will be a service provider using the Ontario fiber distribution network to offer different packages ranging from approximately \$50 for Tier 1 (1Gbps Internet and Voice), approximately \$100 for Tier 2 (Video – a 270 channel lineup plus the Tier 1 package), and approximately \$150 for Tier 3 (Premium channels plus the Tier 2 package). The provider will pay the City access fees for the use of the distribution network in the amount of Tier 1 - \$15, Tier 2 - \$25, and Tier 3 - \$35 per subscriber per month.

BACKGROUND: As envisioned, the New Model Colony will truly be a Gigabit community. The FTTH infrastructure will be a market differentiator and a strategic advantage for home builders as well as a benefit to future citizens. The full fiber network in the New Model Colony, including a redundant backbone will take years to develop awaiting last lane improvements and in conjunction with the other community infrastructure improvements. As this complete network will not be finished for some time, Inyo Networks has agreed to secure leased connections to the community allowing delivery of Gigabit

STAFF MEMBER PRESENTING: Elliott Ellsworth, Information Technology Director

Prepared by: Elliott Ellsworth
Department: Information Technology

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

5

per second Internet plus voice and video services until they are able to transition to the Ontario fiber backbone.

In tract conduit and hand holes have been or are currently being installed; however the bid and procurement of fiber optic cable, cabinets and electronics still need to be completed. These bid recommendations will be presented for award to the City Council at a later date. This agreement with Inyo Networks will initiate coordination with builders and marketing of services in the model homes and turn up services when homes are ready to be occupied. Inyo Networks will ultimately be responsible for connecting the customer to the City's fiber distribution network, and providing and configuring the electronics in the home and handling all customer service issues. Subscribers will have access to affordable "Gigabit" high speed broadband, Wi-Fi, voice and video options.

The agreement is a three year, exclusive access agreement with Inyo Networks for the lease of City fiber assets for the specified seven tracts in the Park Place community. The exclusive access is necessary to allow for the provider to limit risks, protect revenues and recoup expenses on the provider's extensive investments where the timing and build out of the community, the number of subscribers and take rates are not easy to anticipate. Further, the agreement waives any payments to the City for six months from the time the fiber system is installed allowing for the provider to cover startup costs and secure a subscriber base. In the future, the City anticipates a transition of the Ontario fiber infrastructure to an open access model with competition from multiple qualified providers. This pilot will demonstrate the viability of delivering high speed FTTH services but may also be used as a model for delivery to other locations until the City backbone facilities are complete.

Inyo Networks was one of three companies that responded to the City's RFQ for fiber network operations services. Inyo Networks builds and operates backhaul, middle mile and last mile networks, most recently the "digital 395 project" and Inyo County FTTH and fiber to the business distribution solutions. The Inyo Networks is a certified Competitive Local Exchange Carrier that provides competitive broadband services in California and Nevada with numerous public and private sector clients including: AT&T, California Broadband Cooperative, Inc., Ericsson/Entrisphere, Google, Lennar Homes, Pacific Gas and Electric, County of Inyo, County of Merced, City of Roseville, and Tule River Indian Reservation. The Inyo team has extensive background in commercial voice project and is extremely knowledgeable and well positioned to deliver broadband IP voice, video and data services.

CITY OF ONTARIO

Agenda Report
March 17, 2015

SECTION:
CONSENT CALENDAR

SUBJECT: EXTENSION OF TOWING SERVICES AGREEMENTS

RECOMMENDATION: That the City Council authorize the City Manager to extend the existing towing services agreements with Certified Towing, Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage, Inc.; and United Road Service, DBA Bill and Wags, Inc. for a period not to exceed 15 days.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: None.

BACKGROUND: On September 1, 2009 the City Council granted towing carrier permits and executed towing services agreements with Certified Towing Inc.; Dietz Towing, LLC; James Foglesong Towing and Storage Inc.; and United Road Towing, DBA Bill and Wags, Inc., all of Ontario, California, for a period of five years. On December 16, 2014 the City Council adopted Ordinance No. 3008 amending Chapter 19 to Title 4 of the Ontario Municipal Code, regarding the regulation of rotational towing services. On February 17, 2015 the City Council extended the existing towing services agreement for a period not to exceed 30 days to allow for the issuance of a request for proposals, review of submittals, and the issuance of towing services agreements consistent with the updated Municipal Code. Staff is now requesting an additional extension not to exceed 15 days to complete this process. The existing towing services agreements would then expire on April 7, 2015.

STAFF MEMBER PRESENTING: Brad Kaylor, Chief of Police

Prepared by: Darryl Polk
Department: Police

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

6

CITY OF ONTARIO

Agenda Report

March 17, 2015

SECTION: PUBLIC HEARINGS

SUBJECT: RESOLUTIONS REGARDING THE FORMATION OF CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES) AND A PUBLIC HEARING TO AN ORDINANCE LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES)


RECOMMENDATION: That the City Council:

- (A) Adopt a resolution establishing City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), authorizing the levy of a special tax within the community facilities district, and establishing an appropriations limit for the community facilities district;
- (B) Adopt a resolution calling a special election for City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services);
- (C) Adopt a resolution declaring the results of the special election and directing the recording of a Notice of Special Tax Lien; and
- (D) Introduce and waive further reading of an ordinance levying special taxes within City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services).

**COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony**

FISCAL IMPACT: In accordance with the City Council's long standing direction that development of the New Model Colony generate sufficient revenues to fund its required City Services without reliance on the existing financial resources of the Old Model Colony, the use of Mello-Roos financing in connection with the Archibald/Schaefer development is projected to generate approximately \$330,000

STAFF MEMBER PRESENTING: Grant D. Yee, Administrative Services/Finance Director

Prepared by: Bob Chandler
Department: Management Services
City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015
Approved: _____
Continued to: _____
Denied: _____

7

per year, at build-out, to fund City services. As proposed, the maximum annual tax rate on each of the project's 229 single-family detached units is \$1,442. The use of Mello-Roos financing is critical in achieving the City Council's goal of **"Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony."** The use of Mello-Roos financing for the Archibald/Schaefer Development will not generate funds for facilities, and bonds will not be issued as part of this formation. The CFD is being formed pursuant to the provisions of the Ontario Schaefer Holdings, LLC First Amendment to the Development Agreement, and the First Amended and Restated Construction Agreement between the City and NMC Builders.

BACKGROUND: The Mello-Roos Community Facilities Act of 1982 provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various kinds of public infrastructure facilities and government services. Government services that may be included in a community facilities district include police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, open space and flood and storm drain protection services, and maintenance and operation of any real property or tangible property with an estimated useful life of five or more years that is owned by the governmental entity.

On February 3, 2015, the City Council approved Resolution No. 2015-005, a Resolution of the City of Ontario, California, of Intention to establish City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) and to authorize the levy of special taxes within the district. The Archibald/Schaefer project addresses the residential development of approximately 60 acres located north of Schaefer Avenue, south of Chino Avenue, east of Turner Avenue and west of Haven Avenue. At build-out, the development is projected to include 229 detached residential units. Included, as part of the Resolution of Intention, is the proposed Rate and Method of Apportionment of Special Tax for City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services). The terms of the Rate and Method of Apportionment of Special Tax are consistent with the City Council's adopted Mello-Roos local goals and policies, and City staff have discussed the proposed Rate and Method of Apportionment of Special Tax with the landowners.

The Resolution of Intention set the public hearing on the establishment of the CFD for March 17, 2015. In accordance with requirements of the resolution, the City Clerk has published a notice of the time and place of this hearing pursuant to Section 53322 of the California Government Code at least seven days before the hearing. Additionally, the City gave notice of the time and place of the meeting to each registered voter and to each landowner within the CFD's boundaries at least fifteen days before the hearing, and the district boundary map was recorded on February 17, 2015. The election will be held immediately after the close of the public hearing in order for the City Council to be presented with the results of the election during the meeting. The City Council may then adopt a resolution declaring the results of the election after receiving a statement from the City Clerk as to the canvass of ballots.

Attached are three resolutions and an ordinance. The first resolution establishes the CFD, with the rate and method of apportionment of special taxes, and introduces the levy of special taxes within the Community Facilities District. The second resolution calls for a special landowner election to be held on March 17, 2015. The third resolution declares the results of the election and includes a statement from the City Clerk as to the canvass of ballots. The ordinance authorizes the levying of special taxes. As noted, the issuance of bonds is not being contemplated for this project, so there is no resolution to issue bonds as part of this formation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, OF FORMATION OF THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES), AUTHORIZING THE LEVY OF A SPECIAL TAX WITHIN THE COMMUNITY FACILITIES DISTRICT AND ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE COMMUNITY FACILITIES DISTRICT.

WHEREAS, on February 3, 2015, the City Council (the “City Council”) of the City of Ontario (the “City”), pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), adopted a resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes” (the “Resolution of Intention”), stating its intention to establish a community facilities district (the “Community Facilities District”) proposed to be named City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), to authorize the levy of special taxes within the Community Facilities District to finance certain services and setting the date for a public hearing to be held on the establishment of the Community Facilities District; and

WHEREAS, pursuant to the Resolution of Intention, notice of said public hearing was published in the *Inland Valley Daily Bulletin*, a newspaper of general circulation published in the area of the Community Facilities District, in accordance with the Act; and

WHEREAS, on this date, the City Council opened, conducted and closed said public hearing; and

WHEREAS, pursuant to the Resolution of Intention, each officer of the City who is or will be responsible for providing one or more of the proposed types of services was directed to study, or cause to be studied, the proposed Community Facilities District and, at or before said public hearing, file a report with the City Council containing a brief description of the services by type that will in his or her opinion be required to adequately meet the needs of the Community Facilities District, and his or her estimate of the cost of providing such services, and such officers were also directed to estimate the fair and reasonable cost of the incidental expenses proposed to be paid; and

WHEREAS, said report was so filed with the City Council and made a part of the record of said public hearing; and

WHEREAS, at the hearing, the testimony of all persons for or against the establishment of the Community Facilities District, the extent of the Community Facilities District and the furnishing of the specified types of services was heard; and

WHEREAS, written protests against the establishment of the Community Facilities District, the furnishing of any specified type or types of services within the Community Facilities District or the levying of any specified special tax were not made or filed at or before said hearing by 50% or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the Community Facilities District, or the owners of one-half or more of the area of land in the territory proposed to be included in the Community Facilities District and not exempt from the special tax; and

WHEREAS, there has been filed with the City Clerk of the City a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of February 25, 2015, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the proposed Community Facilities District for each of the 90 days preceding the close of said public hearing;

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The Community Facilities District is hereby established pursuant to the Act.

