

CITY OF ONTARIO
COUNCIL AGENDA OCTOBER 1, 2013

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CITY OF ONTARIO
CITY COUNCIL / HOUSING AUTHORITY AND
ONTARIO PUBLIC FINANCING AUTHORITY
AGENDA
OCTOBER 1, 2013

Paul S. Leon
Mayor

Jim W. Bowman
Mayor pro Tem

Alan D. Wapner
Council Member

Debra Dorst-Porada
Council Member

Paul Vincent Avila
Council Member



Chris Hughes
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 / Housing Authority and Ontario Public Financing 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

Bowman, Wapner, 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 54957 (b), PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT: City Manager
- 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*

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

PLEDGE OF ALLEGIANCE

Council Member Avila

INVOCATION

Bishop Reid Halterman, Church of Jesus Christ of Latter Day Saints

REPORT ON CLOSED SESSION

City Attorney

PUBLIC COMMENTS

6:30 p.m.

The Public Comment portion of the Council / Housing Authority and Ontario Public Financing 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.

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 / Housing Authority and Ontario Public Finance Authority of September 3, 2013, and approving same as on file in the Records Management Department.

2. BILLS/PAYROLL

Bills August 25, 2013 through September 7, 2013 and **Payroll** August 25, 2013 through September 7, 2013, when audited by the Finance Committee.

3. RESOLUTIONS MODIFYING PAYMENT OF EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR EMPLOYEES IN MISCELLANEOUS BARGAINING UNITS AND UNREPRESENTED EMPLOYEE GROUPS

That the City Council adopt resolutions modifying the Employer Paid Member Contributions (EPMC) to the California Public Employees Retirement System (CalPERS) consistent with the terms and conditions of existing labor agreements and pursuant to California Government Code Section 20691.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JANUARY 12, 2014 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JULY 13, 2014 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JULY 12, 2015 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE, POLICE MANAGEMENT, FIRE, AND FIRE MANAGEMENT UNITS.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER
CONTRIBUTIONS FOR ELECTED OFFICIALS.

4. AGREEMENT BETWEEN THE CITY OF EASTVALE AND THE CITY OF ONTARIO FOR THE MAINTENANCE AND OPERATIONS OF JOINTLY OWNED TRAFFIC SIGNALS

That the City Council approve an agreement (on file in the Records Management Department) between the City of Eastvale and the City of Ontario for the maintenance and operation of jointly owned traffic signals, and authorize the City Manager to execute said agreement and related documents.

5. AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE SOUTH MILLIKEN AVENUE AND NORTH VINEYARD AVENUE RAIL-HIGHWAY GRADE SEPARATION PROJECTS/DANKEN CONSTRUCTION ENGINEERING GROUP

That the City Council approve a Professional Services Agreement with Danken Construction Engineering Group (Danken), of Ladera Ranch, California, to provide construction management, soils and materials testing, and public outreach services for the construction of the South Milliken Avenue and North Vineyard Avenue Rail-Highway Grade Separation Projects for \$9,500,000 plus a 5% contingency of \$500,000 for a total authorized expenditure of \$10,000,000; and authorize the City Manager to execute said agreement and all future amendments.

6. RECOGNITION OF OCTOBER 6-12, 2013 AS "NATIONAL FIRE PREVENTION WEEK"

That the City Council recognize the week of October 6-12, 2013 as "Fire Prevention Week" in the City of Ontario and invite the public to attend the Ontario Fire Department Open House 2013 to be held on October 5, 2013.

7. AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET VEHICLES AND EQUIPMENT

That the City Council take the following actions:

- (A) Award Bid No. 369 to Fairview Ford of San Bernardino, California, in the amount of \$571,736 for the purchase and delivery of one (1) police interceptor K-9 vehicle and twenty (20) police interceptor vehicles;
- (B) Award Bid No. 374 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$779,720 for the purchase and delivery of three (3) automated side loader solid waste trucks;
- (C) Award Bid No. 375 to E-W Truck & Equipment Co., Inc. of San Diego, California, in the amount of \$266,569 for the purchase and delivery of one (1) front loading solid waste truck; and
- (D) Authorize the cooperative purchase and delivery of one (1) John Deere 410K Backhoe-Loader from John Deere Construction Retail Sales of Moline, Illinois, in the amount of \$111,949 consistent with the terms and condition of the National Joint Powers Alliance Contract (NJPA) Invitation for Bids (IFB) No. 060311-JDC.

8. AN ORDINANCE APPROVING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN SL ONTARIO DEVELOPMENT CORPORATION, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN THE PHASED TRACT MAP

That the City Council adopt an ordinance approving the second amendment (File No. PDA13-003) to the Development Agreement between SL Ontario Development Corporation, LLC, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure as provided in the phased Tract Map No. 18913-1.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT CORPORATION, LLC. FILE NO. PDA13-003, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN THE PHASED TRACT MAP NO. 18913-1, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-014-01 THROUGH 07; 0218-022-01 THROUGH 04 AND 10 THROUGH 12; 0218-033-01 THROUGH 06; 0218-042-01 THROUGH 05 AND 13; AND 0218-052-02 THROUGH 05).

9. AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, AMENDING VARIOUS SECTIONS OF TITLE 9 (DEVELOPMENT CODE) OF THE ONTARIO MUNICIPAL CODE RELATIVE TO MEDICAL MARIJUANA DISPENSARIES

That the City Council adopt an ordinance approving File No. PDCA13-004, amending various sections of Title 9 (Development Code) of the Ontario Municipal Code to expressly define and clarify the City's existing prohibition of medical marijuana dispensaries in all zoning districts, including mobile medical marijuana dispensaries.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTIONS 9-1.0200 AND 9-1.1300 OF TITLE 9 OF THE ONTARIO DEVELOPMENT CODE TO CLARIFY THE DEFINITION AND EXISTING PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES, INCLUDING MOBILE MEDICAL MARIJUANA DISPENSARIES, IN ANY ZONE OF THE CITY.

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.

10. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A ZONE CHANGE REQUEST AMENDING THE ZONING DESIGNATIONS ON CERTAIN PROPERTIES LOCATED THROUGHOUT THE CITY TO PROVIDE ZONING CONSISTENCY WITH THE LAND USE DESIGNATIONS OF THE POLICY PLAN (GENERAL PLAN) OF THE ONTARIO PLAN

That the City Council adopt a resolution approving an addendum to The Ontario Plan Environmental Impact Report analyzing the environmental effects of the Project, pursuant to State CEQA Guidelines section 15164; and introduce and waive further reading of an Ordinance approving Zone Change File No. PZC13-002, changing the zoning designations on certain properties located throughout the City to provide consistency with the land use designations of the Policy Plan (General Plan) of The Ontario 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, ADOPTING AN ADDENDUM TO THE ONTARIO PLAN ENVIRONMENTAL IMPACT REPORT FOR FILE NO. PZC13-002, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC13-002, A CHANGE IN THE ZONING DESIGNATIONS FOR CERTAIN PROPERTIES IN THE CITY OF ONTARIO TO CONSISTENCY WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF - APNS: VARIOUS (SEE EXHIBIT A).

COUNCIL MATTERS

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

STAFF MATTERS

City Manager Hughes

ADJOURNMENT

**CITY OF ONTARIO
CLOSED SESSION REPORT**
City Council // Housing Authority //
Ontario Public Financing Authority // Other // (GC 54957.1)
October 1, 2013

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

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

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

- GC 54957 (b), PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT: City Manager

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

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

- GC 54956.9 (d)(1), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED 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
October 1, 2013

SECTION:
CONSENT CALENDAR

SUBJECT: RESOLUTIONS MODIFYING PAYMENT OF EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR EMPLOYEES IN MISCELLANEOUS BARGAINING UNITS AND UNREPRESENTED EMPLOYEE GROUPS

RECOMMENDATION: That the City Council adopt resolutions modifying the Employer Paid Member Contributions (EPMC) to the California Public Employees Retirement System (CalPERS) consistent with the terms and conditions of existing labor agreements and pursuant to California Government Code Section 20691.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Operate in a Businesslike Manner

FISCAL IMPACT: The modification of EPMC was previously approved by the City Council as part of the Memoranda of Understanding for miscellaneous employee groups and Compensation and Benefits Profiles for unrepresented employee groups. This action implements provisions of the approved MOUs and profiles, and there is no additional fiscal impact.

BACKGROUND: The recommended resolutions are required by CalPERS to implement the changes in EPMC that were approved by the City Council on July 2, 2013 as part of the Memoranda of Understanding with the miscellaneous employee groups and the Compensation and Benefits Profiles for the unrepresented employee groups. Employees in the miscellaneous bargaining units and unrepresented employee groups will contribute incrementally toward the cost of retirement benefits as a percentage of salary as follows: 2% in January 2014, 4% as of July 2014, and 6.25% as of July 2015.

STAFF MEMBER PRESENTING: Linda Matthews, Human Resources Director

Prepared by: Ramon Figueroa
Department: Human Resources

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

3

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JANUARY 12, 2014 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all miscellaneous employees in the Miscellaneous Services, Professional/Technical, Management, Confidential, Department Head, and Executive Management Units.
- This benefit shall consist of paying 6% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 12, 2014.

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all safety employees in the Executive Management Unit.
- This benefit shall consist of paying 7% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 12, 2014.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JULY 13, 2014 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all miscellaneous employees in the Miscellaneous Services, Professional/Technical, Management, Confidential, Department Head, and Executive Management Units.
- This benefit shall consist of paying 4% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be July 13, 2014.

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all safety employees in the Executive Management Unit.
- This benefit shall consist of paying 5% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be July 13, 2014.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS EFFECTIVE JULY 12, 2015 FOR MISCELLANEOUS MEMBERS IN THE MISCELLANEOUS SERVICES, TECHNICAL/PROFESSIONAL, MANAGEMENT, CONFIDENTIAL, DEPARTMENT HEAD, AND EXECUTIVE MANAGEMENT UNITS AND FOR SAFETY MEMBERS IN THE EXECUTIVE MANAGEMENT UNIT.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all miscellaneous employees in the Miscellaneous Services, Professional/Technical, Management, Confidential, Department Head, and Executive Management Units.
- This benefit shall consist of paying 1.75% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be July 12, 2015.

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all safety employees in the Executive Management Unit.
- This benefit shall consist of paying 2.75% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be July 12, 2015.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO,
CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR
ELECTED OFFICIALS.

WHEREAS, the City Council of the City of Ontario has the authority to implement
Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or
agreement which specifically provides for the normal member contributions to be paid
by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is
the adoption by the City Council of the City of Ontario of a Resolution to commence said
Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following
conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all Elected Officials.
- This benefit shall consist of paying 8% of the normal member contributions
as EPMC.
- The effective date of this Resolution shall be January 12, 2014.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of
Ontario, California, elects to pay EPMC, as set forth above.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR EMPLOYER PAID MEMBER CONTRIBUTIONS FOR MEMBERS IN THE POLICE, POLICE MANAGEMENT, FIRE, AND FIRE MANAGEMENT UNITS.

WHEREAS, the City Council of the City of Ontario has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of Ontario has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Ontario of a Resolution to commence said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Ontario has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of the Police, Police Management, Fire, and Fire Management Units.
- This benefit shall consist of paying 9% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be January 12, 2014.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, elects to pay EPMC, as set forth above.

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report

October 1, 2013

SECTION: CONSENT CALENDAR

SUBJECT: AN AGREEMENT BETWEEN THE CITY OF EASTVALE AND THE CITY OF ONTARIO FOR THE MAINTENANCE AND OPERATIONS OF JOINTLY OWNED TRAFFIC SIGNALS

RECOMMENDATION: That the City Council approve an agreement (on file in the Records Management Department) between the City of Eastvale and the City of Ontario for the maintenance and operation of jointly owned traffic signals, and authorize the City Manager to execute said agreement and related documents.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: The City's baseline operating budget includes appropriations for Ontario's portion of the on-going maintenance and operations costs of these traffic signals.

BACKGROUND: There are eight intersections along the Milliken/Hamner Avenue corridor shared between the cities of Eastvale and Ontario. The City of Ontario maintains and operates seven intersections while Eastvale maintains and operates one. The responsibilities were originally shared between Ontario and the County of Riverside prior to the incorporation of Eastvale. A new agreement is now required between Eastvale and Ontario.

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

Prepared by: Mauricio Diaz
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

CITY OF ONTARIO

Agenda Report

October 1, 2013

SECTION: CONSENT CALENDAR

SUBJECT: AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE SOUTH MILLIKEN AVENUE AND NORTH VINEYARD AVENUE RAIL-HIGHWAY GRADE SEPARATION PROJECTS

RECOMMENDATION: That the City Council approve a Professional Services Agreement with Danken Construction Engineering Group (Danken), of Ladera Ranch, California, to provide construction management, soils and materials testing, and public outreach services for the construction of the South Milliken Avenue and North Vineyard Avenue Rail-Highway Grade Separation Projects for \$9,500,000 plus a 5% contingency of \$500,000 for a total authorized expenditure of \$10,000,000; and authorize the City Manager to execute said agreement and all future amendments.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health

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

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

FISCAL IMPACT: The approved Five-Year Capital Improvement Program Budget includes appropriations for the construction phase of both the South Milliken Avenue and North Vineyard Avenue Rail-Highway Grade Separation Projects. Per the cooperative funding agreement with SANBAG, the City's share is 20% of the actual expenses and is split in accordance with the City's adopted DIF Program and SANBAG's approved Measure I Nexus Study.

BACKGROUND: These projects will construct new rail-highway grade separations at South Milliken Avenue at the Union Pacific Railroad Los Angeles Line and North Vineyard Avenue at the Union Pacific Railroad Alhambra Line. The agreement is for construction management, soils and materials testing, and public outreach services in support of construction of the two proposed grade separations.

