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

COUNCIL MEETING AGENDA
CITY COUNCIL – CITY OF ONTARIO OREGON
TUESDAY, NOVEMBER 27, 2018, 7:00 PM, MT

Pursuant to the Public Meetings Laws and Rules within the Oregon Revised Statutes, the City Council has the authority, ability, and standing to take action on any items on the Agenda, or add items to the Agenda, during the Study Session or Regular Meeting, as long as all public meeting notice requirements have been met.

1) CALL TO ORDER

Roll Call: Betty Carter _____ Marty Justus _____ Ramon Palomo _____ Dan Capron _____
Thomas Jost _____ Norm Crume _____ Mayor Ron Verini _____

2) PLEDGE OF ALLEGIANCE

This Agenda was posted on November 26, 2018. Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) MOTION TO ADOPT THE AGENDA

4) PUBLIC COMMENTS Citizens may address the Council; however, Council may not be able to provide an immediate answer or response. Our of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

5) OLD BUSINESS

A) Bid Award: Ontario Aquatic Center Splash Pad Site Work

6) NEW BUSINESS

A) Resolution #2018-143: City Hall Security Project

B) Ordinance #2746-2018: Extenet Systems, LLC Franchise Agreement

C) Ordinance #2747-2018: Marijuana Business License Ordinance Amendment by Emergency Passage

7) HAND-OUTS/DISCUSSION ITEMS

8) CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

9) ADJOURN

The City Council may recess/adjourn to Executive Session under ORS 192.660(2) as follows: (a) Employment of Public Officers, Employees, or Agents; (b) Discipline of Public Officers, Employees, or Agents; (d) Labor Negotiations; (e) Real Property Transactions; (f) Exempt Public Records; (g) Trade Negotiations; (h) Litigation /Consult with Legal Counsel; (i) Performance Evaluation of Public Officers and Employees; (j) Trade Negotiations; and/or (l) Labor Negotiations.

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

AGENDA REPORT
OLD BUSINESS
November 27, 2018

TO: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: BID AWARD: ONTARIO AQUATIC CENTER SPLASH PAD SITE WORK

DATE: November 25, 2018

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE THE BID FROM WARRINGTON CONSTRUCTION FOR THE SPLASH PAD SITE IMPROVEMENTS AT THE ONTARIO AQUATIC CENTER MINUS THE CONCRETE DECK FOR UP TO $208,966 PLUS AN ADDITIONAL $2,000 FOR MATERIAL TESTING.

SUMMARY:

Public Works staff have secured a low bid for the Splash Pad Site Improvements at the Ontario Aquatic Center. Staff would like to secure a partial approval of the bid by the City Council so the project can progress forward.

BACKGROUND:

Several years ago a passionate group of volunteers got together to revive the Ontario Aquatic Center. Over time, they determined an outdoor splash pad was the most cost effective way to begin revitalizing the city's pool.

The City of Ontario committed several year's transient occupancy tax collections toward the project until it had sufficient funds to award the splash features to Anderson Poolworks in January of 2018. After the council awarded the contract to Anderson Poolworks the Friends of the Aquatic Center began securing significant donations towards the remainder of the project. This past spring, the project was kicked off.

The City Parks Master Plan was approved in time for the City to apply for the State Local Government Grant Program. In the spring, the city applied for the grant and received funding for up to $298,200 for restrooms and other splash pad elements, such as shade structures. The restroom portion of the project was bid previously and awarded to Holcomb Construction for $154,720 after the State of Oregon officially announced the award of Grants in September of 2018.

CURRENT SITUATION:

The Site Work portion of the Splash Pad Project was bid separately from the restrooms. This part of the project ties together the bathroom piece with the pool features into one facility. Two bids were received. The low bid came from Warrington Construction for $378,620.

Since receiving the bids, city staff and JACOBS have worked with the contractor to value engineer elements of the project. JACOBS worked with the engineer to reduce concrete fill amounts and concrete coloring by $46,080. We were also able to reduce the scope by a donation of fill material to save approximately $7,715. Another $4,890 was saved by the contractor identifying different lights and drains. Additionally, the city's public works contractor, JACOBS, has agreed to donate $50,000 to the project.

After accounting for the donation from JACOBS and the contract savings, we have a revenue gap of $50,000 to finish the project. We are still awaiting notification from several donors to fill the remaining gap. After fulling exploring those donors, we will consider other alternatives to make sure the project is finished.

Since the full revenue to complete the job has not been raised we recommend the council to award the project MINUS the concrete deck. We would include the deck for the splash pad so that Anderson could install the pool features as soon as possible once the pad is complete. The reduction in scope is $110,970 which falls within the current revenue. The remaining portion of the contract would be awarded as soon as the additional funds are identified.

ANALYSIS:

A. **FINANCIAL** Staff is looking for the council to award a partial contract of $208,966 to Warrington Construction. We are also requesting an additional $2,000 for material testing. We have sufficient project revenues to cover this contract.

   The savings is $110,970 is more than enough for the gap we have right now. If the volume of quantities changes by more than 25%, the contractor and owner have a right to renegotiate unit prices. However, it would certainly be our goal that before we are ready to place concrete, we actually have the money in hand and there is no reduction in quantities and therefore none in unit price.

B. **TIMING** Timing for awarding this project is critical. The goal is to have the Splash Pad open by June 1, 2019. There is a very short window for work yet this fall, with the majority occurring next spring. The more that can be completed this fall, the better off the contractor will be in the spring, especially as we never know what kind of snow year could occur.