SECTION 3. The Community Facilities District is hereby named "City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services)."

SECTION 4. The services (the "Services") proposed to be financed by the Community Facilities District pursuant to the Act are described under the caption "Services" on Exhibit A hereto. The incidental expenses proposed to be incurred are described under the caption "Incidental Expenses" on Exhibit A hereto. No facilities are proposed to be financed by the Community Facilities District.

SECTION 5. The proposed special tax to be levied within the Community Facilities District has not been precluded by majority protest pursuant to Section 53324 of the Act.

SECTION 6. Except where funds are otherwise available, a special tax sufficient to pay for all Services, secured by recordation of a continuing lien against all nonexempt real property in the Community Facilities District, will be annually levied within the Community Facilities District. The rate and method of apportionment of the special tax (the "Rate and Method"), in sufficient detail to allow each landowner within the proposed Community Facilities District to estimate the maximum amount that he or she will have to pay, is described in Exhibit B attached hereto, which is by this reference incorporated herein. The obligation to pay the special tax may not be

prepaid and permanently satisfied. The special tax will be collected in the same manner as ordinary *ad valorem* property taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

The special tax may only finance the Services to the extent that they are in addition to those provided in the territory of the Community Facilities District before the Community Facilities District is created. The Services may not supplant services already available within that territory when the Community Facilities District is created.

SECTION 7. The name, address and telephone number of the office that will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and that will be responsible for estimating further special tax levies pursuant to Section 53340.2 of the Act are as follows: Management Analyst, Management Services, City of Ontario, 303 East B Street, Ontario, California 91764, (909) 395-2341.

SECTION 8. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the Community Facilities District and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City Council ceases.

SECTION 9. The boundary map of the Community Facilities District has been recorded in San Bernardino County in Book 86 at Page 44 of Maps of Assessments and Community Facilities Districts in the San Bernardino County Recorder's Office (Document No. 2015-0059905).

SECTION 10. The annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the Community Facilities District is hereby established at \$20,000,000.

SECTION 11. Pursuant to the provisions of the Act, the levy of the special tax and a proposition to establish the appropriations limit specified above shall be subject to the approval of the qualified electors of the Community Facilities District at a special election. The City Council hereby finds and determines that that no persons were registered to vote within the territory of the proposed Community Facilities District as of February 25, 2015, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearing held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized

representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax. The voting procedure shall be by mailed or hand-delivered ballot.

SECTION 12. The City Council hereby finds and determines that all proceedings up to and including the adoption of this Resolution were valid and in conformity with the requirements of the Act. In accordance with Section 53325.1 of the Act, such finding shall be final and conclusive.

SECTION 13. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 14. This Resolution shall take effect immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED this 17th day of March, 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 17, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held March 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A

SERVICES AND INCIDENTAL EXPENSES

Services

The types of services to be financed by the Community Facilities District are police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads and open space, flood and storm protection services and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

Incidental Expenses

The incidental expenses proposed to be incurred include the costs associated with the creation of the Community Facilities District, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

EXHIBIT B

CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax shall be levied on all Assessor's Parcels in the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) ("CFD No. 32") and collected each Fiscal Year commencing in Fiscal Year 2015-16, in an amount determined by the City Council of the City of Ontario through the application of the Rate and Method of Apportionment, as described below. All of the real property in CFD No. 32, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

A. DEFINITIONS

The terms as may hereinafter be set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the California Government Code.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 32: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or CFD No. 32 or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City or CFD No. 32 related to an appeal of the Special Tax; the City's administration fees and third party expenses; the costs of City staff time and reasonable overhead related to CFD No. 32; and amounts estimated or advanced by the City or CFD No. 32 for any other administrative purposes of CFD No. 32, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel Number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means, with respect to an Assessor's Parcel, that number assigned to such Assessor's Parcel by the County for purposes of identification.

"CFD Administrator" means an official of the City responsible for determining the Special Tax Requirement, providing for the levy and collection of the Special Tax, and performing the other duties provided for herein.

“CFD No. 32” means City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services).

“City” means the City of Ontario, California.

“City Council” means the City Council of the City, acting as the legislative body of CFD No. 32.

“County” means the County of San Bernardino.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Gated Apartment Community Dwelling Unit” means a Multiple Family Dwelling Unit within a gated community that, within such community, is primarily served by private interior streets.

“Land Use Class” means any of the classes listed in Table 1 below.

“Maximum Special Tax” means, with respect to an Assessor’s Parcel of Taxable Property, the maximum Special Tax determined in accordance with Section C below that can be levied in any Fiscal Year on such Assessor’s Parcel of Taxable Property.

“Multiple Family Dwelling Unit” means a Unit within any residential building containing two or more dwelling units, including attached condominiums, townhomes, duplexes, triplexes, and apartments, but excluding Gated Apartment Community Dwelling Units.

“Non-Residential” means any buildings that are for commercial lodging use, commercial retail use, institutional use (e.g., churches, private schools), commercial restaurant use, office use, or industrial use.

“Non-Residential Property” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction was issued after January 1, 2015, and before May 1 of the prior Fiscal Year, for a Non-Residential use.

“Property Owner Association Property” means, for each Fiscal Year, property within the boundaries of CFD No. 32 that was owned by a property owner association, including any master or sub-association, as of January 1 of the prior Fiscal Year.

“Proportionately” means that the ratio of the actual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Taxable Property.

“Public Property” means, for each Fiscal Year, property within the boundaries of CFD No. 32 that is (a) owned by, irrevocably offered to, or dedicated to the federal government, the State, the County, the City, or any local government or other public agency or (b) encumbered by an easement for purposes of public right-of-way that makes impractical its

use for any purpose other than that set forth in such easement, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment of Special Tax.

“Residential Property” means, for each Fiscal Year, an Assessor’s Parcel for which a building permit for new construction of one or more Units was issued after January 1, 2015, and before May 1 of the prior Fiscal Year.

“Services” means the services authorized to be financed, in whole or in part, by CFD No. 32: police protection services, fire protection and suppression services, ambulance and paramedic services, maintenance and lighting of parks, parkways, streets, roads, and open space, flood and storm protection services, and maintenance and operation of any real property or other tangible property with an estimated useful life of five or more years that is owned by the City.

“Special Tax” means the special tax authorized by the qualified electors of CFD No. 32 to be levied within the boundaries of CFD No. 32.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to pay the cost of the Services, Administrative Expenses, and an amount equal to Special Tax delinquencies based on the historical delinquency rate for Special Taxes, as determined by the CFD Administrator.

“Single Family Detached Dwelling Unit” means any residential building containing only one Unit on one legal lot, including single family residences and single family detached residential condominium units.

“Square Footage” or **“Sq. Ft.”** means, with respect to a building, the gross floor area square footage reflected on the original construction building permit for such building, plus any square footage subsequently added to a building after issuance of a building permit for expansion or renovation of such building.

“State” means the State of California.

“Taxable Property” means, for each Fiscal Year, all Assessor’s Parcels of Residential Property and Non-Residential Property within the boundaries of CFD No. 32 which are not exempt from the Special Tax pursuant to law or Section E below.

“Unit” means an individual single-family detached home, townhome, condominium, apartment unit, or other residential dwelling unit, including each separate dwelling unit within a half-plex, duplex, triplex, fourplex, or other residential building.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, beginning with Fiscal Year 2015-16, all Taxable Property within CFD No. 32 shall be classified as Residential Property (Single Family Detached Dwelling Unit, Multiple Family Dwelling Unit, or Gated Apartment Community Dwelling Unit) or Non-Residential Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment as determined pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax for each Assessor's Parcel classified as Taxable Property shall be determined by reference to Table 1 below.

**TABLE 1
MAXIMUM SPECIAL TAX**

Land Use Class	Maximum Special Tax Fiscal Year 2015-16
Residential Property:	
Single Family Detached Dwelling Unit	\$1,442 per Unit
Multiple Family Dwelling Unit	\$1,250 per Unit
Gated Apartment Community Dwelling Unit	\$1,048 per Unit
Non-Residential Property	\$0.27 per Sq. Ft.

On January 1 of each Fiscal Year, commencing January 1, 2016, the Maximum Special Tax to be applied in the next Fiscal Year shall be subject to an automatic increase at a rate equal to 4.0% of the amount in effect for the prior Fiscal Year.