On July 30, 2013, the City solicited proposals for Construction Management, Soils and Materials Testing and Public Outreach Services for the Projects and received four (4) proposals. City staff

STAFF MEMBER PRESENTING: Louis Abi-younes, P.E., City Engineer

Prepared by: Jay Bautista
Department: Engineering

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

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reviewed the proposals and all firms were short-listed. These firms were interviewed by a selection team comprised of four (4) City staff members, one (1) representative from SANBAG and one (1) representative from Caltrans. After evaluation of the 4 firms, the selection team recommended that Danken be selected.

Staff negotiated the fees shown below for the recommended Professional Services Agreement:

- South Milliken Avenue Services:
 - Danken submitted an initial fee proposal of \$8,705,410. Staff finalized the scope of services and negotiated a contract amount of \$6,540,395.
- North Vineyard Avenue Services:
 - Danken submitted an initial fee proposal of \$4,714,535. Staff finalized the scope of services and negotiated a contract amount of \$3,459,605.

The consultant's hourly compensation rates were found to be reasonable and consistent with industry standards, and their proposed number of hours is adequate to provide the required scopes of services.

CITY OF ONTARIO

Agenda Report
October 1, 2013

SECTION:
CONSENT CALENDAR

SUBJECT: RECOGNITION OF OCTOBER 6-12, 2013 AS "NATIONAL FIRE PREVENTION WEEK"

RECOMMENDATION: That the City Council recognize the week of October 6-12, 2013 as "Fire Prevention Week" in the City of Ontario and invite the public to attend the Ontario Fire Department Open House 2013 to be held on October 5, 2013.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Maintain the Current High Level of Public Safety
Encourage, Provide or Support Enhanced Recreational, Education, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The Fiscal Year 2013-14 Adopted Budget includes appropriations for the minimal staff and materials cost associated with the annual Ontario Fire Department Open House

BACKGROUND: "National Fire Prevention Week" commemorates the Great Chicago Fire of 1871, which killed more than 250 persons, left 100,000 homeless, and destroyed more than 17,400 buildings. Every year since 1925, the President of the United States has signed a proclamation pronouncing a national observance during Fire Prevention Week.

The National Fire Protection Association announced Fire Prevention Week 2013 to be observed throughout the nation on October 6-12. Their theme, "Prevent Kitchen Fires" will also be the theme at the Ontario Fire Department Open House 2013 on Saturday, October 5, 2013, from 9:00 a.m. until 2:00 p.m. at the Ontario Fire Training facility located at 1408 East Francis Street.

National Firefighters Memorial Day coincides with Fire Prevention Week and will be observed on Sunday, October 6, 2013. The American flag will be lowered to half-staff honoring those who gave their life fighting fires.

STAFF MEMBER PRESENTING: Floyd E. Clark, Fire Chief

Prepared by: Art Andres
Department: Fire

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

This year's theme actively works to motivate Ontario residents to take actions to keep their homes and family safe from fire. This annual observance serves as a way to keep the public informed about the importance of fire prevention.

CITY OF ONTARIO

Agenda Report
October 1, 2013

SECTION:
CONSENT CALENDAR

SUBJECT: AWARD OF BIDS FOR THE PURCHASE OF REPLACEMENT FLEET VEHICLES AND EQUIPMENT

RECOMMENDATION: That the City Council take the following actions:

- (A) Award Bid No. 369 to Fairview Ford of San Bernardino, California, in the amount of \$571,736 for the purchase and delivery of one (1) police interceptor K-9 vehicle and twenty (20) police interceptor vehicles;
- (B) Award Bid No. 374 to Los Angeles Truck Centers, LLC of Whittier, California, in the amount of \$779,720 for the purchase and delivery of three (3) automated side loader solid waste trucks;
- (C) Award Bid No. 375 to E-W Truck & Equipment Co., Inc. of San Diego, California, in the amount of \$266,569 for the purchase and delivery of one (1) front loading solid waste truck; and
- (D) Authorize the cooperative purchase and delivery of one (1) John Deere 410K Backhoe-Loader from John Deere Construction Retail Sales of Moline, Illinois, in the amount of \$111,949 consistent with the terms and condition of the National Joint Powers Alliance Contract (NJPA) Invitation for Bids (IFB) No. 060311-JDC.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2013-14 Adopted Budget includes appropriations in the amount of \$1,783,000 for the purchase of the replacement vehicles and equipment listed above. The total cost of the vehicles and equipment recommended for purchase is \$1,729,974.

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

Prepared by: Michael Johnson
Department: MU/Fleet Services

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

BACKGROUND: The vehicles and equipment recommended for replacement have outlived their useful life and are no longer cost effective to maintain. They are scheduled for replacement pursuant to ongoing efforts to reduce expenses, maximize useful life expectancy and extend replacement cycles of fleet equipment while ensuring safe and reliable operation.

(A) Bid No. 369: One (1) Ford Police Interceptor K-9 Vehicle and Twenty (20) Ford Police Interceptor Patrol Vehicles for Police Department

In August 2013, the City solicited and received six (6) bids for Ford All-Wheel Drive (AWD) Police Interceptor Vehicles. The results are as follows:

1. One (1) Ford AWD Police Interceptor K-9 Vehicle for Police Department

<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fairview Ford	San Bernardino, CA	\$27,716
Raceway Ford	Riverside, CA	\$27,800
David Wilson Ford	Orange, CA	\$27,805
South Bay Ford	Hawthorne, CA	\$28,978
Wondries Fleet Group	Alhambra, CA	\$28,930
Fritts Ford	Riverside, CA	\$28,732

2. Twenty (20) Ford AWD Police Interceptor Patrol Vehicles for Police Department

<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Fairview Ford	San Bernardino, CA	\$544,020
Raceway Ford	Riverside, CA	\$544,755
David Wilson Ford	Orange, CA	\$545,292
South Bay Ford	Hawthorne, CA	\$550,637
Wondries Fleet Group	Alhambra, CA	\$553,524
Fritts Ford	Riverside, CA	\$561,698

Staff recommends award to Fairview Ford, located in San Bernardino, California, in the amount of \$571,736.

(B) Bid No. 374: Three (3) Autocar Model ACX64 with AMREP Model AMHOASLTPO-19 Bodies for Solid Waste Department

In August 2013, the City solicited and received two (2) bids for automated side loading solid waste trucks. The results are as follows:

Three (3) Autocar Model ACX64 with AMREP Model AMHOASLTPO-19 Bodies

<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
Los Angeles Truck Centers	Whittier, CA	\$779,720
E-W Truck & Equipment Co.	San Diego, CA	\$782,884

Staff recommends award to Los Angeles Truck Centers, LLC, located in Whittier, California, in the amount of \$779,720. The purchase of the Autocar model ACX64 cab and chassis with an AMREP body continues the City's ongoing effort to standardize the solid waste fleet.

(C) **Bid No. 375: One (1) Autocar Model ACX64 with AMREP Model AMHFLPO-22 Body for Solid Waste Department**

In August 2013, the City solicited and received two (2) bids for front loading solid waste trucks. The results are as follows:

One (1) Autocar Model ACX64 with AMREP Model AMHFLPO-22 Bodies

<u>Supplier</u>	<u>Location</u>	<u>Bid Amount</u>
E-W Truck & Equipment Co.	San Diego, CA	\$266,569
Los Angeles Truck Centers	Whittier, CA	\$266,645

Staff recommends award to E-W Truck, located in San Diego, California, in the amount of \$266,569. The purchase of the Autocar model ACX64 cab and chassis with an AMREP body continues the City's ongoing effort to standardize the solid waste fleet.

(D) **One (1) John Deere 410K Backhoe-Loader for Utilities Department**

The John Deere 410K Backhoe Loader recommended for purchase replaces a similar piece of equipment that is 13 years old.

<u>Supplier (Location)</u>	<u>Bid Amount</u>
John Deere Construction Retail Sales, Moline, Illinois	\$111,949

The cooperative purchase and delivery of this replacement equipment is recommended from John Deere Construction Retail Sales, located in Moline, Illinois, for the amount of \$111,949 consistent with the terms and condition of the National Joint Powers Alliance Contract (NJPA) Invitation for Bids (IFB) No. 060311-JDC. City of Ontario Municipal Code Section 2-6.11(b) (3) allows for the purchase of supplies and equipment through cooperative purchasing when another governmental agency generally follows the provisions of Government Code Section 54201 through 54204. Cooperative purchasing allows the City to pool its procurement power with other public agencies to obtain prices lower than would otherwise be possible.

CITY OF ONTARIO

Agenda Report
October 1, 2013

SECTION:
CONSENT CALENDAR

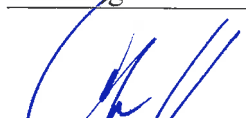
SUBJECT: AN ORDINANCE APPROVING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN SL ONTARIO DEVELOPMENT CORPORATION, LLC, AND THE CITY OF ONTARIO TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN THE PHASED TRACT MAP

RECOMMENDATION: That the City Council adopt an ordinance approving the second amendment (File No. PDA13-003) to the Development Agreement between SL Ontario Development Corporation, LLC, and the City of Ontario to update certain provisions of the existing Development Agreement to conform with the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure as provided in the phased Tract Map No. 18913-1.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewer, Parks, Storm Drains, and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

FISCAL IMPACT: The proposed Development Agreement Amendment will update certain provisions of the existing Development Agreement to conform to the Construction Agreement Amendment with NMC Builders, LLC, and to provide for phasing of the construction of public infrastructure as provided in the phased Tract Map No. 18913-1. In addition, the City will receive Public Service Funding fees plus development impact, compliance processing, licensing, and permitting fees. No Original Model Colony revenue will be used to support the New Model Colony development. The Development Agreement and the related tract map conditions require the developer to construct public infrastructure.

STAFF MEMBER PRESENTING: Jerry L. Blum, Planning Director

Prepared by: Scott Murphy
Department: Planning
City Manager Approval: 

Submitted to Council/O.H.A. 10/01/2013
Approved: _____
Continued to: _____
Denied: _____

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BACKGROUND: On August 27, 2013, the Planning Commission recommended approval with a vote of 7 to 0. On September 17, 2013, the City Council introduced the ordinance to approve an amended Development Agreement between SL Ontario Development Corporation, LLC, and The City of Ontario. The City recognized that the financial commitment required for construction in the New Model Colony (“NMC”) was substantial. To adequately forecast these costs and gain assurance that the project may proceed under the existing policies, rules and regulations, SL Ontario entered into a Development Agreement with the City providing for the development of up to 1,203 dwelling units. The Development Agreement, approved in November 2006, addressed issues of parkland, public facilities, public services funding, infrastructure and affordable housing.

The Second Amendment incorporates new and modified provisions to conform to the Construction Agreement Amendment, including:

- Adds that SL Ontario shall have evidence of compliance with the Construction Agreement requirements for participation in funding of regional water infrastructure and regional storm water treatment facilities (Mill Creek Wetlands)
- Modifies the amounts and escalation factors for the funding of City services

The Second Amendment also incorporates specific requirements for the phased construction and completion of required public infrastructure, including regional and local streets and traffic signals, water and sewer utilities, and regional and local storm drain improvements. Lastly, the Second Amendment recognizes that SL Ontario may partially assign the obligations of the Development Agreement to purchasers of portions of the property yet retain other benefits and obligations.

The Development Agreement and the Second Amendment continues to require funding for all new City expenses created by the development of the project. These expenses include all additional City-provided services, infrastructure and affordable housing requirements.

The main points of the Development Agreement including the provisions of the Second Amendment are as follows:

Term:	Maintains the same term of ten (10) years with a five (5) year option.
Assignment:	Assignable with all terms and conditions applying to the assignee. New provisions are added in the Second Amendment to recognize and provide City approval all partial assignments.
Fees:	
Development Impact Fees:	To be paid at current amounts; varies by category (i.e.; Streets and Bridges, Police, Fire, Open Space/Parks etc.). This is a separate fee from existing City licensing fees and permits and is due at building permit issuance for each unit.
Public Services Funding Fees:	No modifications to the fee amount. SL Ontario has complied with the payment requirement for 2 of 3 total installments; third installment to be paid at permit

Community Facilities:
District (CFD):

City will cooperate with Owner to form a CFD to reimburse costs of infrastructure construction and maintenance of public facilities.

Parks/Open Space:

Maintains The Ontario Plan (General Plan) requirement of five (5) acres per 1,000 projected population through park dedication and/or the payment of in-lieu fees; and recognizes that SL Ontario will construct 8 acres of parks and open space and pay a pro-rated fee for the remainder of the park and open space requirements

Housing:

Maintains the provision of affordable housing as required by the Policy Plan (General Plan) through construction, rehabilitation, or by paying an In-Lieu Fee.

Schools:

Maintains the requirement to satisfy Mountain View Elementary School District and Chaffey High School District school facilities requirements.

Termination:

Maintains the City's ability to terminate the Agreement if substantial evidence is found of noncompliance.

In considering the application at their meeting of August 27, 2013, the Planning Commission found that the Development Agreement Second Amendment is consistent with State law, The Ontario Plan, the City's Development Agreement policies, and other Development Agreements previously approved for NMC development, and unanimously recommended approval of the Development Agreement Second Amendment to the City Council.