   If we do not get the project awarded shortly, we may not be able to get much prep work completed before we start to get freezing conditions (which are not acceptable for material placement and compaction). Warrington would like to try to get the Anderson Poolworks vaults installed and as much of the fill material placed and compacted as possible before winter really settles in.

C. **POLICY/LEGAL** Only the City Council has the authority to award the bid as per city and state policy.

ALTERNATIVES:

1. Approve the low bid for the splash pad by Warrington Construction and allow the project to move forward.
2. Do not approve the low bid. The result would be a significant hold up to the project.

RECOMMENDATION:

Staff recommends the City Council partially award the low bid for the Ontario Splash Pad Site Improvement from Warrington at a cost of $208,966 plus $2,000 for material testing.

ATTACHMENTS:

1. Warrington Bid
2. Holcomb Bid
3. Splash Pad - Site Work - Bid Spredsheet

Addendum #2

Bid Item	Description	Unit	Approx QTY	Unit Price	Extended Total Amount
1	Reinforced Concrete Splash Pad (includes ~~surface prep, fill, bedding, and~~ fence post sleeves)	CY	85	467.00	39,695.00
2	Concrete Deck/Slab – Plain (includes surface prep, fill, bedding, and fence post sleeves)	CY	195	450.00	87750.00
3	Concrete Deck/Slab - Pigmented ~~(includes surface prep, fill, and bedding)~~	CY	110	630.00	69,300.00
4	Concrete Sidewalk	CY	10	1070.00	10,700.00
5	3/4" Minus Crushed Aggregate Base (includes *both 4" thick section under deck and 6" thick section under splash pad)*	CY	420	24.00	10,080.00
6	6" Minus Aggregate *Fill Material* ~~Sub-Base (12" thick)~~ *(includes all material, hauling, placement, and compaction to subbase elevation)*	CY	1390	21.00	29,190.00
6A	*Coordination with Anderson Pool Works – APW contract includes:* *- Excavation & trenching coordination for surge tank, manifold vault, and piping system* *- Assist in placement of vaults (direction only)* *- Core drill vaults for system piping* *- Link seal and grout all pipe* *- Waterproof surge tank* *- Install plumbing for splash pad, surge tank, and manifold vault* *General Contractor responsible for all other work to ensure site is to proper grade, trenches for system piping are excavated to appropriate depths and backfilled (except right at vaults or under the splashpad).*	*LS*	*1*	5000.00	5000.00
7	Concrete Stairs (includes handrail)	LS	1	2500.00	2500.00
8	4" Gravity Sewer Service (includes earthwork)	LF	40	30.00	1200.00
9	1" Potable Water Service (includes earthwork, cap, and marker)	LF	40	30.00	1200.00
10	10" Storm Drain Culvert – SDR 35 (includes earthwork, concrete outlet pad, and rodent screens)	LF	115	40.00	4600.00
11	6" Storm Sewer Pipe and Appurtenances	LF	200	32.00	6400.00
12	8" Storm Sewer Pipe and Appurtenances	LF	155	35.00	5425.00
13	Clean Out Fixture	EA	2	1000.00	2000.00
14	Stainless Steel Drain Fixture	EA	6	500.00	3000.00
15	Storm Sewer Manhole	EA	3	2500.00	7500.00
16	~~Landscaping Boulders~~ *(to be donated, hauled, and placed)*	EA	~~7~~ *0*	--------------	--------------
17	Landscaping (finish grading, weed barrier, ~~bark mulch, lawn seeding, *placement of landscape rock*~~)	LS	1	2000.00	2000.00
18	Pole Mounted Luminaires	EA	6	4500	27000.00
18A	*Wall Mounted Luminaires*	*EA*	*2*	1000.	2000.00

19	Underground Power Services (includes conduit and wires)	LF	1,220	14.00	17080.00
20	Erosion & Sediment Control	LS	1	5000.00	5000.00
21	Construction Traffic Control	LS	1	5000.00	5000.00
22	Mobilization	LS	1	35000.00	35000.00
				TOTAL BID AMOUNT	378620.00

TOTAL BID AMOUNT

$ Three hundred seventy-eight thousand six hundred twenty dollars

(Amount written out in words)

Bidder acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents. Bid amount shall be made based on Instructions to Bidders, Article 8. In comparison of bids, bids will be evaluated based on the Total Bid Amount.

Addendum #2[RB1]