In some instances an Assessor's Parcel of Taxable Property may contain more than one Land Use Class. The Maximum Special Tax levied on an Assessor's Parcel shall be the sum of the Maximum Special Tax for all Units of Residential Property and Square Footage of Non-Residential Property (based on the applicable final subdivision map, parcel map, condominium plan, or other recorded County map) located on that Assessor's Parcel.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Each Fiscal Year, beginning with Fiscal Year 2015-16, the CFD Administrator shall determine the Special Tax Requirement. The Special Tax shall then be levied Proportionately on each Assessor's Parcel of Taxable Property up to 100% of the applicable Maximum Special Tax for such Assessor's Parcel, until the Special Tax Requirement is satisfied. However, the Special Tax levied in any Fiscal Year shall not increase by more than 4.0% of the amount of the Special Tax levied in the prior Fiscal Year.

E. EXEMPTIONS

Notwithstanding anything in this Rate and Method of Apportionment to the contrary, no Special Tax shall be levied on Public Property or Property Owner Association Property.

F. APPEALS

Any property owner may file a written appeal of the Special Tax with CFD No. 32 claiming that the amount or application of the Special Tax is not correct. The appeal must be filed not later than one calendar year after having paid the Special Tax that is disputed, and the appellant must be current in all payments of Special Taxes. In addition, during the term of the appeal process, all Special Taxes levied must be paid on or before the payment date established when the levy was made.

The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination.

If the property owner disagrees with the CFD Administrator's decision relative to the appeal, the owner may then file a written appeal with the City Council, whose subsequent decision shall be final and binding on all interested parties. If the decision of the CFD Administrator or subsequent decision by the City Council requires the Special Tax to be modified or changed in favor of the property owner, then the CFD Administrator shall determine if sufficient Special Tax revenue is available to make cash refund. If a cash refund cannot be made, then an adjustment shall be made to credit future Special Tax levy(ies).

This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to filing any legal action by such owner.

G. MANNER OF COLLECTION

The Special Taxes shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that the Special Taxes may be collected in such other manner as the City Council shall determine, including direct billing of affected property owners.

H. TERM OF SPECIAL TAX

The Special Tax shall continue to be levied indefinitely on an annual basis on all Taxable Property in CFD No. 32.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, CALLING SPECIAL ELECTION FOR CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES).

WHEREAS, on this date, the City Council (the “City Council”) of the City of Ontario (the “City”), pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), adopted a resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 32 (Archibald/Schafer – Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District” (the “Resolution of Formation”), establishing City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) (the “Community Facilities District”), authorizing the levy of a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District; and

WHEREAS, pursuant to the provisions of the Resolution of Formation, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District are to be submitted to the qualified electors of the Community Facilities District as required by the Act; and

WHEREAS, the City Council desires to designate the City Clerk of the City (the “City Clerk”) as the election official for the special election provided for herein; and

WHEREAS, there has been filed with the City Clerk a letter from the Registrar of Voters of the County of San Bernardino indicating that no persons were registered to vote within the territory of the proposed Community Facilities District as of February 25, 2015, and, accordingly, that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings on the establishment of the Community Facilities District; and

WHEREAS, there has been filed with the City Clerk consents and waivers of all of the landowners of record in the Community Facilities District waiving any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said special election, including any time limit or requirement applicable to an election pursuant to Article 5 of the Act (commencing with Section 53345 of the Act), consenting to the holding of said special election on March 17, 2015 and waiving any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act; and

WHEREAS, the City Clerk has concurred in said waivers and has concurred in holding said special election on March 17, 2015.

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

SECTION 1. Pursuant to Sections 53326 and 53325.7 of the Act, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be submitted to the qualified electors of the Community Facilities District at an election called therefor as provided below.

SECTION 2. The City Clerk is hereby designated as the official to conduct said election.

SECTION 3. As authorized by Section 53353.5 of the Act, the propositions to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District shall be combined into one ballot proposition.

SECTION 4. The City Council hereby finds and determines that no persons were registered to vote within the territory of the proposed Community Facilities District as of February 25, 2015, and that 12 or more persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public hearings heretofore held by the City Council on the establishment of the Community Facilities District. Accordingly, pursuant to Section 53326 of the Act, the vote shall be by the landowners of the Community Facilities District and each person who is the owner of land as of the close of said public hearings, or the authorized representative thereof, shall have one vote for each acre or portion of an acre that he or she owns within the Community Facilities District not exempt from the special tax.

SECTION 5. The City Council hereby finds and determines that the qualified electors of the Community Facilities District have unanimously consented (a) to the waiver of any time limit specified by Section 53326 of the Act and any requirement pertaining to the conduct of said election, (b) to the holding of said election on March 17, 2015, and (c) to the waiver of any impartial analysis, arguments or rebuttals, as set forth in Sections 53326 and 53327 of the Act. The City Council hereby finds and determines that the City Clerk has concurred in said waivers and has concurred in holding said election on March 17, 2015.

SECTION 6. The City Council hereby calls a special election to submit to the qualified electors of the Community Facilities District the combined proposition to levy a special tax within the Community Facilities District and to establish an appropriations limit for the Community Facilities District, which election shall be held at 303 East B Street, Ontario, California, California, on March 17, 2015. The City Council has caused to be provided to the City Clerk, as the official to conduct said election, the Resolution of Formation, a certified map of sufficient scale and clarity to show the boundaries of the Community Facilities District, and a sufficient description to allow the City Clerk to determine the boundaries of the Community Facilities District.

The voted ballots shall be returned to the City Clerk not later than 7:30 p.m. on March 17, 2015; provided, however, that if all of the qualified electors have voted prior to such time, the election may be closed with the concurrence of the City Clerk.

SECTION 7. Pursuant to Section 53326 of the Act, the election shall be conducted by mail or hand-delivered ballot pursuant to Section 4000 *et. seq.* of the California Elections Code. Except as otherwise provided in the Act, the provisions of law regulating elections of the City, insofar as they may be applicable, will govern the election.

SECTION 8. The form of the ballot for said election is attached hereto as Exhibit A and by this reference incorporated herein, and such form of ballot is hereby approved. The City Clerk shall cause to be delivered to each of the qualified electors of the Community Facilities District a ballot in said form. Each ballot shall indicate the number of votes to be voted by the respective landowner to which it pertains.

Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The identification envelope for return of the ballot shall be enclosed with the ballot, shall have the return postage prepaid, and shall contain: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration described in clause (b) above, and (e) a notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

Analysis and arguments with respect to the ballot proposition are hereby waived, as provided in Section 53327 of the Act.

SECTION 9. The City Clerk shall accept the ballots of the qualified electors in the office of the City Clerk at 303 East B Street, Ontario, California, to and including 7:30 p.m. on March 17, 2015, whether said ballots be personally delivered or received by mail. The City Clerk shall have available ballots which may be marked at said location on the election day by said qualified electors.

SECTION 10. The City Council hereby determines that the services financed by the Community Facilities District are necessary to meet increased demands placed upon local agencies as a result of development occurring in the Community Facilities District.

SECTION 11. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 12. This Resolution shall take effect immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17th day of March 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 17, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held March 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

EXHIBIT A

OFFICIAL BALLOT

CITY OF ONTARIO
MARCH 17, 2015

SPECIAL ELECTION

This ballot is for a special, landowner election. The number of votes to be voted pursuant to this ballot is 60.

INSTRUCTIONS TO VOTERS:

To vote on the measure, mark a cross (+) in the voting square after the word "YES" or after the word "NO". All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of Ontario and obtain another.

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 32
(ARCHIBALD/SCHAEFER – SERVICES)

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) (the "Community Facilities District") be authorized to levy a special tax in order to finance certain services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$20,000,000, all as specified in the Resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District," adopted by the City Council of the City of Ontario on March 17, 2015?

Yes: ☐

No: ☐

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, DECLARING RESULTS OF SPECIAL ELECTION AND
DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN.

WHEREAS, on March 17, 2015, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services)" (the "Resolution Calling Election"), calling for a special election of the qualified electors within City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) (the "Community Facilities District"); and

WHEREAS, pursuant to the terms of the Resolution Calling Election and the provisions of the Act, the special election was held on March 17, 2015; and

WHEREAS, the City Clerk of the City (the "City Clerk") has certified the canvass of the returns of the election and has filed a Canvass and Statement of Results of Election (the "Canvass"), a copy of which is attached hereto as Exhibit A.

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

SECTION 1. The City Council has received, reviewed and hereby accepts the Canvass.

SECTION 2. The City Council hereby finds and declares that the ballot proposition submitted to the qualified electors of the Community Facilities District pursuant to the Resolution Calling Election has been passed and approved by such electors in accordance with Section 53328 and Section 53325.7 of the Act.

SECTION 3. The City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of San Bernardino a notice of special tax lien in the form required by the Act, said recording to occur no later than fifteen days following adoption by the City Council of this Resolution.

SECTION 4. The officers, employees and agents of the City are hereby authorized and directed to take all actions and do all things which they, or any of them, may deem necessary or desirable to accomplish the purposes of this Resolution and not inconsistent with the provisions hereof.

SECTION 5. This Resolution shall take effect immediately upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17th day of March 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 17, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held March 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO
COMMUNITY FACILITIES DISTRICT NO. 32
(ARCHIBALD/SCHAEFER – SERVICES)

CANVASS AND STATEMENT OF RESULTS OF ELECTION

I hereby certify that on March 17, 2015, I canvassed the returns of the special election held on March 17, 2015, for the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), that the total number of ballots cast in said Community Facilities District and the total number of votes cast for and against the proposition are as follows and that the totals as shown for and against the proposition are true and correct:

	<u>Qualified</u> <u>Landowner</u>	<u>Votes</u>		
	<u>Votes</u>	<u>Cast</u>	<u>YES</u>	<u>NO</u>
City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) Special Election, March 17, 2015	60			

MEASURE SUBMITTED TO VOTE OF VOTERS: Shall the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) (the “Community Facilities District”) be authorized to levy a special tax in order to finance certain services and shall the annual appropriations limit of the Community Facilities District be established in the amount of \$20,000,000, all as specified in the Resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District,” adopted by the City Council of the City of Ontario on March 17, 2015?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 17th day of March, 2015.