ENVIRONMENTAL REVIEW: The environmental impacts of this project were previously reviewed in conjunction with the Subarea 29 Specific Plan, for which an Environmental Impact Report (SCH #2004011009) was certified by the City Council on October 19, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT CORPORATION, LLC. FILE NO. PDA13-003, TO UPDATE CERTAIN PROVISIONS OF THE EXISTING DEVELOPMENT AGREEMENT TO CONFORM WITH THE CONSTRUCTION AGREEMENT AMENDMENT WITH NMC BUILDERS LLC, AND TO PROVIDE FOR PHASING OF THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE AS PROVIDED IN THE PHASED TRACT MAP NO. 18913-1, AND MAKING FINDINGS IN SUPPORT THEREOF (APN: 0218-014-01 THROUGH 07; 0218-022-01 THROUGH 04 AND 10 THROUGH 12; 0218-033-01 THROUGH 06; 0218-042-01 THROUGH 05 AND 13; AND 0218-052-02 THROUGH 05).

WHEREAS, California Government Code Section 65864 now provides, in pertinent part, as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval process of development projects can result in a waste of resources, escalate the cost of housing and other developments to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the Applicant for a development project that upon approval of the project, the Applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”

WHEREAS, California Government Code Section 65865 provides, in pertinent part, as follows:

“Any city ... may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of such property as provided in this article ...”

WHEREAS, California Government Code Section 65865.2. provides, in part, as follows:

“A Development Agreement shall specify the duration of the Agreement, the permitted uses of the property, the density of intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The Development Agreement may include

conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for discretionary actions shall not prevent development of the land for the uses and to the density of intensity of development set forth in this Agreement ...”

WHEREAS, on the 4th day of April 1995, the City Council of the City of Ontario adopted Resolution No. 95-22 establishing procedures and requirements whereby the City of Ontario may consider Development Agreements.

WHEREAS, on the 10th day of September 2002, the City Council of the City of Ontario adopted Resolution No. 2002-100 which revised the procedures and requirements whereby the City of Ontario may consider Development Agreements.

WHEREAS, on the 7th day of November 2006, the City Council of the City of Ontario, adopted Ordinance No. 2844, approving a Development Agreement between SL Ontario Development Corporation and the City; and

WHEREAS, attached to this resolution, marked Exhibit “A” and incorporated herein by this reference, is the proposed Second Amendment to the Development Agreement between SL Ontario Development Corporation and the City of Ontario, File No. PDA13-003. Hereinafter in this Resolution, the Development Agreement is referred to as the “Second Amendment”; and

WHEREAS, the environmental impacts of this project were previously reviewed in conjunction with the Subarea 29 Specific Plan, for which an Environmental Impact Report (SCH #2004011009) was certified by the City Council on October 19, 2006. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are be a condition of project approval and are incorporated herein by reference; and

WHEREAS, on August 27, 2013, the Planning Commission of the City of Ontario conducted a hearing to consider the Second Amendment and concluded said hearing on that date. After considering the public testimony, the Planning Commission voted unanimously to recommend approval of the Amendment to the City Council; and

WHEREAS, on September 17, 2013, the City Council of the City of Ontario conducted a hearing to consider the Second Amendment and concluded said hearing on that date; and

WHEREAS, on October 1, 2013, the City Council of the City of Ontario conducted a hearing to adopt the Second Amendment 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 ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. Based upon substantial evidence presented to the City Council during the above-referenced hearing on September 17, 2013, including written and oral staff reports, together with public testimony, the City Council hereby specifically finds as follows:

a. The Second Amendment to the Development Agreement applies to 279 acres of residential land within the Subarea 29 Specific Plan, generally located south of Eucalyptus Avenue and east of Archibald Avenue and is presently utilized for dairy and agriculture uses; and

b. The properties to the north of the Project site are within the proposed Grand Park Specific Plan, are designated for open space uses and are vacant. The properties to the south of the project site are developed with single family residents within the City of Eastvale. The properties to the east are within planning areas 27-29 of the Subarea 29 Specific Plan and are vacant. The properties to the west are within planning area 1 of the Subarea 29 Specific Plan (designated for single family residential uses) and the Business Park land use designation of The Ontario Plan ("TOP") and are vacant and developed with a dairy; and

c. The Development Agreement and the Second Amendment to the Development Agreement establishes parameters for the development of the Subarea 29 residential projects. The Development Agreement also grants SL Ontario Development Corporation the right to develop, the ability to quantify the fees; and establish the terms and conditions that apply to those projects. These terms and conditions are consistent with The Ontario Plan Policy plan (General Plan), design guidelines and development standards for the Subarea 29 Specific Plan; and

d. The Second Amendment to the Development Agreement focuses revisions to the Development to bring it into consistency with the Construction Agreement between the City and New Model Colony Builders, ("NMC"), LLC; and

e. The Second Amendment to the Development Agreement will provide for the phasing of various improvements established by the Subarea 29 Specific Plan; and

f. The Second Amendment to the Development Agreement has been prepared in conformance with the goals and policies of The Ontario Plan Policy Plan (General Plan); and

g. The Second Amendment to the Development Agreement does not conflict with the Land Use Policies of The Ontario Plan Policy Plan (General Plan) and will provide for development, within the district, in a manner consistent with the Policy Plan and with related development; and

h. The Second Amendment to the Development Agreement will promote the goals and objectives of the Land Use Element of the Policy Plan; and

i. The Second Amendment to the Development Agreement will not be materially injurious or detrimental to the adjacent properties and will have a significant impact on the environment or the surrounding properties but the benefits of the project

outweighs the potential environmental impacts and the mitigation of these impacts were addressed in the Subarea 29 Specific Plan EIR certified by the City Council on October 19, 2006.

SECTION 2. Based upon the findings and conclusions set forth in Sections 1 above, the City Council hereby approves the Project.

SECTION 3. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

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. This Ordinance shall take effect and shall be in force 30 days after the date of 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 1st day of October 2013.

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. 2967 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 17, 2013, and adopted at the regular meeting held October 1, 2013, 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. 2967 duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013 and that Summaries of the Ordinance were published on September 24, 2013 and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Exhibit A – Second Amendment to the Development Agreement
(See Attached)

**SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT
COMPANY**

This Second Amendment (hereinafter "Second Amendment") is entered into as of the 1st day of October 2013 by and among the City of Ontario, a California municipal corporation (hereinafter "CITY"), and SL ONTARIO DEVELOPMENT COMPANY LLC, a Delaware limited liability company (hereinafter "OWNER").

RECITALS

WHEREAS, the CITY and OWNER's predecessor have previously entered into a Development Agreement dated November 7, 2006 and recorded in San Bernardino County, California on March 19, 2007 as Instrument No. 2007-0171238 pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "Original Development Agreement"); and

WHEREAS, the CITY and OWNER have previously entered into a First Amendment to the Development Agreement dated July 7, 2009, and recorded in San Bernardino County, California on September 14, 2009, as Instrument No. 2009-0403691, pursuant to Section 65864, et seq., of the Government Code, (hereinafter the "First Amendment"); and

WHEREAS, the OWNER's predecessor has previously assigned the entered into an assignment and assumption agreement whereby OWNER's predecessor assigned to OWNER, and OWNER assumed all of the rights, duties and obligations of OWNER's predecessor; and

WHEREAS, Section 2.5 of the Development Agreement specifies that the Development Agreement may be amended in whole or in part only in the manner provided for in Government Code Section 65868.1 and the procedure for adopting and entering into an amendment to the Development Agreement shall be the same as the procedure for adopting and entering into the Development Agreement; and

WHEREAS, the CITY and NMC Builders, LLC, a California limited liability company ("NMC Builders"), entered into that certain Agreement for the Financing and Construction of Phase I and II Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony dated October 4, 2005, which is referred to both herein and in the Development Agreement as the "Construction Agreement;" and

WHEREAS, the CITY and NMC Builders have entered into the Amended and Restated Construction Agreement dated August 21, 2012 that supersedes and replaces the Construction Agreement (the "Construction Agreement Amendment"); and

WHEREAS, NMC Builders is identified as the "Developer" under the Construction Agreement Amendment; and

WHEREAS, OWNER is a member of NMC Builders and is a “Member” as such term is defined in the Construction Agreement Amendment; and

WHEREAS, OWNER and CITY have agreed to apply certain specified provisions of the Construction Agreement Amendment and modify the Development Agreement by and between the CITY and OWNER; and

WHEREAS, the CITY and OWNER agree that execution of this Second Amendment shall constitute Certification of Agreement Compliance under Section 6.4 of the Development Agreement and City shall issue “Certificate of Agreement Compliance” within 10 days following the Effective Date of this Second Amendment.

AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual agreements hereinafter contained, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Existing Definitions. The following terms when used in this Second Amendment shall be defined as in the Original Development Agreement: “CITY”; Construction Agreement; Deferred Infrastructure; Development; Development Approvals; Development Exaction; Development Impact Fee; Development Plan; General Plan; Land Use Regulations; “OWNER”; Project, Property, Specific Plan; Subsequent Development Approvals; and Subsequent Land Use Regulations.

1.2 Additional and Modified Definitions.

1.2.1 The following additional terms shall be defined as follows:

“Construction Agreement Amendment” means that certain Amended and Restated Agreement for the Financing and Construction of Infrastructure Improvements to Serve an Easterly Portion of the New Model Colony, entered into between the CITY and NMC Builders dated August 21, 2012.

“Effective Date” means the date of the second reading of the ordinance approving this Second Amendment.

“Phase I Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units and as shown in Exhibit F- Phase I Improvements.”

“Phase I Units” means the first four hundred thirty-five (435) units for which the CITY issues building permits to OWNER and shall include up to thirty five (35) Model Units.

“Phase II Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units and as shown in Exhibit F – Phase II Improvements”

“Phase II Units” means the next four hundred seventy-seven (477) units for which the CITY issues building permits to OWNER after the issuance of building permits for the Phase I Units.

“Phase III Improvements” means the public infrastructure and improvements that shall be designed, constructed and completed by OWNER prior to, and as a condition precedent to, CITY’s issuance of the first building permit for Production Units and as shown in Exhibit F –Phase III Improvements”

“Phase III Units” means the final three hundred thirty-seven (337) units for which the CITY issues building permits to OWNER after the issuance of the building permits for the Phase I and Phase II Units.

“Model Units” means a maximum of thirty-five (35) units constructed by OWNER prior to the construction of any Production units and not offered for sale and occupancy prior to the issuance of building permits for any Phase I Production Units.

“Production Units” means all units constructed for sale and occupancy by OWNER and excludes a maximum of thirty-five (35) Model Units constructed by OWNER for promotion of sales.

“Storm Water Capacity Availability Equivalents” means a designated portion of the total Storm Water Capacity Availability made available through the completion of construction of a Phase of regional storm water treatment facilities by the NMC Builders LLC. OWNER shall be required to provide evidence of sufficient Storm Water Capacity Availability Equivalents (or portions thereof) based upon the storm water generation factors and assumptions contained in the Construction Agreement Amendment.

“Water Availability Equivalent (WAE)” means a designated portion of the total Net MDD made available through the construction of each Phase described in the Water Phasing Plan of the Amended and Restated Construction Agreement. The number of Water Availability Equivalents (of portions thereof) required for the issuance of each building permit shall be based upon water demand factors and assumptions listed in the Construction Agreement Amendment as “Water Availability Equivalents by Land Use” for each land use category.

1.2.2 The following definitions shall be revised as follows:

“Existing Development Approvals” is revised to mean all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as Exhibit “C-R” and all other Approvals that are a matter of public record on the Effective Date.

“Existing Land Use Regulations” is revised to mean all Land Use Regulations in effect on the Effective Date and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as Exhibit “D-R,” and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

“Improvement” or “Improvements” is revised to mean those public improvements required to support the development of the Project as described in the Tract Map conditions for the “A” Tract Map No. 18913-1 and the “B” Tract Maps for Tract Nos. 18075, 18076, 18077, 18078, 18079, and 18080 and as further described in Exhibit “F” (the “Infrastructure Improvements Exhibit”).

“Owner’s Fire Station No. 9 Capital Contribution” is added to mean OWNER’s share, calculated on a per-unit basis under the provisions of the Construction Agreement Amendment and the NMC Builders LLC agreement, for the costs of the completion of the design and construction of Fire Station No. 9, as estimated by CITY.

“Owner’s Storm Water Treatment Improvements Capital Contribution” is added to mean OWNER’s share, calculated on a per-acre basis under the provisions of the Construction Agreement Amendment and the NMC Builders LLC agreement, for the costs of the completion of the design and construction of Mill Creek Wetlands Stormwater Treatment Improvements.

1.3 Exhibits. The following documents are attached to, and by this reference made a part of, this First Amendment:

Exhibit “C-R” – Revised Existing Development Approvals.

Exhibit “D-R” – Revised Existing Land Use Regulations.

Exhibit “E-R” — Revised Conceptual Phasing Plan.

Exhibit “F” — Infrastructure Improvements Exhibit.

Exhibit “F-Phase I” - Phase I Improvements Exhibit.

Exhibit "F-Phase II" - Phase II Improvements Exhibit

Exhibit "F- Phase III" - Phase III Improvements Exhibit.

Exhibit "G" - Partial Assignment and Assumption of Development Agreement Form

2. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO CONFORM TO CONSTRUCTION AGREEMENT AMENDMENT

2.1 Continuing Requirement for the Funding of Fire Station No. 9 by NMC Builders for Issuance of Building Permits. The issuance of building permits for Production Units within the Property is contingent upon, among other things, the provision of payments from NMC Builders for the completion of the construction of CITY's Fire Station No. 9. If OWNER requests that CITY issue building permits for any units, including Model Units, prior to CITY's receipt of payments from NMC Builders in an amount deemed by CITY to be necessary and sufficient for the design and construction of Fire Station No. 9, then prior to and as a condition precedent to CITY's issuance of any such building permits for the construction of any units, OWNER shall deposit, or shall have deposited, with NMC Builders an amount equal to the OWNER's Fire Station No. 9 Capital Contribution allocable to such unit(s).