Bid Item	Description	Unit	Approx QTY	Unit Price	Extended Total Amount
1	Reinforced Concrete Splash Pad (includes ~~surface prep, fill, bedding, and~~ fence post sleeves)	CY	85	$753.23	$64,025.00
2	Concrete Deck/Slab – Plain (includes surface prep, fill, bedding, and fence post sleeves)	CY	195	$759.87	$148,175.00
3	Concrete Deck/Slab - Pigmented ~~(includes surface prep, fill, and bedding)~~	CY	110	$890.45	$97,950.00
4	Concrete Sidewalk	CY	10	$840.00	$8,400.00
5	3/4" Minus Crushed Aggregate Base (includes *both 4" thick section under deck and 6" thick section under splash pad*)	CY	420	$81.09	$34,060.00
6	6" Minus Aggregate *Fill Material* ~~Sub-Base (12" thick)~~ *(includes all material, hauling, placement, and compaction to subbase elevation)*	CY	1390	$43.95	$61,100.00
6A	*Coordination with Anderson Pool Works – APW contract includes:* - *Excavation & trenching coordination for surge tank, manifold vault, and piping system* - *Assist in placement of vaults (direction only)* - *Core drill vaults for system piping* - *Link seal and grout all pipe* - *Waterproof surge tank* - *Install plumbing for splash pad, surge tank, and manifold vault* *General Contractor responsible for all other work to ensure site is to proper grade, trenches for system piping are excavated to appropriate depths and backfilled (except right at vaults or under the splashpad).*	*LS*	*1*	$22,000.00	$22,000.00
7	Concrete Stairs (includes handrail)	LS	1	$10,500.00	$10,500.00
8	4" Gravity Sewer Service (includes earthwork)	LF	40	$31.25	$1,250.00
9	1" Potable Water Service (includes earthwork, cap, and marker)	LF	40	$31.25	$1,250.00
10	10" Storm Drain Culvert – SDR 35 (includes earthwork, concrete outlet pad, and rodent screens)	LF	115	$42.00	$4,830.00
11	6" Storm Sewer Pipe and Appurtenances	LF	200	$29.00	$5,800.00
12	8" Storm Sewer Pipe and Appurtenances	LF	155	$31.61	$4,900.00
13	Clean Out Fixture	EA	2	$500.00	$1,000.00

14	Stainless Steel Drain Fixture	EA	6	$ 1,800.00	$ 10,800.00
15	Storm Sewer Manhole	EA	3	$ 2,100.00	$ 6,300.00
16	~~Landscaping Boulders~~ *(to be donated, hauled, and placed)*	EA	~~7~~ *0*	--------------	--------------
17	Landscaping (finish grading, weed barrier, ~~bark mulch, lawn seeding,~~ ~~*placement of landscape rock*~~)	LS	1	$ 3,500.00	$ 3,500.00
18	Pole Mounted Luminaires	EA	6	$ 5,908.33	$ 35,450.00
18A	*Wall Mounted Luminaires*	*EA*	*2*	$ 500.00	$ 1,000.00
19	Underground Power Services (includes conduit and wires)	LF	1,220	$ 9.75	$ 11,900.00
20	Erosion & Sediment Control	LS	1	$ 500.00	$ 500.00
21	Construction Traffic Control	LS	1	$ 500.00	$ 500.00
22	Mobilization	LS	1	$ 28,284.00	$ 28,284.00
				TOTAL BID AMOUNT	$ 563,474.00

TOTAL BID AMOUNT

$ Five Hundred Sixty Three Thousand Four Hundred Seventy Four dollars
(Amount written out in words)

Bidder acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents. Bid amount shall be made based on Instructions to Bidders, Article 8. In comparison of bids, bids will be evaluated based on the Total Bid Amount.

Bid Item	Description	Unit	Approx QTY	Unit Price	Extended Total Amount	Approx QTY	Unit Price	Extended Total Amount
1	Reinforced Concrete Splash Pad (includes ~~surface prep, fill, bedding, and~~ fence post sleeves)	CY	85	467	$ 39,695	85	467	$ 39,695
2	Concrete Deck/Slab – Plain (includes surface prep, fill, bedding, and fence post sleeves)	CY	195	450	$ 87,750	158	470	$ 74,260
3	Concrete Deck/Slab - ~~Pigmented (includes surface prep, fill, and bedding)~~	CY	110	630	$ 69,300	73	502.88	$ 36,710
4	Concrete Sidewalk	CY	10	1070	$ 10,700	10	1070	$ 10,700
5	3/4" Minus Crushed Aggregate Base (includes *both 4" thick section under deck and 6" thick section under splash pad*)	CY	420	24	$ 10,080	420	24	$ 10,080
6	6" Minus Aggregate *Fill Material* ~~Sub-Base (12" thick)~~ *(includes all material, hauling, placement, and compaction to subbase elevation)*	CY	1390	21	$ 29,190	1390	15.45	$ 21,476
6A	*Coordination with Anderson Pool Works – APW contract includes:* - *Excavation & trenching coordination for surge tank, manifold vault, and piping system* - *Assist in placement of vaults (direction only)* - *Core drill vaults for system piping* - *Link seal and grout all pipe* - *Waterproof surge tank* - *Install plumbing for splash pad, surge tank, and manifold vault*	*LS*	*1*	5000	$ 5,000	*1*	5000	$ 5,000

	General Contractor responsible for all other work to ensure site is to proper grade, trenches for system piping are excavated to appropriate depths and backfilled (except right at vaults or under the splashpad).								
7	Concrete Stairs (includes handrail)	LS	1	2500	$ 2,500	1	2500	$ 2,500	
8	4” Gravity Sewer Service (includes earthwork)	LF	40	30	$ 1,200	40	30	$ 1,200	
9	1” Potable Water Service (includes earthwork, cap, and marker)	LF	40	30	$ 1,200	40	30	$ 1,200	
10	10” Storm Drain Culvert – SDR 35 (includes earthwork, concrete outlet pad, and rodent screens)	LF	115	40	$ 4,600	115	40	$ 4,600	
11	6” Storm Sewer Pipe and Appurtenances	LF	200	32	$ 6,400	200	32	$ 6,400	
12	8” Storm Sewer Pipe and Appurtenances	LF	155	35	$ 5,425	155	35	$ 5,425	
13	Clean Out Fixture	EA	2	1000	$ 2,000	2	1000	$ 2,000	
14	~~Stainless Steel Drain Fixture~~ Epoxy Coated Cast Drains	EA	6	500	$ 3,000	6	100	$ 600	
15	Storm Sewer Manhole	EA	3	2500	$ 7,500	3	2500	$ 7,500	
16	~~Landscaping Boulders~~ *(to be donated, hauled, and placed)*	EA	~~7~~ *0*	--------------	--------------	~~7~~ *0*	--------------	--------------	