By: _____
Mary E. Wirtes, MMC, City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING
SPECIAL TAXES WITHIN THE CITY OF ONTARIO COMMUNITY
FACILITIES DISTRICT NO. 32 (ARCHIBALD/SCHAEFER – SERVICES).

WHEREAS, on February 3, 2015, the City Council (the “City Council”) of the City of Ontario (the “City”), pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”), adopted a resolution entitled “A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes” stating its intention to establish City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services) (the “Community Facilities District”) and to finance certain services (the “Services”); and

WHEREAS, on March 17, 2015, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled “A Resolution of the City Council of the City of Ontario, California, of Formation of the City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services), Authorizing the Levy of a Special Tax within the Community Facilities District and Establishing an Appropriations Limit for the Community Facilities District” (the “Resolution of Formation”) and “A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 32 (Archibald/Schaefer – Services)”, which resolutions established the Community Facilities District, authorized the levy of a special tax within the Community Facilities District and called an election within the Community Facilities District on the proposition of levying a special tax within the Community Facilities District and establishing an appropriations limit for the Community Facilities District, respectively; and

WHEREAS, on March 17, 2015, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act.

THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS
FOLLOWS:

SECTION 1. The City Council hereby authorizes and levies special taxes within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the “Rate and Method of Apportionment”). The special taxes are hereby levied commencing in fiscal year 2015-16 and in each fiscal year thereafter until the last fiscal year in which such special taxes are authorized to be levied pursuant to the Rate and Method of Apportionment.

SECTION 2. The City Council may, in accordance with subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the special tax in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the special tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method of Apportionment.

SECTION 3. The special tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method of Apportionment.

SECTION 4. The proceeds of the special tax shall only be used to pay, in whole or in part, the cost of providing the Services and incidental expenses pursuant to the Act.

SECTION 5. The special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes, unless another procedure is adopted by the City Council.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 7. This Ordinance shall take effect and shall be in force 30 days after the date of its adoption and prior to the expiration of 15 days from the passage thereof shall be published at least once in the *Inland Valley Daily Bulletin*, a newspaper of general circulation, printed and published in the City of Ontario, State of California, together with the names of the City Council members voting for and against the same.

The City Clerk of the City of Ontario shall certify as to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
March 17, 2015

**SECTION:
PUBLIC HEARINGS**

SUBJECT: A PUBLIC HEARING TO CONSIDER AN APPEAL OF THE PLANNING COMMISSION'S DECISION MODIFYING CERTAIN CONDITIONS OF APPROVAL FOR A CONDITIONAL USE PERMIT (FILE NO. PCUP14-025) RELATING TO ALCOHOLIC BEVERAGE SALES AND LIVE ENTERTAINMENT FOR THE JAZZ CAFÉ ONTARIO RESTAURANT

RECOMMENDATION: That the City Council adopt a resolution upholding the Planning Commission's decision modifying certain conditions of approval and denying the appeal for Conditional Use Permit (File No. PCUP14-025) for the Jazz Café Ontario located at 1133 West Sixth Street, within the Main Street District Land Use designation of the Mountain Village Specific Plan.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: None.

BACKGROUND: In December 2014, the City initiated hearings for the Jazz Café Ontario Restaurant, located at 1133 West Sixth Street, to consider the revocation or reconditioning of their Conditional Use Permit for the on-site sale of alcoholic beverages and the providing of live entertainment. The hearings were initiated after numerous calls for service at the business location by the Police Department (detailed in the Planning Commission staff report). The calls for service ranged from disturbances and public intoxication to assault with a deadly weapon and shots fired.

On January 27, 2015, the Planning Commission considered the Conditional Use Permit modification (File No. PCUP14-025). At the hearing, staff proposed the modification of certain conditions of approval in an attempt to curb ongoing issues related to live entertainment and alcoholic beverage sales in conjunction with the Jazz Café Ontario Restaurant. The modified conditions clarify the allowed types of live entertainment, specify required amount of security for live entertainment events, and reduce hours of operation. The following shows the modified conditions of approval in detail:

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

8

Current General Hours for Restaurant Operation:

- 11:30 AM to 2:30 PM & 4:30 PM to 12:00 AM (midnight) Sunday to Thursday.
- 11:00 AM to 2:00 AM Friday and Saturday.

Proposed General Hours for Restaurant Operation:

- 11:00 AM to 12:00 AM (midnight), daily.
- Last call for alcohol sales at 11:15 PM, daily.

Current Hours for Live Entertainment:

- Limited to Wednesday & Thursday to 12:00 AM, Friday & Saturday to 1:00 AM.

Proposed Hours for Live Entertainment:

- No limit on days or starting times.
- All live entertainment to end at 11:45 PM, daily.

Current Types of Live Entertainment Allowed:

- General entertainment limited to live Jazz bands (5-members), solo musicians, vocalists, and comedians.
- DJ's permitted for private parties, wedding receptions, and on-site banquets.

Proposed Types of Live Entertainment Allowed:

- General entertainment limited to live bands (5-members), solo musicians, vocalists, and comedians.
- Karaoke allowed during business hours.
- DJ's permitted only for private parties - not open to general public.
- No cover charges for live entertainment.

Current Security Requirements:

- Special events would require hiring off-duty officers for security and traffic control through the Police Department.

Proposed Security Requirements:

- Any combination of live bands/DJ's with dancing for general entertainment or private events requires five (5) security guards - two (2) armed in parking lot and three (3) internal.
- During non-entertainment hours of operation, two (2) security guards inside facility to monitor alcoholic beverage sales and consumption.
- Security personnel will remain on-duty until after closing, and parking lot has cleared.

These modified conditions are consistent with conditions imposed on other similar types of businesses which have live entertainment and alcoholic beverage sales, in conjunction with a restaurant. Furthermore, staff believes the conditions are reasonable and fair, and are a result of the ongoing, unabated incidences occurring at the Jazz Café Ontario Restaurant, which have been detailed in the Planning Commission report. After receiving all public testimony on the application, the Planning Commission voted unanimously to approve the modifications, rather than revoking the Conditional Use Permit. The Planning Commission felt that the business owner should be given the opportunity to incorporate the conditions into their operations and demonstrate that the business can be operated effectively. The Planning Commission requested that an update be brought back to them in three months to determine if the modifications were achieving the desired effect, if additional modifications were needed or if some conditions could be relaxed.

The Jazz Café Ontario Restaurant business owner, Robert Granato, did not agree with the modified conditions of approval and filed an Appeal of the Planning Commission Decision. The following includes Robert Granato's reasons for the Appeal, followed by staff's response.

1. **Appellant did not receive advance notice of the Staff Report and Conditions subject to modification until the day before the scheduled hearing of January 27, 2015. Appellant requested a continuance of the hearing at the hearing, however, his request was denied by a vote of 4-3.**

The Appellant, Robert Granato, was mailed a hard-copy of the Planning Commission staff report and conditions of approval on Friday, January 23, 2015 and emailed the same reports on Monday, January 26, 2015. As was discussed during the Planning Commission hearing, the modified conditions of approval of primary concern by Robert Granato was the hours of operation change. The modified conditions require the business to close at midnight daily and the previous conditions allowed for operations until midnight, Sunday through Thursday and until 2:00 AM Friday and Saturday.

The Jazz Café Ontario restaurant has become a nuisance use and due to the nature of the incidences and types of service calls associated with the restaurant, the Planning Commission decided to move forward with the CUP review and decision rather than continuing the project for an additional month.

2. **Appellant was never given a warning to correct any alleged violations before the matter was set for a formal hearing. If Appellant had been given a warning, he could and would have taken corrective measures which would have made the need for the hearing of January 27, 2015, moot.**

The Ontario Police Department and City staff met with Robert Granato, his business partners, and his security team, multiple times over the course of the past year, as documented within the Planning Commission Staff Report and Resolution No. PC14-004. The meetings included discussions about the existing conditions of approval, general operating practices, and security requirements. Furthermore, Ontario Police Department provided options for Robert Granato to conduct his business more responsibly. However, Robert Granato did not substantially change his business practices, as shown by the on-going calls for service.

3. **John Hildebrand, Associate Planner, informed Appellant during an informal meeting with Ontario Police Officer, Robert Sturgis, on October 22, 2014, that he would be receiving a letter from the Planning Department outlining the corrective measures that needed to be taken, however, Mr. Hildebrand never sent Appellant the letter. Appellant has already made significant corrective measures which would have been completed if Mr. Hildebrand had sent Appellant the aforementioned letter.**

The business owner, Robert Granato, as well as the property owner, Rita C. Hansen Family Trust were mailed a "Notice of Commencement of Revocation Proceedings" letter on December 23, 2014. Development Code states that the process for CUP revocation and modification, follow the same procedure for noticing. The letter contained detailed information regarding incidences/violations, which occurred up to that point, as well as Police Department meetings with the applicant and it was included as part of the Planning Commission report package. Although "corrective measures" were discussed multiple times over the course of the past year, final "corrective measures" were included in the Conditional Use Permit modification as conditions of approval.