2.2 Requirements for Sufficient Water Availability Credits. Prior to, and as a condition precedent to, CITY's approval of the final subdivision map for each Phase 1, OWNER shall provide evidence of sufficient Water Availability Equivalents for the Phase I units. Additionally, prior to, and as a condition precedent to, CITY's approval of final subdivision maps for the Phase II and Phase III areas, OWNER shall provide evidence of sufficient Water Availability Equivalents for all units in the respective Phase.

2.3 Requirements for Storm Water Capacity Availability Equivalents. Prior to, and as a condition precedent to, CITY's issuance of grading permits for any grading of the Property OWNER shall provide evidence of sufficient Storm Water Treatment Capacity Availability for the acreage to be graded. If the CITY has not issued sufficient Storm Water Treatment Capacity Availability for the issuance of grading permits for the Phase I area of OWNER's Project, because regional storm water treatment facilities are not completed by NMC Builders, then OWNER may provide and CITY, in its sole discretion, may accept evidence of sufficient Storm Water Treatment Capacity that is conditioned upon the future completion of the regional storm water treatment facilities.

2.4 Modification of the Amounts of the CFD to Finance City Services. Prior to, and as a condition precedent to, the recordation of each final subdivision map creating buildable lots, such map shall be included in a Community Facilities District (CFD) to finance CITY services through annual special taxes. The amounts contained in Section 5.1 Financing Mechanism(s) in the Original Development Agreement shall be modified as follows:

The amount for a Single Family Detached Dwelling Unit shall be modified to \$1,334.00

The amount for a Multiple Family Dwelling Unit shall be modified to \$1,156.00

The amount for a Gated Apartment Community Dwelling Unit shall be modified to \$969.00

The amount for Non-Residential building shall be modified to \$.25 per square foot.

These modified amounts shall be subject to an automatic increase, not to exceed four (4%) percent per year, beginning on January 1, 2014. CITY acknowledges OWNER has paid a deposit in the amount of \$75,000 for the CITY's costs of formation of a CFD. The CITY and OWNER shall use commercial reasonable efforts to complete the formation of the CFD prior to December 31, 2013.

2.5 Retention of Public Services Funding Fee Amounts and Payment Terms. CITY and OWNER acknowledge and agree that the modifications to amount and payments terms included in Section 3.7.4 of the Construction Agreement Amendment shall not apply to OWNER's Public Services Funding Fee Amounts and payment terms as OWNER entered into a development agreement with the City prior to the effective date of the Construction Agreement Amendment. Additionally, CITY agrees that OWNER is in compliance with the requirements for payment of the first and second installments of the Public Services Funding Fees as specified in the Original Development Agreement.

2.6 Modification of School Financing Provisions. The provisions of Section 5.2 School Financing. of the Original Development Agreement shall be removed and replaced with the following:

"5.2 Schools. OWNER, either through joint or individual agreements between OWNER and the applicable school district(s), shall satisfy its new school obligations. The new school obligations for the Mountain View School District in the New Model Colony area have been projected to include the acquisition or dedication of school sites for, and construction of, up to eight (8) schools. Of these eight (8) schools, six (6) are to be elementary (K-5) grade schools and two (2) are to be middle grade schools. The new school obligations for the Chaffey Joint Union High School District in the New Model Colony area have been projected to include the dedication of a school site for, and construction of, an additional high school. The new school obligations for the applicable school district shall be met by a combination of the following: (1) designating and dedicating school site(s) within the Property as set forth in the General Plan, and/or (2) paying school impact fees, (3) entering into a joint mitigation agreement or individual mitigation agreements, or (4) any combination of the foregoing. Written evidence of approval by the applicable school district that OWNER has met its school obligations may be required by the CITY as a condition to the issuance by the City of any entitlements for OWNER's Project. In the event OWNER is unable to provide such written evidence from the applicable school district(s), CITY shall have the right to decline to honor any DIF Credit, Certificates of MDD Availability, Certificates of Storm

Water Treatment Capacity Availability, or any combination thereof, presented by OWNER, without liability to the City. To the extent that a joint mitigation agreement is approved by the applicable school district(s), and OWNER is a participant in good standing in such mitigation agreement, OWNER shall be deemed to have mitigated its new school obligations under this Section 5.2.”

2.7 Remaining Provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS All other provisions of Section 5. FINANCING OF PUBLIC IMPROVEMENTS shall continue and shall be unaffected by this Second Amendment.

3. MODIFICATIONS TO DEVELOPMENT AGREEMENT TO REQUIRE CONSTRUCTION OF SPECIFIED PUBLIC IMPROVEMENTS

3.1 Modifications to Conceptual Phasing Plan. Section 3.4 of the Original Development Agreement is hereby amended to read as follows:

“3.4 Phasing Plan. Development of the Property is contingent on the phasing of infrastructure improvements. Attached hereto as Exhibit “E-R” is a revised phasing plan which is based on the OWNER’s established phasing for the completion of needed infrastructure improvements and the availability of improvements and services to serve Tract Map No.s 18913-1, 18913-2 and 18913-3.

3.4.1 Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of a maximum number of thirty-five (35) Model Units and a common private recreation and sales facilities. City may issue a maximum of thirty-five (35) building permits for Model Units and a building permit or permits for the common private recreation and sales facilities. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Model Units and other facilities.

3.2 Requirements for the Construction of Public Infrastructure and Improvements. The following provisions shall be added to Section 3.7 of the Original Development Agreement:

“3.7.1 Responsibility for the Timely Construction of Public Improvements. Attached hereto as Exhibit “F” is a description of the infrastructure improvements needed for the development of the Property (the “Infrastructure Improvement Exhibit”).

3.7.1.1 OWNER agrees that development of the Property shall require the construction of a significant portion of permanent master planned water utility infrastructure, known as the “Francis Zone Water Loop.” OWNER shall be responsible for the construction of the necessary extension of permanent master planned water utility infrastructure to the Property to the extent that such water utility infrastructure has not been constructed by NMC Builder LLC or others.

OWNER acknowledges and agrees that no building permits for Production Units in Phase I shall be issued by CITY for the Project prior to the completion of the extension of permanent master planned water utility infrastructure to serve the Project.

3.7.1.2 OWNER agrees that development of the Project shall require the construction of a significant portion of Storm Drain facilities known as the "Turner Avenue Storm Drain" from the northern boundary of the Property at Merrill Avenue to the connection with the County line Channel. OWNER shall be responsible for the construction of the necessary extension of master planned Storm Drain facilities.

3.7.1.3 OWNER agrees that development of the Project shall require the construction of a significant portion of Archibald Avenue improvements. OWNER shall be responsible for the construction of the master planned street and related improvement in a major portion of Archibald Avenue.

3.7.2 Timely Construction of Public Improvements. The phasing of the infrastructure construction within the Property shall be as approved by the CITY. OWNER shall be responsible for the timely design, construction and completion of all public infrastructure required for each of the three (3) Phases of the Project as shown on the attached Exhibits for each Phase of the Project. OWNER shall also be responsible for compliance with any and all other tract map conditions. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18913-1 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase I Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each "B" Tract Map in the Phase I area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within each such "B" Tract Map.

3.7.2.1 CITY and OWNER agree that OWNER shall construct and complete all public infrastructure required for Phase I of the Project as shown on Exhibit F-Phase I prior to, and as a condition precedent to, CITY's issuance of the first building permit for Production Units for the Property.

3.7.2.2 CITY and OWNER agree that OWNER shall file an application with CITY for approval of Tract Map 18913-2 and shall design, construct and complete all public infrastructure for Phase II as shown in Exhibit F-Phase II prior to, and as a condition precedent to, CITY's issuance of the four hundred thirty sixth (436th) building permit for the Property or CITY's issuance of any building permits for any Production Units in the Phase II area. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18913-2 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase II Units. Additionally, unless otherwise

specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each Tract Map in the Phase II area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within any such "B" Tract Map.

3.7.2.3 CITY and OWNER agree that OWNER shall file an application with CITY for approval of Tract Map 18913-3 and shall design, construct and complete all public infrastructure for Phase III as shown in Exhibit F-Phase III prior to, and as a condition precedent to, CITY's issuance of the nine hundred thirteenth (913th) building permit for the Property or CITY's issuance of any building permits for any Production Units in the Phase III area. Unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions or requirements of "A" Tract Map 18913-3 shall be completed and operational prior to, and as a condition precedent to, CITY's granting of a building permit for Phase III Units. Additionally, unless otherwise specified in a Subdivision Agreement/Tract Map conditions, all other required improvements and all other conditions for each Tract Map in the Phase III area shall be completed and operational prior to, and as a condition precedent to, OWNER requesting and CITY's granting of a building permit for Production Units within any such "B" Tract Map.

3.3 Modifications to Section 4.2 of the Original Development Agreement. Section 4.2.1, 4.2.2 and 4.2.3 of the Original Development Agreement shall be amended to read as follows:

"4.2.1 Amount of Development Impact Fee. Development Impact Fees shall be paid by OWNER, and any credit and/or reimbursement shall be provided to OWNER, in accordance with Section 3.1 of the Construction Agreement Amendment. Without limiting the nature of the foregoing, nothing contained in this Agreement shall affect the ability of other public agencies to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY.

4.2.2 Time of Payment. The Development Impact Fees required pursuant to Subsection 4.2.1 shall be paid to CITY prior to the issuance of building permit for each applicable residential or other unit, except for the Open Space and Habitat Acquisition Development Impact fees which shall be paid by OWNER to CITY prior to the issuance of a grading permit.

4.2.3 Parkland and Quimby Act Fees. Pursuant to the General Plan (OntarioPlan) Goal PR1, Policy PR1-5 (achievement of a park standard of 5 acres of parkland per 1,000 residents) OWNER shall develop and improve eight (8.0) acres of parks and improved open space in accordance with the CITY's park standards in Tract Nos. 18078, 18076, 18075, 18074, 18073, 18065, 18066, 18067, 18068, 18081 and Planning Areas 4 and 5 of the Specific Plan without

credit, reimbursement, offset or other consideration from CITY. CITY and OWNER also agree that lot NN consisting 2.74 acres is to be developed and improved as a private recreation area to serve the Project without credit, reimbursement, offset or other consideration from CITY. OWNER shall develop such areas to CITY standards. These designated Park areas shall be transferred to a homeowners' association and the homeowners' association shall be responsible for all maintenance of these developed park areas. CITY and OWNER also agree that lots LL and MM consisting of eleven and ninety-five one hundredths of an acre (11.95 acres) shall be developed and improved as a public park area. Such public park acreage, when developed and accepted by CITY, shall partially satisfy OWNER's Quimby Act park requirements. OWNER shall develop such areas to CITY standards. After acceptance and completion of all warranty periods, CITY shall assume responsibility for maintenance of these areas designated as public parks. OWNER shall also pay a pro-rated amount of the Development Impact Fee for the Parkland Acquisition and Development Fee category (Quimby Act fees). The prorated fee amount shall be based upon the calculated percentage of OWNER's Quimby Act park acreage requirement divided by the actual net acreage developed as a public park exclusive of any areas of public rights-of-way. At the time of this Amendment, the prorate fee is calculated to be sixteen and twenty-one one hundredths percent (16.21)% of the Parkland Acquisition and Development Fee. OWNER shall complete the development of parks and open space areas within each Tract map area at the time required by the conditions of approval for each respective Tract Map.

Additionally, Sections 4.2.4 and 4.2.5 of the Original Development Agreement shall be removed and replaced by the following:

4.2.4 Construction of DIF Program Infrastructure (Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and the Construction Agreement Amendment between CITY and NMC Builders LLC, CITY agrees that CITY shall issue DIF Credit in accordance with the provisions of the Construction Agreement and any amendments thereto. Use of DIF Credit issued to OWNER as a member of NMC Builders LLC to offset OWNER's DIF payment obligations shall also be subject to the provisions of the Construction Agreement and any amendments thereto.

4.2.5 Construction of DIF Program Infrastructure (Non-Construction Agreement). To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY's Development Impact Fee Program and such public improvements are not included the Construction Agreement Amendment, CITY agrees that CITY shall issue DIF Credit and DIF Reimbursement in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER. Limitation on the use of DIF Credit issued to OWNER to offset OWNER's DIF payment obligations shall also

be subject to the provisions of a separate Fee Credit Agreement. OWNER may also be eligible to receive reimbursement from DIF collected by CITY and paid by other development that benefits from OWNER's construction of DIF Program Infrastructure. Any such DIF Reimbursement shall be subject to a Fee Credit Agreement between CITY and OWNER. CITY and OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY's adopted policies applicable to such agreements."

4. OTHER MODIFICATIONS.

4.1 Additional Provisions to Recognize the Partial Assignment and Assumption of the Development Agreement. Section 2.4.6 shall be added to the Original Development Agreement as follows:

"2.4.6 Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign obligations and rights under this Development Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a Partial Assignment and Assumption of Development Agreement in a form substantially the same as in the attached Exhibit "G" attached hereto, and incorporated herein. Any such completed and executed Partial Assignment and Assumption of Development Agreement shall be submitted to CITY for approval pursuant to Section 2.4.2 of the Development Agreement. Within thirty (30) days of such submittal, CITY shall review, and if the above conditions are satisfied shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. No such release approved pursuant to this Subsection 2.4.6 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Development Agreement that are retained by OWNER and excluded from the transfer or assignment.

5. INTEGRATION.

5.1 Integration of Previous Understandings and Clarifications. This Second Amendment reflects the complete understanding of the parties with respect to the subject matter hereof. To the extent this Second Amendment conflicts with the Development Agreement, or the First Amendment or both, this Second Amendment supersedes such previous document(s). In all other respects, the parties hereto re-affirm and ratify all other provisions of the Development Agreement and First Amendment. The Property covered by this Second Amendment is as described in the legal description of the Property attached hereto as Exhibit B of the Original Development Agreement. This Second Amendment shall be recorded against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date the ordinance adopting this Second Amendment becomes effective ("Effective Date").