17	Landscaping (finish grading, weed barrier, ~~bark mulch, lawn seeding~~*~~, placement of landscape rock~~*)	LS	1	2000	$ 2,000	1	2000	$ 2,000
18	Pole Mounted Luminaires	EA	6	4500	$ 27,000	6	4085	$ 24,510
18A	*Wall Mounted Luminaires*	*EA*	*2*	*1000*	$ 2,000	*2*	*1000*	$ 2,000
19	Underground Power Services (includes conduit and wires)	LF	1,220	14	$ 17,080	1,220	14	$ 17,080
20	Erosion & Sediment Control	LS	1	5000	$ 5,000	1	5000	$ 5,000
21	Construction Traffic Control	LS	1	5000	$ 5,000	1	5000	$ 5,000
22	Mobilization	LS	1	35000	$ 35,000	1	35000	$ 35,000
				TOTAL BID AMOUNT	$ 378,620			$ 319,936
								$ 2,000
								$ 5,000
								$ 326,936
								$ 51,684

AGENDA REPORT
NEW BUSINESS
November 27, 2018

TO: Mayor and City Council

FROM: Betsy Roberts, City Engineer

THROUGH: Adam J. Brown, City Manager

SUBJECT: RESOLUTION #2018-143: CITY HALL SECURITY PROJECT

DATE: November 21, 2018

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE RESOLUTION #2018-143, AND AWARD THE CITY HALL SECURITY UPGRADE PROJECT TO HOLCOMB CONSTRUCTION FOR UP TO $48,300.

SUMMARY:

Public Works opened a bid for the City Hall Security Upgrade Project on November 8, 2018. Only one bid was received.

BACKGROUND:

Over the past 18 months, the Police Chief has been working with City Administration to develop an improved flow through the City Hall building that would better separate Police space from Administrative space. This is being done through relocation of staff, construction of walls to divide space, and addition of doors with new security locks. The movement of doors, addition of walls, and other changes require some lighting, electrical, and communications cable updating as well. All of these improvements were developed into a set of Construction Documents that were put out to three local contractors for consideration.

CURRENT SITUATION:

Public Works staff followed up several times with each contractor, including taking each contractor through City Hall and describing the improvements. However, due to the booming economy, only one bidder responded. At this time, to keep the project moving and implements the changes desired by Public Safety, Public Works staff needs an approval from Council to award the project to Holcomb Construction.

ANALYSIS:

A. **FINANCIAL** This project has been budgeted and bid in the past. Unfortunately, no bids were received. The project was modified slightly, and the bid was held up to allow for potentially better bidding environment. However, the budget was not carried forward into the current fiscal year. This Staff Report is accompanied by a Resolution to use Public Safety Funds to cover the project costs. The cost of the project identified in the motion includes an approximate 10% contingency. The actual bid amount is $43,914.

B. **TIMING** This project has been in the works for over a year. The winter is a good season for this type of indoor construction. The improvements are being done as a safety and security measure for those working in and using City Hall.

C. **POLICY/LEGAL** None.

ALTERNATIVES:

The Council could choose not to award the bid and rebid at a later date. Whether a better bid could be secured is questionable in this bidding climate.

RECOMMENDATION:

Staff recommends approval of Resolution #2018-143, and awarding the project to Holcomb Construction.

ATTACHMENTS:

1. Reso 2018-143 - Security Upgrade
2. Holcomb city hall bid Nov 8 2018
3. Bid-Quote-Track-Form (002)

RESOLUTION #2018-2018-143

A RESOLUTION TO APPROPRIATE FUNDS FROM THE PUBLIC SAFETY DEPARTMENT WITHIN THE RESERVE FUND FOR CITY HALL SECURITY UPGRADE

WHEREAS, The City of Ontario wishes to make security upgrades at City Hall; and

WHEREAS, The improvements will include relocating staff and dividing space to develop an improved workspace and separate police from administrative space; and

WHEREAS, There was one bid received for this project from Holcomb Construction; and

WHEREAS, The 2018-2019 budget was developed without knowledge of the cost of this project; and

WHEREAS, The City desires to modify the 2018-2019 budget to receive and expend the funds.

NOW THEREFORE, THE CITY OF ONTARIO RESOLVES to approve the adjustments to the fiscal year 2018-2019 budget:

Line Item	Item Description	FY 18-19 Budget	Amount of Change	Adjusted Budget
RESERVE FUND	**PUBLIC SAFETY DEPARTMENT**			
055-131-712116	City Hall Security Upgrades	$ -	$48,300	$48,300
055-131-871000	Contingency	$ 466,277	($48,300)	$417,977

PASSED AND ADOPTED by the Common Council of the City of Ontario this ______ day of ____________, 2018, by the following vote:

AYES:
NAYS:
EXCUSED:
ABSENT:

APPROVED by the Mayor this _______day of _______________, 2018.