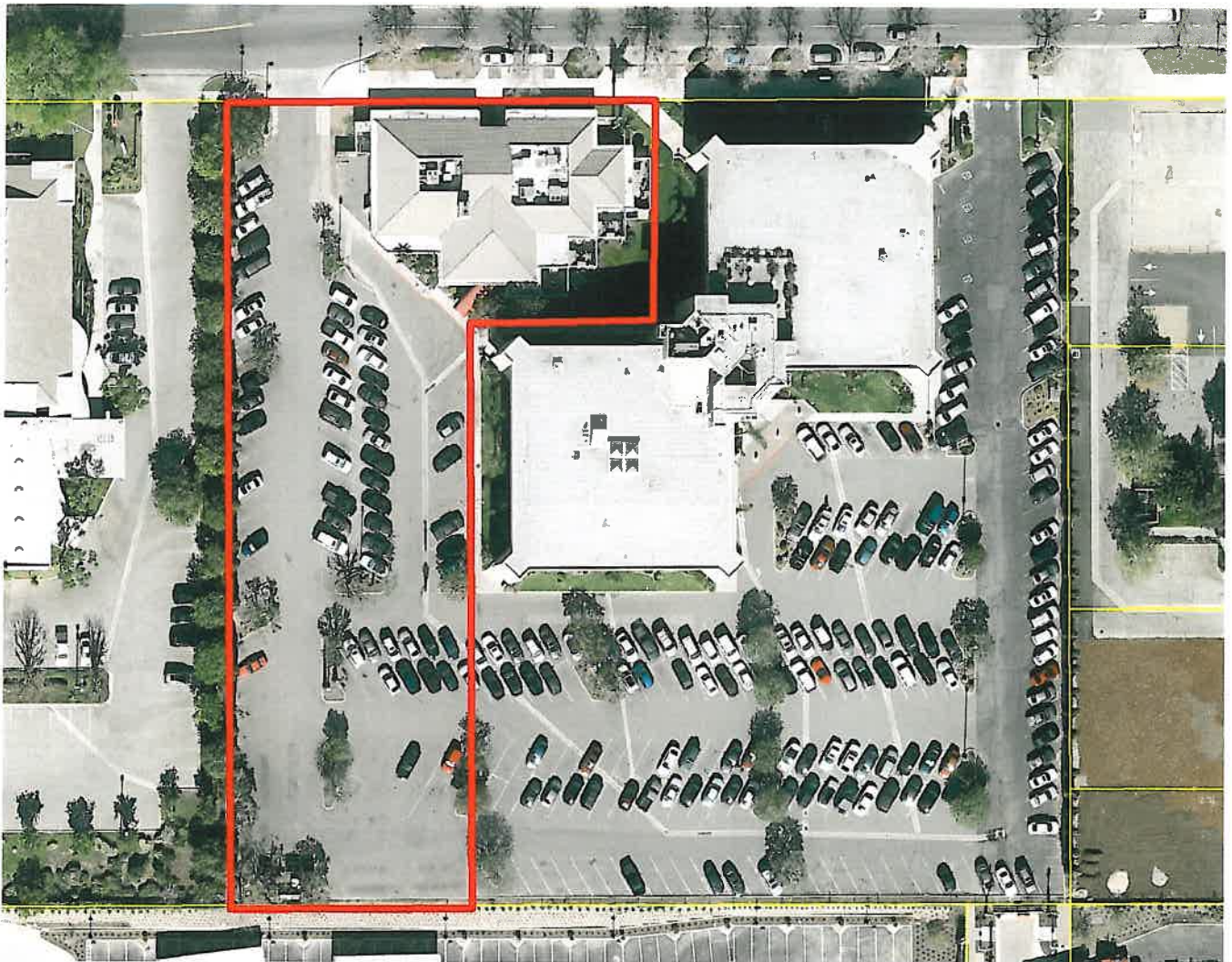
4. The modifications are too severe and will, in all likelihood, cause the Appellant to go out of business.

City staff works with all Ontario businesses to ensure they are operated in a safe, responsible manner and that they do not negatively impact other surrounding businesses or the community at large. In the case where a business first requires Conditional Use Permit approval, the City may impose certain conditions of operation to mitigate potential impacts the business may create. Should those mitigation measures be insufficient to address operational problems, the City has not only the right, but also the responsibility to bring that business into compliance by imposing further operational conditions or revoking the use altogether.

The Police Department and City staff have worked with Robert Granato over the course of the previous year to implement measures which would reduce the number of incidences and general calls for service in conjunction with live entertainment and alcoholic beverage sales. Furthermore, the Ontario Police Department has proactively sent patrol vehicles to the area during times of business closure, in an attempt to reduce potential incidences. Public safety is paramount and it is the City's responsibility to ensure that the general public will not be negatively affected by any business operating within the City. The modified conditions of approval have been imposed to address the ongoing issues and substantial calls for service in an effort to abate the nuisance business operations.

Pursuant to Development Code Sec. 9-1.0520 and reiterated on the Appeal application, an appeal "...shall specifically state wherein an administrative decision is not in accordance with the provisions of the Code, or wherein it is claimed that there was an error or abuse of discretion by the Development Advisory Board, Zoning Administrator, or the Planning Commission or where a decision by the Development Advisory Board, Zoning Administrator, or the Planning Commission is not supported by the record." Furthermore, anyone speaking at the Appeal hearing is limited to raising only those issues stated in the Appeal application. Mr. Granato's appeal does not specifically address an abuse of discretion or an error on the part of the Planning Commission but a disagreement with the modified conditions and the manner in which those conditions were transmitted. The conditions imposed by the Planning Commission are reasonable in light of the issues identified by City staff, allow the business to continue to operate, and the Planning Commission provided an opportunity to reevaluate the business status in three months.

Exhibit A: Aerial Map



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING PLANNING COMMISSION'S DECISION TO MODIFY CERTAIN CONDITIONS OF APPROVAL RELATED TO ALCOHOLIC BEVERAGE SALES AND LIVE ENTERTAINMENT, IN CONJUNCTION WITH JAZZ CAFÉ ONTARIO RESTAURANT, LOCATED AT 1133 WEST SIXTH STREET, WITHIN THE MAIN STREET DISTRICT LAND USE DESIGNATION OF THE MOUNTAIN VILLAGE SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF – APN: 1008-431-23.

WHEREAS, Jazz Café Ontario Restaurant ("Applicant") has filed an appeal of Planning Commission's decision, Resolution No. PC14-004, modifying conditions of approval related to Conditional Use Permit, File No. PCUP14-025, as described in the title of this Resolution (hereinafter referred to as "Application", "Project", or "Appeal"); and

WHEREAS, the Application applies to property located 1133 West Sixth Street with a street frontage of approximately 215-feet and a lot depth of approximately 410-feet and is presently improved with the Jazz Café Ontario Restaurant; and

WHEREAS, the property to the north of the Project site is within the Entertainment District of the Mountain Village Specific Plan and is developed with an Edwards Movie Theater, retail shops, and accompanying parking structure. The property to the south is within the Main Street District of the Mountain Village Specific Plan and is developed with a Walmart shopping center. The property to the east is within the Main Street District of the Mountain Village Specific Plan and is developed with a three-story, multi-tenant office building. The property to the west is within the Administrative Professional zoning district and is developed with a single-story medical office building; and

WHEREAS, the Planning Commission approval of Conditional Use Permit File No. PCUP14-025, on January 27, 2015, resulted in imposing new operating conditions of approval (Resolution No. PC14-004) upon the Jazz Café Ontario Restaurant, for the purpose of reducing calls for service due to alcoholic beverage sales and live entertainment related incidences; and

WHEREAS, in addition to approving Conditional Use Permit File No. PCUP14-025 and accompanying conditions of approval, this CUP became the guiding document for alcoholic beverage sales and live entertainment operations for the Jazz Café Ontario Restaurant, consolidating the previous Conditional Use Permit (File No. PCUP00-009), approved by the Zoning Administrator, on May 10, 2000 (Decision No. 2000-16), and previous Conditional Use Permit Amendment, approved by the Planning Commission on March 25, 2003 (Resolution No. 2003-025); and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, on January 27, 2015, the Planning Commission of the City of Ontario conducted a duly noticed public hearing and issued Resolution No. PC15-004, approving Conditional Use Permit, File No. PCUP14-025, modifying previous Conditional Use Permit conditions of approval; and

WHEREAS, on February 4, 2015, the Jazz Café Ontario Restaurant business owner, Robert Granato, filed an Appeal of the Planning Commission decision (Resolution No. PC15-004); and

WHEREAS, on March 17, 2015, the City Council of the City of Ontario conducted a hearing to consider the Appeal, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the City Council of the City of Ontario, as follows:

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

a. The Project is categorically exempt from environmental review pursuant to Section 15321 (Enforcement Actions by Regulatory Agencies of the CEQA Guidelines); and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby reaffirms the following Planning Commission findings:

a. That the Conditional Use Permit contains certain conditions that are not being complied with on a certain date or within a period of time. Pursuant to the City of Ontario Police Department reports as contained in the Planning Commission staff

report of January 27, 2015, calls for service have occurred over the past year and the operator has failed to take sufficient steps necessary to curtail the calls for service.

b. That the failure to comply with the conditions was done knowingly and intentionally or with reckless disregard of the requirements for compliance or, if not knowingly or intentionally or with reckless disregard, the failure to comply was not cured by the date of the hearing. As evidenced by the City of Ontario Police Department reports noted in the Planning Commission staff report of January 27, 2015, the restaurant operator (Robert Granato) failed to resolve ongoing incidences resulting from alcoholic beverage sales and live entertainment, as documented by an undue amount of service calls, creating a nuisance business and causing public health and safety concerns. City staff met with Robert Granato multiple times over the course of the past year to discuss the issues and offer corrective measures, as documented by City of Ontario Police Department.

c. That the Planning Commission did not err or abuse their discretion in approving the Conditional Use Permit, thereby modifying the conditions of approval, and, rather, provided reasonable conditions of approval aimed at addressing the specific issues encountered on the site. Additionally, the Planning Commission provided the opportunity for reevaluate the business status in three months.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby upholds the Planning Commission's decision (Resolution PC15-004) for File No. PCUP14-025 and denying the appeal request.