SIGNATURE PAGE
TO SECOND AMENDMENT TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF ONTARIO AND SL ONTARIO DEVELOPMENT COMPANY L.L.C.

"OWNER"

SL ONTARIO DEVELOPMENT COMPANY
L.L.C., a Delaware California limited liability
company

By: _____

By: _____
Name: _____
Its: _____

Date: _____

"CITY"

CITY OF ONTARIO

By: _____
Chris Hughes, City Manager

Date: _____

ATTEST:

City Clerk, Ontario

APPROVED AS TO FORM:
BEST, BEST & KRIEGER LLP

City Attorney

CITY OF ONTARIO

Agenda Report
October 1, 2013

SECTION:
CONSENT CALENDAR

SUBJECT: AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, AMENDING VARIOUS SECTIONS OF TITLE 9 (DEVELOPMENT CODE) OF THE ONTARIO MUNICIPAL CODE RELATIVE TO MEDICAL MARIJUANA DISPENSARIES

RECOMMENDATION: That the City Council adopt an ordinance approving File No. PDCA13-004, amending various sections of Title 9 (Development Code) of the Ontario Municipal Code to expressly define and clarify the City's existing prohibition of medical marijuana dispensaries in all zoning districts, including mobile medical marijuana dispensaries.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: None.

BACKGROUND: On August 27, 2013, the Planning Commission recommended approval with a vote of 7 to 0. On September 17, 2013, the City Council held a public hearing and introduced and waived further reading of the ordinance to approve a Development Code Amendment of the Ontario Municipal Code relative to medical marijuana dispensaries. In 1996, California voters approved Proposition 215 ("The Compassionate Use Act") which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" upon being deemed by a physician to be beneficial to the patient's health, and it establishes several forms by which marijuana can be distributed. Nothing in Act prohibits a city from adopting ordinances restricting the location or establishment of any medical marijuana distributor.

STAFF MEMBER PRESENTING: Jerry L. Blum, Planning Director

Prepared by: Charles Mercier
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

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SB 420, enacted by the State Legislature in 2003, provided further statutory guidance for those involved with medical marijuana use and regulation. Additionally, in May 2013, the California Supreme Court held that local governments can ban medical marijuana dispensaries because California's marijuana laws do not expressly or impliedly limit a local jurisdiction's land use authority. In their opinion, the Court further ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that Proposition 215 and SB 420 do not restrict that power, and that a local ban on medical marijuana dispensaries ("MMDs") does not conflict with these laws because they do no more than exempt certain activities from State criminal and nuisance laws. The attached Planning Commission staff report provides additional background discussion.

The Ontario Municipal Code (OMC) defines Medical Marijuana Dispensaries (MMDs) to be "[a]ny association, cooperative, club, coop, delivery service, collective, and any other similar use involved in the sale, possession, cultivation, use, and/or distribution of marijuana for medicinal purposes," and currently prohibits the establishment of Medical Marijuana Dispensaries (MMDs) in all zoning districts of the City.

The City has been successful in prohibiting several MMDs from locating without the filing of a court case; however, it is the opinion of the City Attorney that the City's current MMD definitions could be tightened-up. An analysis of the City's current MMD ordinance by the City Attorney has identified several areas in which the ordinance should be amended.

1. A relatively weak argument can be made that the current OMC does not [1] prohibit MMD offices that do not dispense marijuana themselves, but do handle or process the paperwork, donations, vouchers, etc., and distribute the marijuana from a mobile or independent location or vehicle (the "hybrid" approach), or [2] prohibit purely mobile MMD operations (including mobile deliveries originating in the City but completed outside of the City; deliveries initiated outside of the City but completed within the City; and deliveries initiated and completed within the City).

These "pure mobile" or "hybrid storefront/off-site" operational approaches are novel approaches taken by many medical marijuana advocates, and the City Attorney considers both approaches to be an illegal use of land, as the OMC prohibits "[a]ny ... similar use involved in the sale, possession, cultivation, use, and/or distribution of marijuana for medicinal purposes," as well as "delivery service(s)". This language likely covers the alternative MMD dispensary approaches; nevertheless, the proposed amendment to the MMD provisions will serve to further clarify that these approaches are not permitted land uses within the City.

2. The OMC does not expressly define the terms "medical marijuana cooperative" and "medical marijuana collective," but does prohibit them. The proposed amendment clarifies what is meant by these terms.

3. The OMC does not have exclusions in the definition of MMDs to specifically exclude "clinics," "health care facilities," "residential care facilities," "residential hospices," and "home health agencies," from its scope. The California Health and Safety Code treats these as unique health facilities with distinct licensing requirements. The proposed amendment provides clarifications to avoid an argument that legally permitted operations fitting these definitions are not prohibited by the OMC.

Based on staff's study of this issue, the City Attorney's Office and City staff prepared a draft ordinance updating the definition of "medical marijuana dispensary." The ordinance further addresses the novel approaches to operating MMDs since the City first enacted its prohibition of MMDs, including "hybrid" (i.e. storefront for paperwork and mobile or off-site delivery) and "purely mobile delivery" operational approaches. On August 27, 2013, the Planning Commission unanimously voted (7-0) to recommend the City Council approve the draft ordinance. At this time the City Council is being asked to approve the proposed ordinance, [1] as it is in the public interest, [2] as it clarifies and updates the existing definition of MMDs, including mobile MMDs, and [3] as it addresses the negative and harmful secondary effects of MMD operations.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Development Code Amendment is consistent with the goals and policies contained within the components of The Ontario Plan. More specifically, the goals and policies of The Ontario Plan that are furthered by the proposed project are as follows:

Land Use Element

Goal LU2: Compatibility between a wide range of uses.

Policy LU2-1: Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests;

Policy LU2-4: Regulation of Nuisances. We regulate the location, concentration and operations of potential nuisances; and

Policy LU2-5: Regulation of Uses. We regulate the location, concentration and operations of uses that have impacts on surrounding land uses.

Safety Element

Goal S7: Neighborhoods and commercial and industrial districts that are kept safe through a multi-faceted approach of prevention, suppression, community involvement and a system of continuous monitoring.

Policy S7-2: Community Oriented Problem Solving (C.O.P.S.). We support and maintain the mission of COPS to identify and resolve community problems;

Policy S7-5: Interdepartmental Coordination. We utilize all City departments to help reduce crime and promote public safety; and

Policy S7-6: Partnerships. We partner with other local, state and federal law enforcement agencies and private security providers to enhance law enforcement service to Ontario.

ENVIRONMENTAL REVIEW: Staff has determined that the proposed Development Code amendment is exempt from the California Environmental Quality Act (codified as Public Resources Code Sections 21000 et seq.) ("CEQA") and the State CEQA Guidelines, pursuant to CEQA Guidelines Section 15061(b)(3), which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTIONS 9-1.0200 AND 9-1.1300 OF TITLE 9 OF THE ONTARIO DEVELOPMENT CODE TO CLARIFY THE DEFINITION AND EXISTING PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES, INCLUDING MOBILE MEDICAL MARIJUANA DISPENSARIES, IN ANY ZONE OF THE CITY.

WHEREAS, in 1996, the voters of the State of California ("State") approved Proposition 215, codified as Health and Safety Code Sections 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" (the "CUA"), which provides seriously ill Californians "the right to obtain and use marijuana for medical purposes" once a physician has deemed the use beneficial to the patient's health; and

WHEREAS, as part of the CUA, Health and Safety Code Section 11362.768 regulates several forms through which marijuana can be distributed. Specifically, the section applies to "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license;" and

WHEREAS, in 2003, the State legislature enacted SB 420 to clarify the scope of the CUA and to allow cities to adopt and enforce rules and regulations consistent with the provisions of SB 420. Specifically, the Legislature approved the Medical Marijuana Program Act ("MMP") which provided additional statutory guidance for those involved with medical marijuana use and also authorized cities to enact rules and regulations with regard to medical marijuana consistent with State law; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (Health & Safety Code Section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in this article shall prevent a city from adopting and enforcing local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective civil and criminal enforcement of local ordinances; [and] other laws consistent with this article" (Health & Safety Code section 11362.83); and

WHEREAS, the Federal Controlled Substances Act (the "Controlled Substances Act"), codified as 21 U.S.C. Section 801 *et seq.*, makes it unlawful for any person to manufacture, distribute or dispense or process with intent to manufacture, distribute or dispense marijuana. Despite the passage of the CUA, the United States Supreme Court in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, held that the Controlled Substances Act continues to prohibit marijuana use, distribution, and possession, and that no medical necessity exceptions exist to those prohibitions and, in *Gonzales v. Raich* (2005) 545 U.S. 1, held that Congress, under the authority of the

Commerce Clause of the United States Constitution, could regulate the intrastate manufacture and possession of marijuana in furtherance of the provisions of the Controlled Substances Act; and

WHEREAS, several California cities that have permitted the establishment of medical marijuana dispensaries have found that such medical marijuana dispensaries have resulted in negative and harmful secondary effects, including significant increases in traffic, crime, and noise. These harmful secondary effects have involved a wide range of activity including burglaries, takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in theft and robberies in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under its influence, the sale of other illegal narcotics other than marijuana in the dispensaries, sales of marijuana to minors, and

WHEREAS, on May 6, 2013, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, et al., the California Supreme Court held that local governments can ban medical marijuana dispensaries by stating that nothing in the State of California's marijuana laws "expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders." In this opinion, the Court further ruled that the California Constitution grants cities and counties broad power to determine the permitted uses of land within their borders, that the CUA and MMP state or imply no purpose to restrict that power, and that the City of Riverside's prohibition of marijuana dispensaries does not conflict with these statutes because the statutes do no more than exempt certain activities from the state's criminal and nuisance laws; and

WHEREAS, in response to the holding in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, marijuana advocates have stated that they plan to narrowly interpret the court's holding to merely prohibit the dispensing of marijuana from a stationary storefront; and

WHEREAS, these marijuana advocates plan on advising marijuana dispensaries to operate under a "hybrid" approach where they would create facilities or offices to handle or process the paperwork for joining a medical marijuana dispensary or medical marijuana cooperative, as defined herein, to receive financial compensation or donations for the marijuana, or to give vouchers or other indicia of membership to new members only to later dispense the marijuana from a mobile or on or off site standalone delivery source independent of the office; and

WHEREAS, the exact number of mobile or on or off site standalone delivery services operating in California is unclear, since the State does not keep a registry of mobile medical marijuana distributors. In August 2013, at least six services within Ontario advertised direct delivery of marijuana within the City on "Weedmaps.com," an internet commercial listing service; and

WHEREAS, an increase in mobile dispensaries has been found to coincide with successful enforcement actions involving storefront dispensaries. In other parts of the state, shuttered businesses turned to delivery services instead. There is reason to expect the same in the City of Ontario, particularly in light of the California Supreme Court's recent ruling upholding the City of Riverside's ban on marijuana dispensaries, the City's willingness to cooperate with federal law enforcement operations, and its own aggressive enforcement actions against medical marijuana dispensaries; and

WHEREAS, mobile dispensaries have been strongly associated with criminal activity. Delivery drivers, for example, are targets of armed robbers who seek cash and drugs. As a result, many of the drivers reportedly carry weapons or have armed guards as protection. Examples of such criminal activity reported in the media include the following:

1. In February 2013, a Temecula deliveryman was reportedly robbed of cash outside of a Denny's restaurant, which led to a vehicular chase that continued until the robbers' vehicle eventually crashed on a freeway on ramp.

2. In January 2013, marijuana deliverymen in Imperial Beach were reportedly robbed after being stopped by assailants (one with a brandished semi-automatic handgun) after making a stop.

3. In January 2013, a deliveryman was reportedly robbed of three ounces of marijuana while making a delivery outside a Carl's Jr. Restaurant in Riverside, and he told police that the suspect may have had a gun.

4. In May 2012, a 23-year-old deliverywoman in La Mesa was reportedly shot in the face with a pellet gun. After running away, the assailants carjacked her vehicle.

5. In March 2012, a West Covina deliveryman was reportedly robbed after making a delivery. The deliveryman told police that he was approached by two subjects in ninja costumes who chased him with batons. He was scared and dropped a bag with some marijuana and money, which was taken by the suspects.

6. In August 2011, a medical marijuana deliveryman was reportedly robbed of \$20,000 worth of his marijuana (approximately 9 pounds) and a cellular phone in Fullerton. The driver suffered a head cut during the crime.

7. In June 2011, a marijuana delivery from a Los Angeles mobile dispensary turned deadly in Orange County when four individuals reportedly ambushed the mobile dispensary driver and his armed security guard and tried to rob them. One of the suspects approached the delivery vehicle and confronted the driver and a struggle ensued. A second suspect armed with a handgun, approached the security guard, who fired at the suspect hitting him multiple times.

8. In April 2011, a customer reportedly made arrangements for a medical marijuana deliveryman to meet him in a Safeway parking lot in Salinas. The deliveryman had about \$1,000 in cash and 1.5 pounds of marijuana. As the deliveryman began weighing the order, he looked up and saw a silver handgun in his face. The customer stole money and marijuana. The judge sentenced the customer to five years in state prison.