ATTEST:

______________________________ ______________________________

Ronald Verini, Mayor

Tori Barnett, MMC, City Recorder

Bid Form

- City Hall First Floor Renovations
- Holcomb Construction
    - Brad Holcomb
    - 407 S 4th St Nyssa, Or 97913
    - 541-823-2202
    - holcconst@yahoo.com
- Acknowledge that there is **NO** prevailing Wage
- No Addendums

Total: $43,914.00 (Forty Three Thousand, Nine Hundred Fourteen Dollars)

President

11-8-18

Swiss Re
Corporate Solutions

BID BOND

CONTRACTOR:
(Name, legal status and address)
Holcomb Construction, Inc. and Construction Management

407 South 4th Street, Nyssa, OR 97913

SURETY:

North American Specialty Insurance Company
1450 American Lane, Suite 1100
Schaumburg, IL 60173

OWNER:
(Name, legal status and address)

City of Ontario
444 SW 4th Street, Ontario, OR 97914

BOND AMOUNT:

5% Five Percent of Amount Bid

PROJECT:
(Name, location or address, and Project number, if any)

Ontario City Hall Remodel

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 1st day of November , 2018

Atty Holcomb
(Witness)

Holcomb Construction, Inc. and Construction Management
(Principal) *(Seal)*
By: [signature]
(Title)

Linda Miner
(Witness) Linda Miner

North American Specialty Insurance Company
(Surety) *(Seal)*
By: Brenda J. Smith
(Title) Brenda J. Smith, Attorney-in-Fact

NORTH AMERICAN SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1973 NEW HAMPSHIRE

SWISS RE CORPORATE SOLUTIONS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Overland Park, Kansas, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Overland Park, Kansas, each does hereby make, constitute and appoint: Brenda J. Smith

Principal: Holcomb Construction, Inc. and Construction Management
Bond Number: Bid Bond
Obligee: City of Ontario
Bond Amount: See Bond Form
Bond Description: Ontario City Hall Remodel

Its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION ($50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."

NORTH AMERICAN SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1973 NEW HAMPSHIRE

By

Steven P. Anderson, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company

By

Michael A. Ito, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company

WASHINGTON INTERNATIONAL INSURANCE COMPANY CORPORATE SEAL NEW HAMPSHIRE

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 12th day of October, 2017.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 12th day of October, 2017, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Michael A. Ito, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.

OFFICIAL SEAL
M. KENNY
Notary Public - State of Illinois
My Commission Expires
12/04/2021

M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 1st day of November, 2018.

Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company

City of Ontario

444 SW 4th Street
Ontario, OR 97914

Bid or Quote Tracking Form

Item: City Hall Remodel — Item On State Bid List? Yes [ ] No [x]

City Representative: Al Haun — Budgeted Amount: ______

Date: 10/30/18 — Line Item: ______

Vendor #1 Name: Snake River Construction

Contact Person: Ty Ingram — Phone # 541-709-6151

First Attempt: Contact Date: 10/30/18 — Contact Time: 10:15AM — Response? Yes [X] No [ ]

Second Attempt: Contact Date: ______ — Contact Time: ______ — Response? Yes [ ] No [ ]

Bid Attached? Yes [ ] No [ ] — Verbal Quote? [ ] — Written Quote? [ ] — Amount: ______

Notes:

10/30/18 Emailed bid packet to Ty 11/05/18 Called and reminded of dates

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Vendor #2 Name: Engraved Expressions

Contact Person: Blake Rebman — Phone # 541-881-6173

First Attempt: Contact Date: 10/30/18 — Contact Time: 10:32AM — Response? Yes [X] No [ ]

Second Attempt: Contact Date: ______ — Contact Time: ______ — Response? Yes [ ] No [ ]

Bid Attached? Yes [ ] No [ ] — Verbal Quote? [ ] — Written Quote? [ ] — Amount: ______

Notes:

10/30/18 Emailed bid packet to Blake 11/05/18 Blake informed me he was unable to bid the job.

Vendor #3 Name: Holcomb Construction

Contact Person: Brad Holcomb — Phone # 541-372-3806

First Attempt: Contact Date: 10/30/18 — Contact Time: 2:55PM — Response? Yes [X] No [ ]

Second Attempt: Contact Date: ______ — Contact Time: ______ — Response? Yes [ ] No [ ]

Bid Attached? Yes [ ] No [ ] — Verbal Quote? [ ] — Written Quote? [ ] — Amount: ______

Notes:

10/30/18 Talked with Brad and emailed bid packet 11/05/18 Brad performed walk-thru 11:30 AM

AGENDA REPORT
NEW BUSINESS
November 27, 2018

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Adam J. Brown, City Manager

SUBJECT: ORDINANCE #2746-2018: EXTENET SYSTEMS, LLC FRANCHISE AGREEMENT

DATE: November 25, 2018

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE THE ORDINANCE NO. 2746-2018, AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO EXTENET SYSTEMS, LLC, ON FIRST READING BY TITLE ONLY.

SUMMARY:

Extenet Systems, LLC, has applied to the city for a nonexclusive telecommunications franchise to use the city rights of way for the installation and maintenance of telecommunications devices. Ordinance #2746-2018 grants Extenet Systems, LLC, a franchise in accordance with the Agreement set forth in Exhibit “1” to the Ordinance.

BACKGROUND:

Extenet Systems, LLC, has applied to the city for a franchise agreement for telecommunications services. The company may or may not provide telecommunications services directly to end-users within the city, but it does intend to install transmission devices to lease out to other service providers. Those devices will be installed on new or existing poles in the city.