SECTION 4. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. The City Clerk shall certify to the adoption of the Resolution.

PASSED, APPROVED AND ADOPTED this 17th day of March, 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2015- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held March 17, 2015 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2015- duly passed and adopted by the Ontario City Council at their regular meeting held March 17, 2015.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
March 17, 2015

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE PROVISIONS OF THE ONTARIO MUNICIPAL CODE TITLE 9 (DEVELOPMENT CODE) REGARDING THE LOCATION AND OPERATION OF MASSAGE ESTABLISHMENTS AND THE OFFERING OF MASSAGE SERVICES

RECOMMENDATION: That the City Council introduce and waive further reading of an ordinance approving the Development Code Amendment (File No. PDCA15-001), amending the provisions relating to the location and operation of massage establishments and the offering of massage services.

COUNCIL GOALS: Regain Local Control of the Ontario International Airport

Invest in the Growth and Evolution of the City's Economy

Maintain the Current High Level of Public Safety

Operate in a Businesslike Manner

Pursue City's Goals and Objectives by Working with Other Governmental Agencies

Focus Resources in Ontario's Commercial and Residential

FISCAL IMPACT: None.

BACKGROUND: The passage of SB 731 established a voluntary certification process for massage technicians through the California Massage Therapy Council (CAMTC), a non-profit benefit corporation, to create uniform standards for massage practitioners and therapists. Furthermore, the legislation provided massage therapists licensed by the State the ability to practice massage without any further license, permit or authorization. The legislation required massage establishments to be treated like other personal services uses, thereby limiting the City's land use authority.

In 2014, the passage of AB 1143 reinstituted the ability of local governments to regulate massage establishments through reasonable land use controls. The bill provided for:

- The ability of cities to require massage establishments to obtain a conditional use permit; and

STAFF MEMBER PRESENTING: Scott Murphy, Planning Director

Prepared by: Scott Murphy
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 03/17/2015

Approved: _____

Continued to: _____

Denied: _____

9

- The ability to establish reasonable hours of operation; and
- The ability of local jurisdictions to conduct background checks on the business owners; and
- The ability of local jurisdictions to require background checks and licensing of massage therapists that are not licensed by CAMTC; and
- The ability of CAMTC to discipline massage therapists found in violation of the provisions of the law; and
- The ability to conduct reasonable inspections to ensure compliance with the local ordinance; and
- The ability of local jurisdictions to require a massage business owner to provide a list of all employees and independent contractors and their CAMTC certifications and to notify the City should this information change; and
- The ability to establish a dress code for therapists, consistent with the bill.

As a result, the City has initiated an amendment to the Development Code to provide reasonable regulations of massage establishments. The Code Amendment includes:

1. Table 13-1 of Article 13 of the Development Code shall be amended to conditionally permit massage establishments in the C2, C3, and C4 zoning designations; and
2. Section 9-1.1305 Massage Establishments and Services shall be amended to:
 - a) Require all massage therapist to obtain a certificate from the California Massage Therapy Council (CAMTC) or the City of Ontario prior to engaging in the business of massage; and
 - b) Limit the hours of operation to 8:00 a.m. to 10:00 p.m. on the same day. These hours of operation are similar to expected/anticipated hours of other services uses (e.g. doctor offices, beauty salons, insurance offices, , etc.); and
 - c) Require all employees to be clothed in a manner consistent with the Massage Therapy Act (AB 1147), which prohibits clothing that is transparent, see-through or substantially exposes the certificate holders undergarments; swim attire, unless providing water-based massage approved by CAMTC; clothing that exposes the certificate holders breasts, buttocks or genitals; or other garments determined by CAMTC to constitute unprofessional attire based on custom and practice of the profession in California; and
 - d) Require as a condition of business license issuance for a massage establishment, the business owner to provide a list of all employees and independent contractors and their CAMTC or City certifications. The business owner shall notify the City should this information change. Additionally, with the annual renewal of their business license, the business owner shall provide an updated list of all employees and their certifications; and

- e) Require as a condition of business license issuance for a massage establishment, the permittee to consent to the right of authorized representatives of the City's Police Department, Building Department, Fire Department, Code Enforcement Officers or San Bernardino County Health Department to enter the massage establishment during regular business hours for the purpose of making reasonable unscheduled inspections, to observe and enforce compliance with applicable regulations, laws, and provisions of this chapter; and
- f) Require a 300-foot separation between a massage establishment and any sensitive land use, including schools, preschools, daycare facilities or parks. In an article in Western Cities Magazine from March 2014, the significant expansion of massage establishments, post-SB 731, was noted. Additionally, the article mentioned that the Polaris Project, an organization formed to eradicate human trafficking, estimated that there were more than 5,000 “fake” massage businesses nationwide. Numerous websites host profiles of local massage establishments where consumers can comment and post reviews about their experiences, including information about sexual services they received. In Sacramento County 47 of the 87 open massage establishments had two or more comments from reviewers suggesting or explicitly stating that they received sexual services within the past year. Based on information gathered from surrounding businesses and preliminary research, 22 massage businesses in Sacramento County have indicators of commercial sex activity. In Ontario, similar techniques are used to identify businesses potentially engaging in commercial sex activity. These investigations have led to several raids and arrests for suspicion of prostitution. Given this information, a separation from sensitive land uses is appropriate.

On February 24, 2015, the Planning Commission considered the Development Code Amendment and unanimously recommended approval of the application to the City Council.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING THE PROVISIONS OF THE ONTARIO MUNICIPAL CODE TITLE 9 (DEVELOPMENT CODE) REGARDING THE LOCATION AND OPERATION OF MASSAGE ESTABLISHMENTS AND THE OFFERING OF MASSAGE SERVICES, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant" or "City") has initiated an Application for the approval of a Development Code Amendment, File No. PDCA15-001, to amend Title 9 of the Ontario Municipal Code regarding the location and operation of massage establishments and the offering of massage services (hereinafter referred to as "Application" or "Project"); and

WHEREAS, Government Code § 51030 recognizes the right of the City Council to enact an ordinance which provides for the licensing for regulation of the business of massage when carried on within the City; and

WHEREAS, in addition to the City's constitutional police powers, Government Code § 65850 permits the City to regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources and other purposes, to regulate the size and use of lots, yards, courts and other open spaces, and to regulate the intensity of land use; and

WHEREAS, AB1147, adopted by the State legislature and signed by the Governor on September 18, 2014, provides local jurisdictions the opportunity to impose reasonable requirements on the location of massage establishments and the offering of massage services; and

WHEREAS, while many massage establishments offered legitimate services, articles reference a connection between massage establishments and illicit commercial sex activity; and

WHEREAS, operation of these illicit businesses poses a threat to the health, safety, and welfare of the citizens of Ontario; and

WHEREAS, the City Council finds and determines the need to adopt reasonable regulations which promote the operation of legitimate massage establishments and prevent problems of blight and deterioration which typically accompany, and are brought about by, large numbers of massage establishments that may act as fronts for prostitution and other illegal activity; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the proposed project is located within the Airport Influence Area of Ontario International Airport (ONT) and was evaluated and found to be consistent with the policies and criteria of the Airport Land Use Compatibility Plan (ALUCP) for ONT; and

WHEREAS, the Project is exempt from CEQA pursuant to a categorical exemption (listed in CEQA Guidelines Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

WHEREAS, on February 24, 2015, the Planning Commission of the City of Ontario conducted a public hearing to consider the Project, and concluded said hearing on that date. After considering all public testimony the Planning Commission recommended City Council approval of the Development Code Amendment; and

WHEREAS, on March 17, 2015, the City Council of the City of Ontario conducted a public hearing and introduced this Ordinance; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

a. The Project is categorically exempt from environmental review pursuant to Section 15060(b) of the CEQA Guidelines, as the project will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

b. The application of the categorical exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

c. The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2. Based upon the substantial evidence presented to the Planning Commission, the Planning Commission's recommendation, the evidence presented to the City Council, and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

a. The proposed Development Code Amendment is consistent with the goals and policies of the General Plan.

b. The proposed Development Code Amendment is reasonable and beneficial, and in the interest of good zoning practice.

c. The proposed Development Code Amendment will not have a significant adverse impact on the environment.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, and the recitals contained in this Ordinance, the City Council approves this Ordinance amending Title 9 of the Ontario Municipal Code (Development Code), as shown on the attached Exhibit "A".

SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2015.

PAUL S. LEON, MAYOR

ATTEST:

MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held March 17, 2015, and adopted at the regular meeting held _____, 2015, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Exhibit "A"

Table 13-1 of Article 13 is amended to read in its entirety as follows:

	AP	NC	C1	C2	C3	C4	EA
Massage Establishments	---	---	---	C	C	C	U

P: Permitted Use

C: Conditional use permit required

U: Refer to underlying zoning designation

---: Prohibited use

Section 1-9.1305 is amended to read in its entirety as follows:

MESSAGE ESTABLISHMENTS AND SERVICES. The following operational standards shall govern any business engaged in massage or any person acting as a massage practitioner or massage therapist:

- A. No person shall engage in the business of massage, or act as a massage practitioner or massage therapist, unless:
 - 1. Such person holds valid massage practitioner or massage therapist certification issued by the California Massage Therapy Council (CAMTC) pursuant to Business and Professions Code Section 4600 et seq.; or
 - 2. Such person holds a valid massage therapist permit issued by the City, pursuant to the following provisions:
 - a. Application and Filing.
 - (i) Any person desiring a massage therapist permit shall make application to the Zoning Administrator, along with a nonrefundable filing fee set by resolution of the City Council, to defray the City's cost of the investigation, inspections and report required by this chapter.
 - (ii) The application and fee required under this section shall be in addition to any license, permit or fee required under any other chapter of this Code.
 - (iii) Separate permits need not be obtained by a massage therapist operating in more than one location within the City, provided that the application for a single permit discloses each location at which the therapist may operate.
 - (iv) The application for a permit does not authorize the applicant to practice massage until such permit has been granted.