9. In May 2010, a college student who delivers medical marijuana door-to-door was reportedly robbed at gunpoint in Richmond. The assailants took \$1,000 in cash and a pound of marijuana; and

WHEREAS, concerns about non-medical marijuana use in connection with medical marijuana distribution operations have been recognized by federal and state courts. One example is *People v. Leal*, (2012) 210 Cal. App. 4th 829. (“Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case — that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card — then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.”); and

WHEREAS, despite the CUA and the MMP, the United States Attorneys in California have taken action to enforce the federal Controlled Substances Act against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violation federal law; and

WHEREAS, Ontario’s Development Code section 9-1.200 does contain an express definition of “medical marijuana dispensary” and “marijuana.” Section 9-1.1300(a) states that land and facilities thereon within the City shall only be developed, divided and/or used for the activities listed in Table 13-1 of the Ontario Municipal Code and decrees that Table 13-1 establishes uses that are permitted, conditionally permitted, not permitted or slowed as an ancillary use in association with a permitted or conditionally permitted use, within each zoning district of the City. Section 9-1.1300(a) also clarifies that a use that is not specifically allowed by Table 13-1 shall be deemed a prohibited use unless otherwise allowed by the Zoning Administrator in accordance with the provision contained in Section 9-1.1310 of Ontario’s Development Code. Table 13-1 prohibits medical marijuana dispensaries in all zoning districts of the City. However, novel approaches to MMD operation have commenced since the City enacted its prohibition of MMD’s, especially in light of the Supreme Court of California recent ruling upholding the right of municipalities to ban MMD’s, including the “hybrid” and mobile marijuana dispensaries described herein; and

WHEREAS, prior to the date of this ordinance, MMD’s are and continue to be prohibited in all zoning districts of the City pursuant to the Ontario Municipal Code; and

WHEREAS, the City Council hereby finds that, given the recent case law upholding a city's ability to ban medical marijuana dispensaries and the public peace, health, safety and welfare concerns associated with the operation of medical marijuana dispensaries as mentioned herein, the City wishes to continue its ban of medical marijuana dispensaries, as the definition of such MMD's is clarified herein, in all zoning districts of the City, including mobile operations.

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

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The paragraph defining "Medical marijuana dispensary" within Section 9-1.0200 entitled "Definitions" of Article 2 of Part 1 of Chapter 1 of the Ontario Development Code is hereby amended to read as follows:

"Sec. 9-1.0200. Definitions.

"Medical Marijuana Dispensary." Any facility or location, including any clinic, cooperative, club, business or group which dispenses, sells, provides, transports or delivers, or arranges the dispensing, sale, provision, transport or delivery, of medical marijuana to any person, firm, corporation, association, club, society, or other organization or any owner, manager, proprietor, employee, volunteer, or salesperson thereof, whether such facility, location or delivery service is independent from or affiliated with any fixed facility or location in the City, where medical marijuana is made available to, distributed by, sold or supplied to one or more of the following: (1) more than a single qualified patient, (2) more than a single person with an identification card, or (3) more than a single primary caregiver. Unless otherwise regulated by ordinance or applicable law, a "medical marijuana dispensary" shall not be construed to include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health & Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health & Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health & Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health & Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health & Safety Code, to the extent that such use strictly complies with applicable law, including but not limited to California Health & Safety Code Section 11362.5, et seq. A medical marijuana cooperative is two or more persons collectively or cooperatively cultivating, using, transporting, processing, administering, delivering or making available medical marijuana, with or without compensation. The term "medical marijuana cooperative" shall include a medical marijuana collective. All terms used in this definition of medical marijuana dispensary, including but not limited to "medical marijuana," "qualified patient," "identification card," and "primary caregiver," shall be as defined in California Health & Safety Code Section 11362.5, et seq."

SECTION 3. Subsection (a) of Section 9-1.1300 entitled “Permitted, Conditional and Ancillary Land Uses – All Zoning Districts.” of the Ontario Development Code is hereby amended to read as follows:

“Sec. 9-1.1300. Permitted, Conditional and Ancillary Land Uses – All Zoning Districts; Medical Marijuana Dispensaries Prohibited.

- (a) Land and facilities thereon shall only be developed, divided and/or used for those activities listed in Table 13-1. Table 13-1 establishes uses that are permitted, conditionally permitted, not permitted or allowed as an ancillary use in association with a permitted or conditionally permitted use, within each zoning district established by Article 12. A use that is not specifically allowed by Table 13-1 shall be deemed a prohibited use unless otherwise allowed by the Zoning Administrator in accordance with the provisions contained in § 9-1.1310 of this chapter. Notwithstanding any other provision of this Code, a medical marijuana dispensary, as defined in Section 9-1.0200 of this Chapter, shall be a prohibited use in all zones of the City.
 - (1) The operation of any medical marijuana dispensary as defined in this Chapter within the City is hereby declared a public nuisance and shall be abated pursuant to all available remedies. Violations of this Section may be enforced by any applicable law.
 - (2) No person shall deliver marijuana or marijuana-infused products, such as tinctures, baked goods or other consumable products, to any location within the City from a medical marijuana dispensary, regardless of whether the medical marijuana dispensary from which the delivery originated is within the City, or engage in any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet, or assist in the operation of any medical marijuana dispensary in the City.
 - (3) No person shall deliver marijuana or marijuana-infused products with such delivery originating from any medical marijuana dispensary located within the City, regardless of whether the delivery destination is within the City.”

SECTION 4. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 6. 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 7. This Ordinance shall take effect and shall be in force 30 days after the date of its adoption.

SECTION 8. 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 by the City Council of the City of Ontario, California, at a regular meeting of the City Council held on the 1st day of October, 2013.

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. 2968 was duly introduced at a regular meeting of the City Council of the City of Ontario held September 17, 2013 and adopted at the regular meeting held October 1, 2013 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. 2968 duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013 and that Summaries of the Ordinance were published on September 24, 2013 and _____, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

CITY OF ONTARIO

Agenda Report
October 1, 2013

SECTION:
PUBLIC HEARINGS

SUBJECT: A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A ZONE CHANGE REQUEST AMENDING THE ZONING DESIGNATIONS ON CERTAIN PROPERTIES LOCATED THROUGHOUT THE CITY TO PROVIDE ZONING CONSISTENCY WITH THE LAND USE DESIGNATIONS OF THE POLICY PLAN (GENERAL PLAN) OF THE ONTARIO PLAN

RECOMMENDATION: That the City Council adopt a resolution approving an addendum to The Ontario Plan Environmental Impact Report analyzing the environmental effects of the Project, pursuant to State CEQA Guidelines section 15164; and introduce and waive further reading of an Ordinance approving Zone Change File No. PZC13-002, changing the zoning designations on certain properties located throughout the City to provide consistency with the land use designations of the Policy Plan (General Plan) of The Ontario Plan.

COUNCIL GOALS: Develop Strategies and Take Actions, Including Regaining Local Control of the Ontario International Airport, to Minimize the Negative Impacts of the Global Financial Downturn on Ontario's Economy and the City's Fiscal Health
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

FISCAL IMPACT: None.

BACKGROUND: The City has initiated the zone changes in order to make the zoning of certain properties, as indicated in the attached ordinance, consistent with the land use designations of the Policy Plan (General Plan) of The Ontario Plan (TOP). The proposed zone changes included in this application are predominantly industrial in nature or are in close proximity to proposed industrial zone changes. This application represents the second of several phases in a citywide effort to achieve consistency between the zoning and General Plan land use designations for properties throughout the City. In total, more than 5,000 properties will require zone changes in order to achieve overall alignment between the zoning and land use designations.

STAFF MEMBER PRESENTING: Jerry L. Blum, Planning Director

Prepared by: Clarice Burden
Department: Planning

City Manager
Approval: 

Submitted to Council/O.H.A. 10/01/2013

Approved: _____

Continued to: _____

Denied: _____

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The Planning Commission reviewed the proposed Zone Changes on August 27, 2013. During the Planning Commission public hearing, four people spoke questioning why the rezoning of their property was necessary. In addition, the Ontario-Montclair School District requested (by mail) that their property located on Bon View Avenue and within Group G5 be removed from rezoning consideration until such time as they have an opportunity to discuss the matter with Planning Department staff.

One person spoke regarding her property (within Group F2), located to the north and south of Airport Drive, east of Grove Avenue, which is proposed to be changed from M1 (Limited Industrial) to M2 (Industrial Park). The speaker owns a property that has a residential use but currently has industrial zoning of M1. Staff explained that the location is in close proximity to the airport for which Industrial Park zoning is appropriate. Residential uses should be located farther from the impacts of the airport and the industrial uses allowed and existing in the surrounding area. The Planning Commission recommended that this group move forward for consideration by City Council. They believed that as the zoning and general plan for the properties was already industrial it was not appropriate to consider a residential zoning of the properties. They encouraged the speaker to meet with staff to better understand her property rights under the non-conforming section of the Development Code.

Three people spoke about their properties within Group I1, generally located along Philadelphia Street from Baker Avenue to Parco Avenue, which proposes changing the zoning from M2 (Industrial Park) to M1 (Limited Industrial). The property owners expressed concern over the limitations of uses within the proposed M1 zoning district. Staff explained that the M1 zoning was recommended due to the proximity to properties zoned and used for residential purposes (single family residential and mobile homes). After discussing the matter the Planning Commission recommended that Group I1 be pulled from consideration at this time, so that the property owners and staff can meet to discuss the differences in the zones in more depth and so staff could further analyze this area.

After the public hearing was closed the Planning Commission found that the proposed zone changes (minus Groups G5 and I1) were consistent with TOP land use designations and policies. As a result, the Commission unanimously voted to recommend approval of the balance of the application and pulled Groups G5 and I1 from consideration at that time and directed staff to meet with the affected parties.

AIRPORT LAND USE COMPATIBILITY: 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 Ontario.

ENVIRONMENTAL REVIEW: The application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts. The environmental impacts of this project were reviewed in conjunction with an Addendum to The Ontario Plan Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 in conjunction with File No. PGPA06-001. The Addendum was prepared pursuant to CEQA, the State CEQA Guidelines and The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" which provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts not previously analyzed in the Environmental Impact Report. All previously adopted mitigation measures are a condition of project approval and are incorporated herein by reference. The environmental documentation for this project is available for review at the Planning Department public counter.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING AN ADDENDUM TO THE ONTARIO PLAN ENVIRONMENTAL IMPACT REPORT FOR FILE NO. PZC13-002, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of Ontario prepared an Initial Study and approved for circulation an Addendum for Planning File No. PZC13-002 (the "Addendum"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"); and

WHEREAS, Planning File No. PZC13-003 (the "Project") analyzed under the Addendum consists of Zone Changes throughout the City (as shown in Exhibit 1 in the Addendum) in order to be consistent with the TOP. In addition, the proposed Zone Changes will amend the City's Zoning Map in order to reflect policies and implementation measures specified in the TOP and, pursuant to Section 65860 of the Government Code, provide consistency between zoning ordinances and general plans; and

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

WHEREAS, in January 2010, the City Council certified the Ontario Plan ("TOP") Final Environmental Impact Report ("EIR") (SCH # 2008101140), adopted an update on the Ontario General Plan and the Preferred Land Use Plan, made Mitigation Findings and adopted a Statement of Overriding Considerations pursuant to CEQA; and

WHEREAS, the TOP EIR contains an analysis of the environmental setting of the City at the time of its certification and also analyzes the environmental impact of build-out of the land use and associated zone changes to achieve the TOP Vision and evaluates and analyses the principles, goals and policies enumerated in the Addendum that are furthered and carried out by the Project; and

WHEREAS, pursuant to CEQA Section 21166 and Sections 15162 and 15163 of the CEQA Guidelines, an Addendum to the TOP EIR was prepared by the City with regard to the Project ("Addendum"). The Addendum incorporates, by reference, the analysis contained in the TOP EIR, and addresses only those issues specific to the Project. The Addendum concludes that the project will not result in impacts beyond what was previously analyzed in the TOP EIR, because the Project does not have new environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly; and

WHEREAS, the City of Ontario is the lead agency on the Project, and the Planning Commission is the recommending body for the proposed approval to construct and otherwise undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Addendum for the Project, and intends to take actions on the Project in compliance with CEQA, and state and local guidelines implementing CEQA; and

WHEREAS, the Addendum for the Project and the TOP EIR is on file in the Planning Department, located at 303 East B Street, Ontario, CA 91764, is available for inspection by any interested person at that location and is, by this reference, incorporated into this Resolution as if fully set forth herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ONTARIO AS FOLLOWS:

SECTION 1. THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Addendum/Initial Study and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum represents the independent judgment and analysis of the City of Ontario, as lead agency for the Project.

SECTION 2. THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby approve the Addendum prepared for the Project and find, pursuant to CEQA Guideline Sections 15162 and 15164, that the Project will not result in any new, increased or substantially different impacts, other than those previously considered and addressed in the TOP EIR and that no changes or additions to the TOP EIR analyses are necessary, nor is there a need for any additional mitigation measures (Planning File No. PZC13-002).

SECTION 3. The documents and materials that constitute the record of proceedings on which these findings have been based upon 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.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October 2013.

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. 2013- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2013 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. 2013- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2013.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PZC13-002, A CHANGE IN THE ZONING DESIGNATIONS FOR CERTAIN PROPERTIES IN THE CITY OF ONTARIO TO CONSISTENCY WITH THE ONTARIO PLAN LAND USE DESIGNATIONS OF THE PROPERTIES, AND MAKING FINDINGS IN SUPPORT THEREOF – APNS: VARIOUS (SEE EXHIBIT A).