CURRENT SITUATION:

The City Attorney has been negotiating the terms of the franchise agreement since July, 2018. The City Attorney has provided Extenet Systems, LLC, with a copy of the franchise agreement with Mobilitie, LLC, approved by the City Council in 2017 through Ordinance #2724-2017 to use as a template because of the similarity between the proposed franchise operations of both companies. Extenet and the City Attorney have tentatively agreed on minor revisions to the Extenet agreement, and Extenet representatives have signed a draft of the most recent version.

ANALYSIS:

A. **FINANCIAL** Section 9 of the proposed franchise agreement requires Extenet to pay quarterly payments of the greater of (1) 7% of Extenet's gross revenues received for the delivery of services within the City or (2) $225.00 per quarter for each installation located in a city right of way, whichever is greater. Therefore, even if Extenet has no local customer base from which it generates gross revenues, the city will obtain a minimum franchise fee per year of $900 for each one of Extenet's installations either on city poles, or on other poles that are within the city's rights of way.

B. **TIMING** Extenet has not provided the city with a timetable for beginning installation of any telecommunication devices in the city limits

C. **POLICY/LEGAL** Telecommunications franchise agreements are subject to provisions of federal and state law in addition to the following Chapters of the City Code: Rights of Way (Title 8, Chapter 8) and Telecommunications (Title 3, Chapter 2). Ordinance #2746-2018 and the attached franchise agreement comply with federal and state law and the City Code. The City Code requires all telecommunications providers in the city to have written franchise agreements with the city. The city's policy is to charge all telecommunications franchisees a 7% franchise fee based on gross revenues earned within the city. Similar to Mobilitie, which obtained a franchise in 2017, Extenet is mounting WIFI devices on poles in the city rights of way instead of installing fiber optic cable below ground. Extenet is willing to pay the city the same franchise fee as the city is charging Mobilitie.

ALTERNATIVES:

1. An alternative would be to take no action. The Council could take no action on this franchise request. This would probably result in a legal claim by Extenet that the city is either barred by federal law from preventing it from operating in the city, or is discriminating against it under federal law, which requires municipalities to treat all telecommunications providers equally.
2. If the Council does not agree with any of the provisions of the franchise agreement, the Council could direct the City Attorney and city staff to renegotiate the terms of the agreement. If this occurs, the Council has the right to conduct that discussion with staff in an executive session under ORS 196.660(2)(e), real property negotiations.

RECOMMENDATION:

Staff recommends that the City Council approve a first reading of Ordinance #2746-2018.

ATTACHMENTS:

1. Ord #2746-2018 Franchse Agreement w EXTENET Communications

ORDINANCE NO. 2746-2018

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO EXTENET SYSTEMS, LLC

WHEREAS, The City of Ontario ("CITY") requires utilities to obtain a franchise to place utility facilities in CITY rights of way; and

WHEREAS, Extenet Systems, LLC ("PROVIDER") has applied for a franchise to place facilities in CITY rights of way.

THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

Section 1. Grant of Authority. CITY grants to PROVIDER the right and privilege, subject to all CITY ordinances, policies, rules, and regulations, to construct, install, maintain, and operate over, in, on, and under the present and future CITY rights of way of the CITY and CITY-owned light poles and fixtures ("CITY Facilities"), facilities necessary for the purpose of providing telecommunication services. This franchise is not exclusive and CITY reserves the right to grant a similar privilege to any other person or entity at any time during the period of this franchise. This franchise is further subject to all prior rights, interests, agreements, permits, easements, or licenses granted by the CITY, and to the CITY's right to use the rights of way for any reasonable purpose, including the same or similar purposes allowed PROVIDER.

Section 2. Terms of Franchise. This franchise is granted on the terms stated in the Franchise Agreement attached as Exhibit 1.

Section 3. Authority of CITY Manager. The CITY Manager is authorized to sign the Franchise Agreement with PROVIDER in substantially the same form attached as Exhibit A.

Section 4. Effectiveness. The franchise shall only be effective if PROVIDER signs the Franchise Agreement no later than 30 days after passage of this ordinance and provides a certificate of insurance and endorsement to CITY covering the insurance required by the Franchise Agreement.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _________________, 2018, by the following vote:

AYES:

NAYS:

ABSENT:

APPROVED by the Mayor this ____ day of ____________________, 2018.

ATTEST:

____
Ronald Verini, Mayor

____
Tori Barnett, MMC, City Recorder

EXHIBIT 1

NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT BETWEEN THE CITY OF ONTARIO AND EXTENET SYSTEMS, INC.

This Agreement is between the City of Ontario, an Oregon Municipal Corporation ("CITY") and ExteNet Systems, Inc. a Delaware corporation ("PROVIDER").

Section 1. Definitions.

Any term defined in the Ontario Code and not in this Agreement shall have the meaning provided by the Ontario Code definition.

"City Facility" means CITY-owned light poles and fixtures.

"Facilities" means the conduits, cables, optic fibers, poles, wires, vaults, fixtures, antennas, underground lines, and other wireline and wireless physical components of PROVIDER's Telecommunication System.

"Gross Revenues" means all revenues received by PROVIDER from the operation of the PROVIDER Facilities in the rights of way, including, but not limited to all rents, payments, fees and other amounts actually collected from any third party and received by PROVIDER and allocable to the period within the term or any renewal term pursuant to any sublease, sublicense or other agreement for telecommunications services provided with respect to the PROVIDER Facilities, but exclusive of:

1. any payments, reimbursements or pass-throughs from the third party to PROVIDER:

    a. for utility charges, taxes and other pass-through expenses, or

    b. in connection with maintenance work performed or equipment installed by PROVIDER;

2. site acquisition, construction management or supervision fees related to the installation of the PROVIDER Facilities; and

3. contributions of capital by any third party to reimburse PROVIDER in whole or in part for the installation of the PROVIDER Facilities.