- (v) Each application for a massage therapist permit shall contain the following information:
- (1) The full true name under which the business will be conducted.
 - (2) The present or proposed address or addresses where the business is to be conducted.
 - (3) The applicant's full, true name, any other names used, date of birth, California driver's license number or California identification number, social security number, present residence address and telephone number, and the sex, height, weight, color of hair, and color of eyes of the applicant.
 - (4) The address of the previous 2 residences of the applicant and the inclusive dates at each address.
 - (5) Two (2) portrait photographs measuring 2 inches in width by 2 inches in height, taken within the 6 month period prior to application submittal.
 - (6) The applicant's business, occupation, and employment history for 5 years preceding the date of application, and the inclusive dates of same.
 - (7) At least 3 written statements, including dates of relationships, signed by persons who have knowledge of the applicant's background, qualifications and suitability for the position of massage therapist. Those persons shall have known the applicant for at least 3 years preceding the date of application.
 - (8) The permit history of the applicant, including whether such person has ever had any permit or license issued by any agency, board, city, county, territory or state, and the date of issuance for such permit or license and whether such permit or license was revoked or suspended. In addition, whether a vocational or professional license or permit was issued, revoked, or suspended, and the reason therefor.
 - (9) Convictions for any crime involving conduct which requires registration under any state law similar to and including California Penal Code Sec. 290, or for conduct which is a violation of the provisions of any state law similar to and including California Penal Code Sec. 266i, 315, 316, 318 or Sec. 647(b), or any crime involving pandering, dishonesty, fraud, deceit, or moral turpitude.

- (10) Convictions of any felony offense involving the sale of a controlled substance specified in California Health & Safety Code Sec. 11054, 11055, 11056, 11057 or 11058, or conviction in any other state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses of this division.
- (11) A complete definition of all services to be provided.
- (12) The name and address of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section wherein the business or profession of massage is carried on.
- (13) Acceptable written proof that the applicant is at least 18 years of age.
- (14) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation or Charter together with the state and date of incorporation, and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than 5 percent of the stock of that corporation.
- (15) If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subdivision pertaining to corporate applicants shall apply.
- (16) The name of the person designated by the applicant, corporation or partnership to act as its responsible managing officer in charge of the premises.
- (17) Acceptable written proof that the person designated by the applicant, corporation or partnership to act as its responsible managing officer in charge of the premises, is at least 18 years of age.

- (18) The applicant and the person designated by the applicant, corporation or partnership to act as its responsible managing officer in charge of the premises shall be required to furnish fingerprints for the purpose of establishing identification. Any required fingerprinting fee will be the responsibility of the applicant.
- (19) A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.
- (20) The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the property that a massage establishment will be located on his or her property.
- (21) Authorization for the City, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application.
- (22) A certificate from a medical doctor stating that the applicant (other than an owner not acting as a massage therapist) has, within 30 days immediately prior thereto, been examined and found to be free of any contagious or communicable disease.
- (23) The applicant (other than an owner not acting as a massage therapist) shall furnish a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method, profession, and work of massage therapists is taught.
- (24) The applicant shall, within 7 calendar days of the change, submit any change of address or fact that may occur during the procedure of applying for a massage establishment permit.
- (25) Such other identification and information as the Police Chief may require in order to discover the truth of the matters hereinbefore specified as required to be set forth in the application.

- (26) Nothing contained in these provisions shall be construed to deny to the Police Chief the right to take additional photographs of the applicant, nor shall anything contained in this chapter be construed to deny the right of the Police Chief to confirm the height and weight of the applicant.
- (vi) The applicant must furnish proof of education and training in accordance with one of the following:
 - (1) A diploma or certificate of graduation and transcripts from a 500 hour course of instruction from either a recognized school of massage or from an existing school or institution of learning outside the State, together with a certified transcript of the applicant's school records showing date of enrollment, hours of instruction and graduation from a course having at least a minimum requirement prescribed by Title 5, Division 21, of the California Administrative Code, wherein the theory, method, profession and work of massage are taught, and a copy of the school's approval by its State Board of Education. For the purpose of this provision, the term "recognized school of massage" shall mean any school or institution of learning which teaches the theory, ethics, practice, profession or work of massage, which has been approved pursuant to the California Education Code. Schools offering a correspondence course not requiring attendance shall not be deemed a State-recognized school. The City shall have a right to confirm that the applicant has actually attended class in a State-recognized school; or
 - (2) A diploma or certificate of graduation and transcripts from a minimum 200 hour course of instruction from schools or institutions as described in subparagraph (i), above, and furnish proof of completion of up to 300 hours of continuing education courses in massage from schools or institutions as described in subparagraph (i), above, or from equivalent organizations as determined by the Zoning Administrator. The minimum combined total course hours and continuing education hours shall equal no less than 500 hours.

- (vii) Each applicant must furnish proof that they hold and maintain a current national certification. For the purpose of this provision, the term "national certification" shall mean an independently prepared and administered national certification exam, which has been recognized by objective standards to fairly evaluate professional levels of skill, safety and competence, as determined by the National Commission for Certifying Agencies (NCCA) or a similar certifying body.
- (viii) Each applicant must furnish proof of membership in a state or national professional massage therapy organization or association, and that they are in good standing. For the purpose of this provision, the term "state or national professional massage therapy organization or association" means an organization or association for massage professionals, which meets each of the following requirements:
 - (1) Requires that its members meet minimal educational requirements appropriate to the nature of their work;
 - (2) Offers and encourages participation in continuing education programs;
 - (3) Has an established code of ethics and has enforcement procedures for the suspension and revocation of membership of persons violating the code of ethics; and
 - (4) The organization does not discriminate on the basis of race, sex, creed, color, age or sexual orientation.
- (ix) Each applicant must furnish the full name, address and telephone number of each massage establishment where the therapist will be employed.
- (x) Such other identification and information as the Zoning Administrator may require in order to discover the truth of the matters herein specified as required to be set forth in the application.

b. Investigation.

- (i) The Zoning Administrator shall refer massage therapist applications to the Police Chief for an investigation and recommendation.

(ii) The Police Chief shall conduct an investigation in such manner deemed appropriate, in order to ascertain whether such permit should be issued as requested. Upon completion of the investigation, the Police Chief shall recommend that the permit be granted if it is found:

- (1) All required fees have been paid.
- (2) The application conforms in all respects to the provisions of this chapter.
- (3) The applicant has not made a material misrepresentation in the application.
- (4) The applicant has not been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under any state law similar to and including California Penal Code Sec. 290, or for conduct which is a violation of the provisions of any state law similar to and including California Penal Code Sec. 266i, 315, 316, 318 or 647(b), or any crime involving pandering, dishonesty, fraud, deceit, or moral turpitude.
- (5) The applicant has not been convicted in a court of competent jurisdiction of an offense involving the sale of a controlled substance specified in California Health & Safety Code Sec. 11054, 11055, 11056, 11057 or 11058, or conviction in any other state of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses of this division.
- (6) The applicant has not had a massage therapist, or other similar permit or license denied, revoked, or suspended by the City, or any other state or local agency prior to the date of approval.
- (7) The applicant is at least 18 years of age.

c. Review and Action.

- (i) The Zoning Administrator shall approve, conditionally approve or deny the application within 45 days of filing. The decision of the Zoning Administrator shall be final and conclusive in the absence of a timely filed appeal. Any appeal of such action shall be subject to the provisions of Article 5 (Appeals) of this chapter.

- (ii) All permits issued pursuant to the provisions of this chapter shall be nontransferable; provided, however, a change of location of a massage establishment may be permitted pursuant to the provisions of division (e) of these provisions.
- d. Permits not assignable. No massage therapist permit may be sold, transferred or assigned by the permittee, or by operation of law, to any other person or persons. Any such sale, transfer, assignment, or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be deemed terminated and void.
- e. Change of Location.
 - (i) A change of location of any massage therapist must first be approved by the Zoning Administrator, who must determine prior to approval that all ordinances and regulations of the City will be complied with at any proposed new location.
 - (ii) No permittee shall operate under any name or conduct any establishment under any designation not specified in permittee's permit.
 - (iii) Separate permits need not be obtained by a massage therapist operating in more than one location within the City for each such location; provided, that the application for a single permit for more than one location shall disclose each location at which the therapist may operate.
- f. Renewal of Permit.
 - (i) Massage therapists licensed pursuant to these provisions shall have 30 days from the date of expiration to renew their permit.
 - (ii) A massage therapist permit shall be renewed on a biannual basis. Permit renewal shall be contingent upon satisfactory compliance with all requirements of this chapter pertinent to massage services, including a current medical clearance and submission to a background investigation subsequent to fingerprint examination.
 - (iii) Every massage therapist licensed under this chapter shall annually complete at least 20 hours of continuing education courses in massage from schools or institutions as described in division A.2(a)(6) of these provisions, or from equivalent organizations as determined by the Zoning Administrator. Failure to complete such hours and submit proof of such completion in a form satisfactory to the Zoning Administrator at the time of permit renewal shall be grounds for denial of permit renewal.

g. Permit Suspension and Revocation.

(i) The Zoning Administrator shall have jurisdiction to revoke any massage therapist permit granted in accordance with paragraphs (a) through (f), above. The Zoning Administrator may order any permits suspended, pending such action. It shall be unlawful for any person to carry on the business of a massage therapist until the suspended permit has been reinstated by the Zoning Administrator.