WHEREAS, the City of Ontario ("Applicant") has filed an Application for the approval of a Zone Change, File No. PZC13-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the zoning of the properties is inconsistent with The Ontario Plan ("TOP") land use designations of the properties and the proposed zone changes will make the zoning consistent with TOP land use designations as shown in Exhibit A; and

WHEREAS, the Application was initiated in conjunction with a comprehensive effort to make the zoning of properties in the City of Ontario consistent with their TOP land use designations; 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 City of Ontario held one (1) Community Open House Workshop on March 21, 2013 to gain input from impacted property owners; and

WHEREAS, the project site is located within the Airport Influence Area of Ontario International Airport and the Project is consistent with the policies and criteria set forth within the Airport Land Use Compatibility Plan; and

WHEREAS, on August 27, 2013, the Planning Commission of the City of Ontario conducted a public hearing and concluded said hearing on that date. After considering all public testimony, the Planning Commission approved a Resolution recommending City Council approval of the project as amended; and

WHEREAS, as the first action on the Project, on October 1, 2013, the City Council approved a Resolution adopting an Addendum to TOP Environmental Impact Report (State Clearinghouse No. 2008101140) adopted by City Council on January 27, 2010 for File No. PGPA06-001 (The Ontario Plan). The Addendum finds that the proposed project introduces no new, significant environmental impacts, and all previously adopted mitigation measures are incorporated into the Project by reference; and

WHEREAS, on October 1, 2013, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; 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 approving body for the project, the City Council has reviewed and considered the information contained in the Addendum to the Environmental Impact Report prepared for the project and supporting documentation. Based upon the facts and information contained in the Addendum and supporting documentation, the City Council finds as follows:

a. The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project; and

b. The Addendum was completed in compliance with CEQA and the Guidelines promulgated thereunder; and.

c. The Addendum reflects the independent judgment of the City Council; and

d. The proposed project introduces no new significant environmental impacts beyond what was analyzed in TOP Environmental Impact Report (State Clearinghouse No. 2008101140) adopted for PGPA06-001 (The Ontario Plan), and all previously adopted mitigation measures are incorporated into the Project by reference.

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 concludes as follows:

a. The proposed zone change is consistent with the goals and policies of the general plan.

b. The proposed zone change is reasonable and beneficial, and in the interest of good zoning practice.

c. The project sites are physically suitable, including, but not limited to parcel size, shape, access, availability of utilities and compatibility with adjoining land uses, for the requested zoning designations and anticipated developments.

d. The proposed zone change will not adversely affect the harmonious relationship with adjacent parcels and land uses.

e. The proposed zone change 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, the City Council hereby approves the requested Zone Change as shown on the attached Exhibit "A".

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this Ordinance might be declared invalid.

SECTION 5. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 6. 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 7. The City Clerk shall certify to the adoption of this ordinance.

SECTION 8. 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 _____ 2013.

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 _____, 2013 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

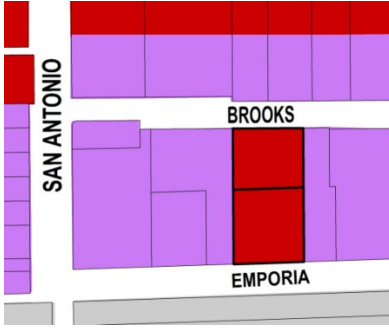
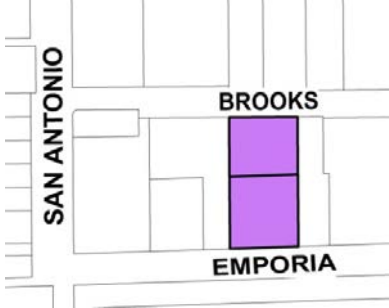
I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

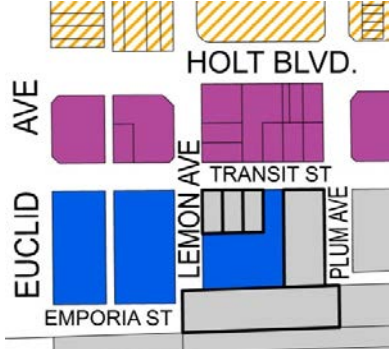
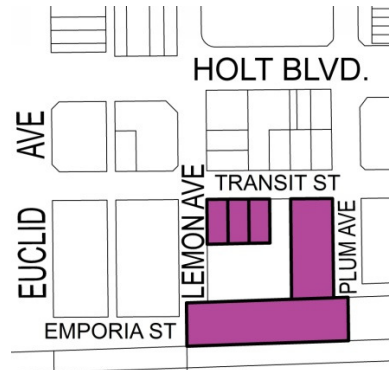
MARY E. WIRTES, MMC, CITY CLERK

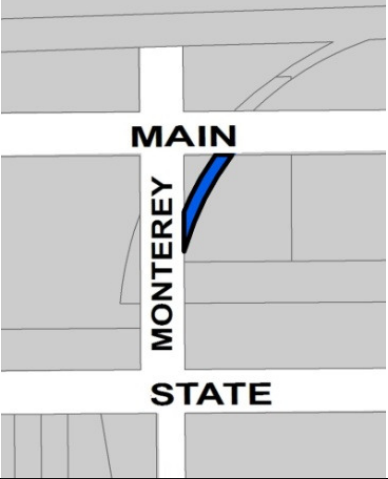
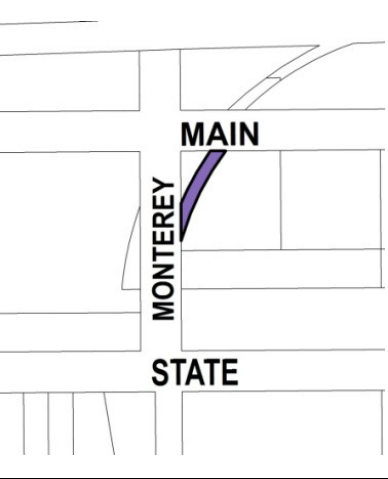
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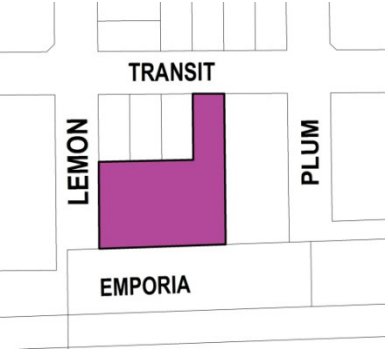
EXHIBIT A

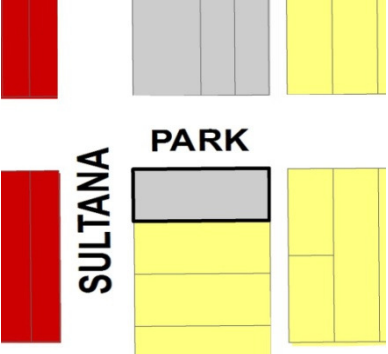
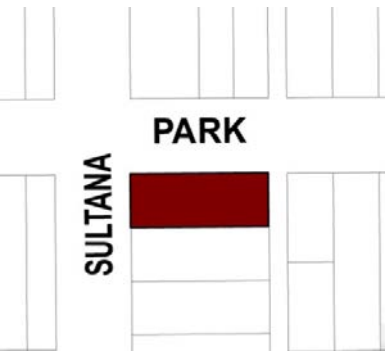
Zone Changes to Make Zoning Consistent with TOP Land Use Designation


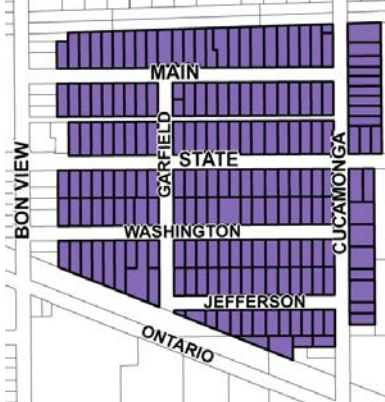
<p>C7 EXISTING ZONING</p> 	<p>PARCELS 104902203 & 104902231</p> <p><i>2 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>C3, Commercial Service</p>	<p>TOP: Industrial</p>	<p>M1, Limited Industrial</p>

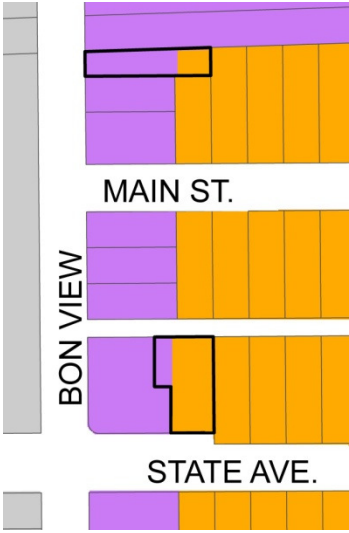
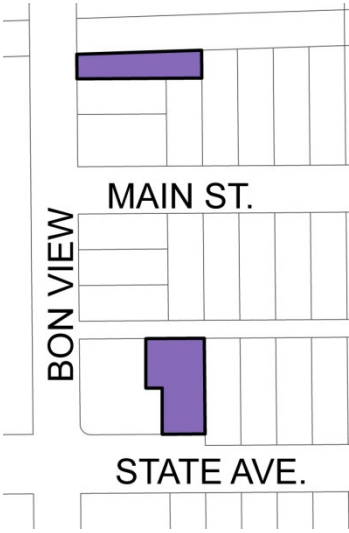
<p>D1a EXISTING ZONING</p> 	<p>PARCELS 104906401 - 104906403, 104906405 & 104906810</p> <p><i>5 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>M3, General Industrial</p>	<p>TOP: Mixed Use (Downtown)</p>	<p>C2, Central Business Commercial</p>

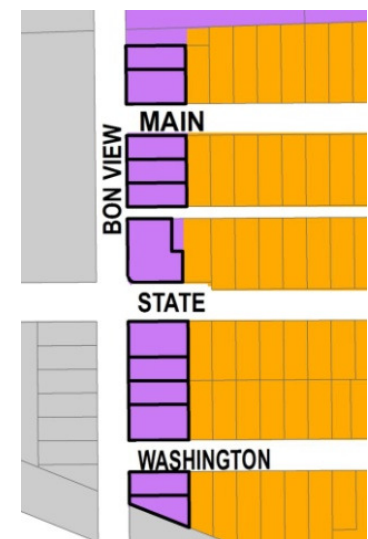
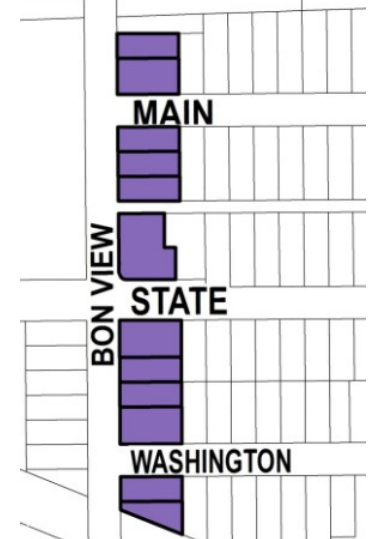
D3 EXISTING ZONING 	PARCELS 104908310 <i>1 property</i>	PROPOSED ZONING 
PF, Public Facility	TOP: Industrial	M2, Industrial Park



D5 EXISTING ZONING 	PARCELS 104906404 <i>1 property</i>	PROPOSED ZONING 
PF, Public Facility	TOP: Mixed Use (Downtown)	C2, Central Business Commercial

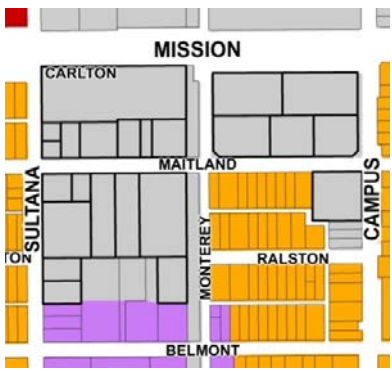
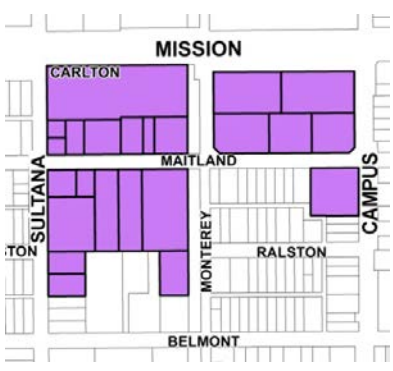
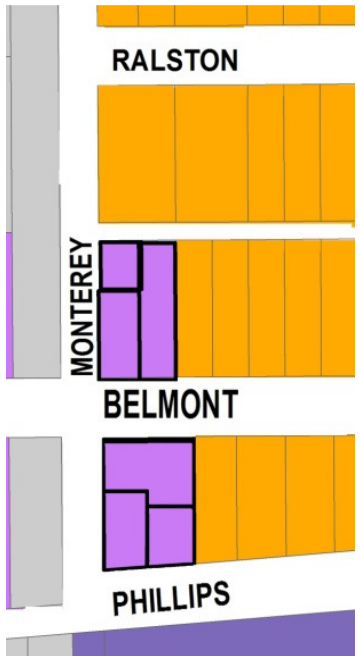
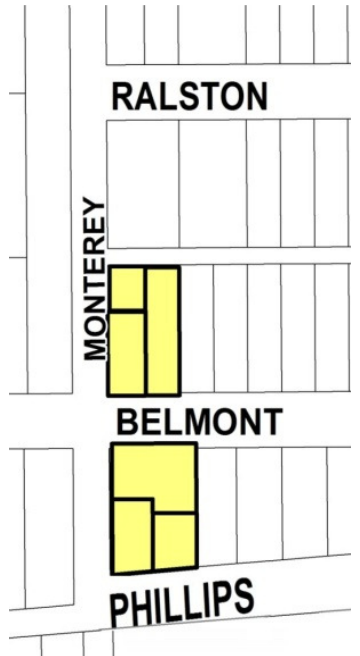
D7 EXISTING ZONING 	PARCELS 104923207 <i>1 property</i>	PROPOSED ZONING 
M3, General Industrial	TOP: Neighborhood Commercial	NC, Neighborhood Commercial