"Telecommunications System" means all facilities owned, operated or used by PROVIDER to provide telecommunication services and located in rights of way administered by the CITY.

Section 2. Grant of Authority.

CITY grants to PROVIDER the right to construct, install, maintain, relocate, remove and operate Facilities over, in, on and under present and future CITY rights of way and on CITY Facilities for the purpose of providing telecommunication services on the terms stated in this Agreement.

CITY is willing to grant PROVIDER a non-exclusive, revocable license under which the CITY will issue permits authorizing the placement or installation of PROVIDER's Facilities on or within specified CITY Facilities, provided that the CITY may in its sole discretion ,for reasons relating to insufficient capacity, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to issue a permit for any particular CITY Facility so long as PROVIDER is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties;

This franchise is not exclusive, and CITY reserves the right to grant a similar franchise to any other person or entity at any time during the period of this franchise. This franchise is subject to all prior rights, interests, agreements, permits easements or licenses granted by the CITY, and to the CITY's right to use rights of way for any reasonable purpose.

Section 3. Compliance with Laws, Rules and Regulations.

The locations and methods of installation and maintenance of all PROVIDER's Facilities shall be subject at all times to reasonable regulation by the CITY (including CITY's ordinances, standards and specifications, and regulations on street cuts and use of rights of way). PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Code in Ontario City Code Title 3, Chapter 2. All Facilities shall be constructed and maintained as to interfere as little as practicable with traffic and other use of rights of way. Right of way permits must be obtained prior to installation or construction of Facilities and approval for such permits shall not be unreasonably withheld, delayed or conditioned. All Facilities shall be installed and at all times maintained by PROVIDER in accordance with telecommunications industry standards.

Section 4. Liability, Indemnification and Insurance.

PROVIDER shall conduct its operations under this Franchise, including installation, construction and maintenance of its Facilities, in a safe and workmanlike manner so as not to present a danger to the public or CITY.

PROVIDER shall defend, indemnify, and hold the CITY, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as 'claims') that result from damage or injury (including death) to persons or property caused by the negligence or breach of PROVIDER in connection with the performance of this Franchise Agreement or based upon violation of any statute, ordinance or regulation. This indemnification required shall not apply to claims caused by the negligence or breach of the CITY, its officers, agents, employees and volunteers. CITY shall defend, indemnify, and hold PROVIDER, its officers, agents, employees and volunteers harmless against all claims that result from damage or injury (including death) to persons or property directly caused by or resulting from the negligence or breach of CITY in connection with the performance of this Franchise Agreement or based upon violation of any statute, ordinance or regulation. This indemnification required shall not apply to claims directly caused by the negligence or breach of the PROVIDER, its officers, agents, employees and volunteers. Notwithstanding the forgoing, PROVIDER agrees that it is not an agent of the CITY and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287. Notwithstanding any other provision of this Agreement, in no event shall PROVIDER or CITY be liable for any special, incidental, indirect, punitive, reliance or consequential or similar damages. PROVIDER shall purchase and maintain, at PROVIDER's expense at all times during the term of this Franchise, the following insurance:

A. Comprehensive Commercial General Liability insurance with limits not less than

1. Three million dollars ($3,000,000.00) for bodily injury or death to each person;

2. Three million dollars ($3,000,000.00) for property damage resulting from any one accident; and

3. Three million dollars ($3,000,000.00) for all other types of liability.

Commercial General Liability coverage shall name, by certificate and endorsement the CITY, its officers, agents, employees and volunteers as additional insured with respect to PROVIDER's work or services conducted under this Agreement. PROVIDER will require that its insurance carrier give the CITY 30 days' written notice of any cancellation of or reduction in insurance coverage. Any failure to comply with this provision will not affect the insurance coverage provided to CITY.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of one million dollars ($1,000,000.00) for each person and three million dollars ($3,000,000.00) for each accident.

C. Employer's Liability insurance with limits of not less than one million dollars ($1,000,000.00).

D. Workers' Compensation insurance as required by ORS chapter 656 and meeting the minimum requirements therein, Employer's Liability insurance with limits of not less than one million dollars ($1,000,000.00). PROVIDER shall ensure that each contractor obtains and maintains workers' compensation insurance and PROVIDER will furnish a certificate of insurance demonstrating such coverage to the state of Oregon before performing the work.

Coverages provided by PROVIDER must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

As evidence of the insurance coverage required by this Franchise, PROVIDER shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the CITY. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

This Agreement shall not be in effect until the required certificates and signed endorsements have been received and approved by CITY. Such approval shall not be unreasonably withheld, conditioned, or delayed. Renewal certificates and endorsements will be sent to CITY 10 days prior to coverage expiration. The CITY may terminate the Franchise for failure to maintain the required insurance.

PROVIDER grants Waiver of Subrogation to the CITY, its officers, agents, employees and volunteers for any claims resulting from PROVIDER's work or service. Further, PROVIDER agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery shall be solely with their insurance carrier, and also grants to CITY on behalf of any insurer providing coverage to either PROVIDER or CITY with respect to the work or services of PROVIDER a waiver of any right to subrogation which any insurer or subcontractor may acquire against CITY by virtue of the payment of any loss under such insurance coverage.