(ii) An action to revoke a permit granted pursuant to these provisions shall be accomplished in the following manner:

(1) The Zoning Administrator shall conduct a hearing to determine whether the permit should be revoked. The Zoning Administrator shall prepare and deliver to the permittee, a written statement setting forth the factual basis for the proposed revocation, and shall state the time and place such hearing will be held, at least 10 days prior to the hearing.

(2) A permit may be revoked by the Zoning Administrator based upon any one or more of the following grounds:

(a) Permit approval was obtained by fraud;

(b) The permit is being, or has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation; or

(c) The permit has been so exercised as to be detrimental to the public peace, health, safety, welfare, or so as to constitute a nuisance to the annoyance of surrounding businesses or residents.

(3) The decision of the Zoning Administrator to revoke a permit shall be final and conclusive in the absence of a timely filed appeal.

h. Burden of proof at hearings. Unless otherwise specifically provided by law, the burden is on the permittee-applicant in any hearing conducted in accordance with paragraphs (a) through (g), above, to prove that the decisions made or action taken is unreasonable, erroneous or clearly abusive of discretion.

- B. Every massage establishment shall maintain facilities meeting the following requirements:
1. If wet and dry heat rooms, steam and vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools are offered, they shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open. Bathtubs shall be thoroughly cleaned and disinfected. All walls, ceilings, floors and other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition.
 2. Instruments for performing massage shall not be used on more than one patron unless they have been sterilized using sterilizing methods approved by the San Bernardino County Health Department.
 3. All employees, including massage practitioners and/or therapists, shall be clean, and shall be clothed in a manner consistent with the Massage Therapy Act, Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code.
 4. No person shall enter, be or remain in any part of a massage establishment while in possession of, consuming or using any alcoholic beverage or drugs, except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, manager or permittee shall not permit any such person to enter or remain upon such premises.
 5. No massage service may be carried on within any cubicle, room, booth or any area within a massage establishment which is not immediately accessible to supervisory, safety or inspection personnel during all hours of operation.
 6. No massage establishment employing massage therapists shall be equipped with tinted or "one-way" glass in any room or office.
 7. Pads used on massage tables, or on other furniture upon which massage services are performed, shall be covered with a durable, washable plastic or other waterproof material acceptable to the City.
- C. Massage establishment hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. of the same day.
- D. Maintain a 300-foot separation between a massage establishment and any sensitive land use, including schools, preschools, daycare facilities or parks.
- E. As a condition of business license issuance for a massage establishment, the permittee shall consent to the right of authorized representatives of the City's Police Department, Building Department, Fire Department, Code Enforcement Officers or San Bernardino County Health Department to enter the massage establishment during regular business hours for the purpose of making reasonable unscheduled inspections, to observe and enforce compliance with applicable regulations, laws, and provisions of this chapter.

- F. As a condition of business license issuance for a massage establishment, the business owner shall provide a list of all employees and independent contractors and their CAMTC or City certifications. The business owner shall notify the City should this information change. Additionally, with the annual renewal of their business license, the business owner shall provide an updated list of all employees and their certifications.
- G. The provisions of this section pertaining to massage services shall not apply to the following institutions or classes of individuals, while engaged in the performance of the duties of their respective professions:
1. Hospitals, nursing homes, sanatoriums or other similar health facilities duly licensed by the State;
 2. Recognized schools of massage;
 3. Physicians, surgeons, chiropractors, osteopaths, or physical therapists, who are duly licensed to practice their respective professions in the State, or other persons licensed to practice any healing art pursuant to Business and Professions Code Section 500 et seq.;
 4. Nurses registered under the laws of the State;
 5. Barbers, cosmetologists, beauticians and manicurists who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face, scalp, hands and/or feet of the customer client;
 6. Coaches and trainers in accredited high schools, junior colleges, and colleges or universities, acting within the scope of their employment; and
 7. Trainers of amateur, semi-professional or professional athletes or athletic teams.
- H. Chair Massage Services.
1. Any person, corporation or partnership wishing to perform chair massage in the City must first be doing business at a fixed location in the City, having a valid business license, or a valid home occupation pursuant to the "home occupations" provisions of this section.
 2. Chair massage services may be performed only by a person with a valid massage practitioner or massage therapist certification issued by the California Massage Therapy Council (CAMTC) pursuant to Business and Professions Code Section 4600 et seq. or a valid City massage therapist permit.

3. Chair massage services may only be offered at commercial or industrial places of business within the AP, NC, C1, C2, C3, C4, M1, M2 and M3 zoning districts and the California Commerce Center North (Ontario Mills) Specific Plan.
4. The massage therapist offering chair massage must have a signed contract for service at each location the service is provided. A copy of such contract shall be provided for inspection upon demand, to any City official with responsibility for enforcement of this chapter. The contract shall specify the location, days and times the service is to be offered.
5. Chair massage shall be offered at a set time and day at each location and shall not be offered at any other time. Such service shall only be conducted between the hours of 8:00 a.m. and 10:00 p.m. of the same day.

I. Unlawful Conduct.

1. It shall be unlawful for any person, for financial or other consideration, to massage any other person, or give or administer any bath, or give or administer any of the other service set forth in this chapter for immoral purposes or in a manner intended to arouse, appeal to, or gratify the lust or passions or sexual desires.
2. It shall be unlawful for any massage therapist to massage the genital area of any patron or the breasts of any female patron or for any responsible managing officer in charge of the premises of a massage establishment to allow or permit such massage.
3. It shall be unlawful for a person serving as a massage therapist to be clothed in a manner inconsistent with the Massage Therapy Act, Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code. Massage therapists shall maintain their permit identification card clearly visible on their person during business hours.
4. It shall be unlawful for a massage therapist issued a permit by the City in accordance with division A.2 of these provisions, to perform any massage service at any location other than that location specified on the therapist's permit. If during the life of a permit, the applicant has any change in information concerning the original application, notification must be made to the Zoning Administrator, in writing, within 30 days of the change.
5. It shall be unlawful for any owner, manager, operator, responsible managing employee, or permittee in charge of or in control of a massage establishment to employ or permit a person to act as a massage therapist who is not in possession of a valid, unrevoked massage therapist permit issued pursuant to division A.2 of these provisions, or a valid massage practitioner or massage therapist certification issued by the California Massage Therapy Council (CAMTC) pursuant to Business and Professions Code Section 4600 et seq.

6. It is unlawful for any massage establishment, massage therapist or massage practitioner to provide, or to offer to provide, out-call massage services in the City. For the purpose of this provision, the term "out-call massage services" shall mean to engage in or carry on massage, not at a fixed location, but at a location designated by the customer or client. "Out-call massage services" shall not include chair massage services conducted pursuant to division G of these provisions.

J. Violations and Penalties.

1. Every person, except those persons who are specifically exempted by the massage services provisions pursuant to division F herein, whether acting as an individual, owner, employee of the owner, or operator or employee of the operator, or whether acting as a mere helper for the owner, employee, or operator, or whether acting as a participant or worker in any way who gives massages or conducts a massage establishment or room, or who gives or administers, or who practices the giving or administering of steam baths, electric light baths, electric tub baths, shower baths, sponge baths, vapor baths, fomentations, sunbathes, mineral baths, alcohol rubs, Russian, Swedish, or Turkish baths, or any other type of baths, salt glows, or any type of therapy, or who does or practices any of the other services or acts set forth in these provisions, without first obtaining a valid, unrevoked massage therapist permit issued pursuant to division A.2 of these provisions, or a valid massage practitioner or massage therapist certification issued by the California Massage Therapy Council (CAMTC) pursuant to Business and Professions Code Section 4600 et seq., or who shall violate any operational standard of the massage services provisions, shall be guilty of a misdemeanor.
2. Any owner, operator, manager, or permittee in charge or in control of a massage establishment who knowingly employs a person performing as a massage therapist, as defined in this chapter, who is not in possession of a valid, unrevoked massage therapist permit issued pursuant to division A.2 of these provisions, or a valid massage practitioner or massage therapist certification issued by the California Massage Therapy Council (CAMTC) pursuant to Business and Professions Code Section 4600 et seq., or who allows such an employee to perform, operate, or practice within such a place of business shall be guilty of a misdemeanor.
3. Any owner, operator, manager, or permittee in charge or in control of a massage establishment under this chapter shall be a Responsible Person. "Responsible Person" shall mean a person who causes a violation of this chapter or the Ontario Municipal Code to occur, or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee, or independent contractor causes a violation to occur, or allows a violation to exist or continue. A Responsible Person shall be liable for the violation of his or her agent, employee, or independent contractor. For the purposes of this chapter, there may be more than one Responsible Person for a violation.

4. Any massage establishment operated, conducted, or maintained contrary to the massage services provisions of this section shall be, and the same is hereby declared to be, unlawful and a public nuisance, and the City may, in addition to or in lieu of prosecuting a criminal action hereunder, commence actions or proceedings for the abatement, removal, and enjoinder thereof in the manner provided by law and shall take such other steps and apply to such courts as may have jurisdiction to grant such relief as will abate or remove such massage establishment and restrain and enjoin any person from operating, conducting or maintaining a massage establishment contrary to the provisions of this chapter.
5. Any violation of any of the provisions of this chapter shall be subject to punishment for violation in accordance with the penalty provisions set forth in Chapter 2 of Title 1 of the Ontario Municipal Code. Punishment for any violation of any of this chapter's provisions shall be in accordance with the Ontario Municipal Code punishment and fine provisions as set forth in Ontario Municipal Code section 1-2.01.