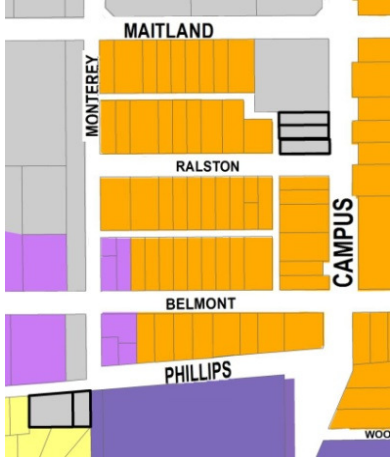
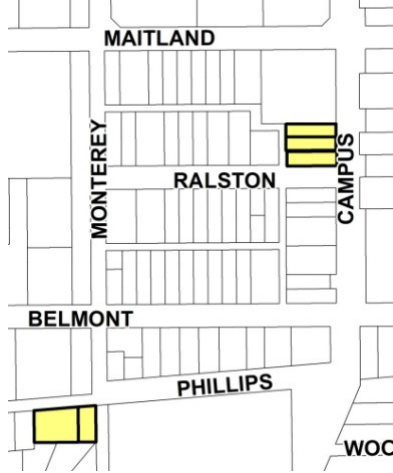
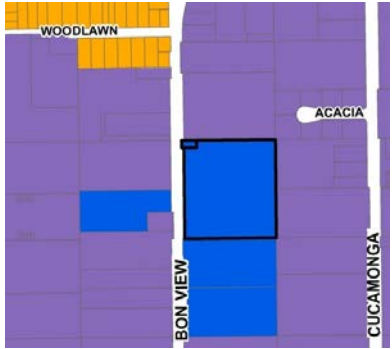

<p>E1 EXISTING ZONING</p> 	<p>PARCELS</p> <p>104912101 - 104912125, 104912207 - 104912223, 104912301 - 104912329, 104915126 - 104915137, 104916102 - 104916107, 104916109, 104916122 - 104916123, 104918201 – 104918204 104919105 - 104919122, 104919203 - 104919209, 104919211 - 104919212, 104919215, 104919401 - 104919422, 104919425 - 104919429, 104919501 - 104919528 & 104919601 – 104919613</p> <p><i>193 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>R2, Medium Density Residential</p>	<p>TOP: Industrial</p>	<p>M2, Industrial Park</p>

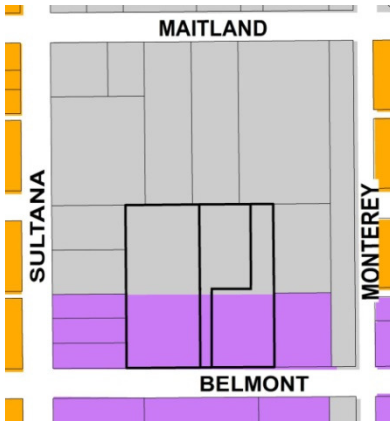
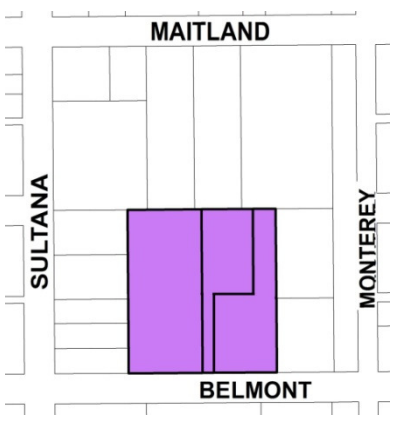
<p>E4 EXISTING ZONING</p> 	<p>PARCELS</p> <p>104912128 & 104912226</p> <p><i>2 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>R2, Medium Density Residential and M1, Limited Industrial</p>	<p>TOP: Industrial</p>	<p>M2, Industrial Park</p>



E5 EXISTING ZONING 	PARCELS 104912126 - 104912127, 104912204 - 104912206, 104912225, 104919101 – 104919104 & 104919201- 104919202 <i>12 properties</i>	PROPOSED ZONING 
M1, Limited Industrial	TOP: Industrial	M2, Industrial Park

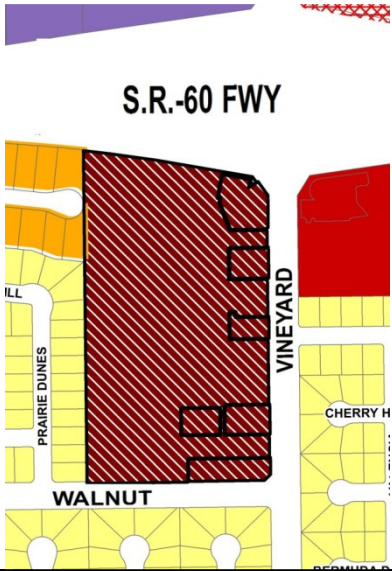
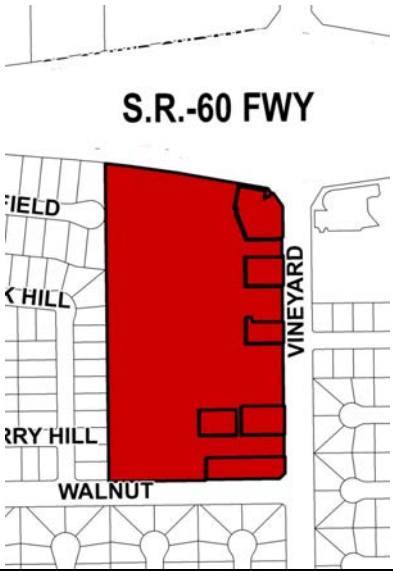
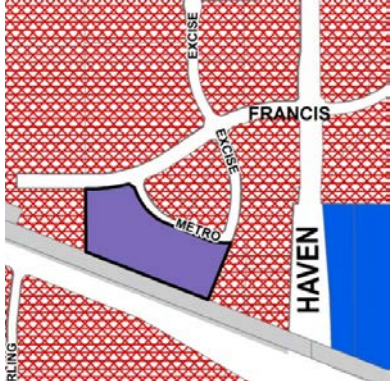
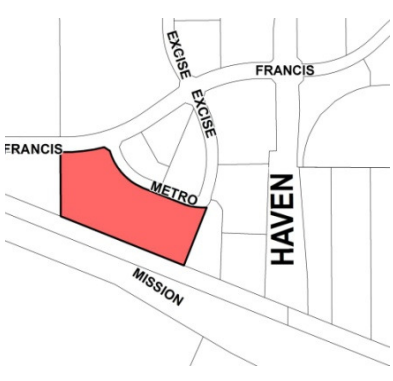
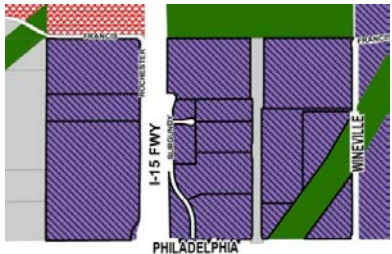
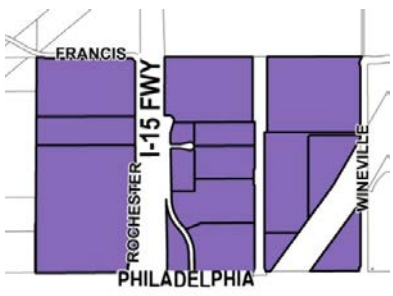
F2 EXISTING ZONING 	PARCELS 11321105 - 11321107, 11321118 - 11321119, 11321121, 11321124 - 11321128, 11321132 - 11321133, 11321135 - 11321136, 11322123, 11322125, 11322128 & 11322131 <i>21 properties</i>	PROPOSED ZONING 
M1, Limited Industrial	TOP: Industrial	M2, Industrial Park

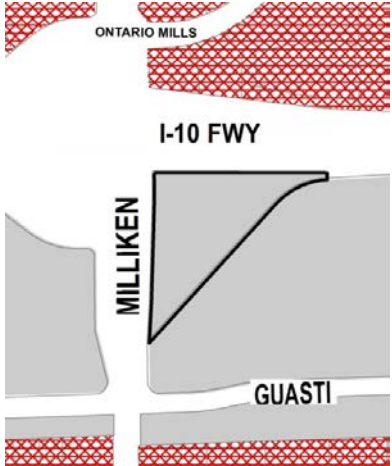
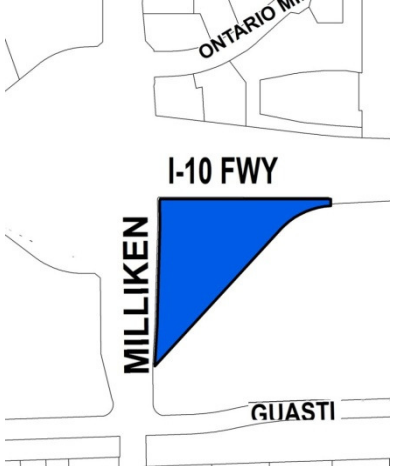
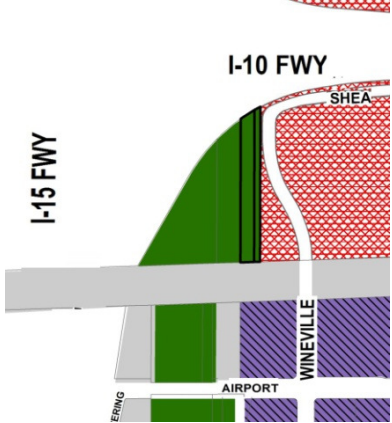
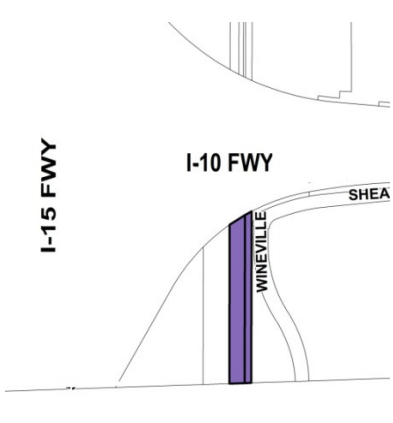
<p>G1 EXISTING ZONING</p>  <p>M3, General Industrial</p>	<p>PARCELS</p> <p>104935307 - 104935314, 104935408 - 104935412, 104950104 - 104950105, 104950110 - 104950115, 104950120 & 104950210</p> <p><i>23 properties</i></p> <p>TOP: Industrial</p>	<p>PROPOSED ZONING</p>  <p>M1, Limited Industrial</p>
<p>G2 EXISTING ZONING</p>  <p>M1, Limited Industrial</p>	<p>PARCELS</p> <p>104948101 - 104948103, 104950328 & 104950331 - 104950332</p> <p><i>6 properties</i></p> <p>TOP: Low Density Residential w/Industrial Transitional Overlay</p>	<p>PROPOSED ZONING</p>  <p>R1, Single Family Residential</p>

<p>G3 EXISTING ZONING</p>  <p>M3, General Industrial</p>	<p>PARCELS 104949217 - 104949218 & 104950211 – 104950213</p> <p><i>5 properties</i></p> <p>TOP: Low Density Residential w/Industrial Transitional Overlay on Campus parcels</p>	<p>PROPOSED ZONING</p>  <p>R1, Single Family Residential</p>
<p>G7 EXISTING ZONING</p>  <p>PF, Public Facility</p>	<p>PARCELS 105014101 - 105014102</p> <p><i>2 properties</i></p> <p>TOP: Industrial</p>	<p>PROPOSED ZONING</p>  <p>M1, Limited Industrial</p>

<p>G8 EXISTING ZONING</p> 	<p>PARCELS 104950117 – 104950119</p> <p><i>3 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>M1, Limited Industrial and M3, General Industrial</p>	<p>TOP: Industrial</p>	<p>M1, Limited Industrial</p>

<p>H1 EXISTING ZONING</p> 	<p>PARCELS 105043116, 105043118 - 105043125, 105044104 - 105044105, 105044163 - 105044164, 105044166 - 105044167, 105044169 - 105044172, 105045103 - 105045104, 105045107 - 105045108, 105050102 - 105050108, 105050117 - 105050122, 105051102, 105051105, 105051108 - 105051110, 105052101 - 105052108, 105052110 - 105052111, 105052113 & 105052115</p> <p><i>53 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>M2, Industrial Park</p>	<p>TOP: Industrial</p>	<p>M1, Limited Industrial</p>

<p>I2 EXISTING ZONING</p>  <p>C1, Shopping Center Commercial</p>	<p>PARCELS 21640145, 21640157, 21640161 - 21640163, 21641133 & 21641137</p> <p><i>7 properties</i></p> <p>TOP: General Commercial</p>	<p>PROPOSED ZONING</p>  <p>C3, Commercial Service</p>
<p>J2 EXISTING ZONING</p>  <p>M2, Industrial Park</p>	<p>PARCELS 21127207</p> <p><i>1 property</i></p> <p>TOP: Office Commercial</p>	<p>PROPOSED ZONING</p>  <p>AP, Administrative Professional</p>
<p>K2 EXISTING ZONING</p>  <p>M3(VI), Vintage Industrial</p>	<p>PARCELS 23815213 - 23815214, 23815216 - 23815226, 23815228 & 23815231 - 23815232</p> <p><i>16 properties</i></p> <p>TOP: Industrial</p>	<p>PROPOSED ZONING</p>  <p>M2, Industrial Park</p>

<p>L1 EXISTING ZONING</p> 	<p>Parcels 23804229</p> <p><i>1 property</i></p>	<p>PROPOSED ZONING</p> 
<p>M3, General Industrial</p>	<p>TOP: Public Facility</p>	<p>PF, Public Facility</p>
<p>L4 EXISTING ZONING</p> 	<p>PARCELS 23805216 & 23805226</p> <p><i>2 properties</i></p>	<p>PROPOSED ZONING</p> 
<p>OS, Open Space</p>	<p>TOP: Industrial</p>	<p>M2, Industrial Park</p>