Section 5. Performance Bond.

PROVIDER shall provide a performance bond, in the amount of $100,000 or other lesser amount as agreed to in writing by the CITY as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by PROVIDER. PROVIDER shall keep the bond in full force and effect during any activities that disturb the surface of any Rights of Way and for a period of at least one year after restoration of Rights of Way. The bond may be withdrawn after one year after restoration of rights of way, but shall be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond shall be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

In the event that CITY reasonably determines that the aggregate costs to restore streets, sidewalks or other surfaces previously disturbed by PROVIDER, or for which PROVIDER applies for a permit to disturb, is likely to be substantially more than $100,000, CITY may require the amount of the performance bond to be increased by a reasonable amount as required to cover such aggregate costs in excess of $100,000. At CITY's request, PROVIDER shall provide to the CITY, in a format reasonably acceptable to the CITY, reasonable documentation demonstrating PROVIDER's estimated costs of such restoration.

Section 6. Construction and Conditions on Right of Way Occupancy.

A. Use. PROVIDER shall construct, install, maintain and operate its Facilities in designated CITY rights of way and on CITY Facilities in compliance with industry standards and CITY ordinances, rules, standards and specifications, policies and regulations; and in a manner so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places. All work in the CITY right of way will require a permit prior to any work being started and will require a traffic plan that is fully compliant with the CITY of Ontario Design Standards and Specifications, except that modifications shall be exempted from these requirements to the extent that: (i) such modification to the Facility involves only substitution of internal components and does not result in any change to the external appearance, dimensions, or weight of the Facility, as approved by PROVIDER; or (ii) such modification involves replacement of the Facility with Facility that is the same, or smaller in weight and dimensions as the approved Facility. PROVIDER will notify CITY of any such modification within 15 days after modification is made. Any approvals from CITY, its officers, agents, employees and volunteers shall not be unreasonably, withheld, delayed or conditioned. PROVIDER may attach its facilities to poles, towers or structures in the rights of way that are owned by third parties, provided that PROVIDER receives consent from such third parties. PROVIDER shall provide CITY with copies of such consent at CITY'S request.

B. CITY hereby grants to PROVIDER the nonexclusive right, privilege, and license to enter and occupy CITY 's Public Ways for purposes of, and/or in connection with, attachments of Facilities to City Facilities, subject to applicable rules, regulations or statutes setting forth non-discriminatory and reasonable controls as to the time, place and manner in which CITY's Public Way and CITY Facilities are accessed, occupied, and/or utilized in order to protect the health, safety and welfare of the public.

C. Approval of Equipment Design, Configurations and Attachments. PROVIDER will submit to CITY an application with a proposed design for any Facilities that PROVIDER proposes to use in CITY Rights-of-Way. Such application shall include a map or annotated aerial photograph identifying which infrastructure or CITY Facilities PROVIDER seeks to use for Facilities. Once the CITY verifies that the Facilities proposed in the design complies with the pre-approved configurations and the Equipment specifications set forth in Exhibit A, the CITY will approve the particular CITY Facilities to which PROVIDER can attach its Facilities.

D. Change in Equipment. If PROVIDER proposes Facilities that differs in a material way from the pre-approved configurations and equipment specifications attached hereto as Exhibit A, then PROVIDER shall first obtain the written approval for the use and installation of the Facilities from an authorized representative of CITY.

E. Structural Integrity of CITY Facility. If PROVIDER selects a CITY Facility that is structurally inadequate to accommodate Facilities, PROVIDER may at its sole cost and expense replace the CITY Facility with one that is acceptable to and approved by the CITY and dedicate such CITY Facility to the CITY, provided that PROVIDER shall be entitled to a credit against the Attachment Fees otherwise payable with respect to such CITY Facility that is equal to the out-of-pocket cost of such replacement CITY Facility paid by or for the account of PROVIDER.

F. Ground-Mounted Furniture Cabinets. If a portion of PROVIDER'S Facilities, not including antennas, cannot be accommodated on CITY's Facilities, the parties agree that PROVIDER may place such equipment in above-ground street furniture and equipment cabinets located in the Public Way. In no instance shall the installation of any of PROVIDER'S Facilities in ground-mounted furniture or equipment cabinets block pedestrian walkways in the ROW or result in violation of the Americans with Disabilities Act. If PROVIDER cannot obtain necessary permits, approvals or other authorizations to place street furniture or equipment cabinets in the Public Way, parties agree that PROVIDER may place Facilities in below-ground vaults, and that CITY shall authorize such vaults expeditiously pursuant to applicable CITY Code zoning and undergrounding provisions. In such instance, PROVIDER will be responsible for all costs associated with such below-ground vaults, including without limitation relocation costs of any public improvements or public utilities facilities.

G. Power for Equipment and Facilities. PROVIDER will be solely responsible for establishing electrical power services for all of its Facilities and for the payment of all electrical utility charges to the applicable utility company. Notwithstanding this provision, CITY and PROVIDER may mutually agree that PROVIDER may power its Facilities to CITY Facilities from a power source available at or associated with the relevant CITY Facilities.Construction. Prior to beginning construction, PROVIDER shall provide the CITY Engineer with a construction schedule for work in CITY rights of way. Within 30 days of completing construction, PROVIDER shall provide the CITY Engineer with a map showing the location of installed Facilities in CITY rights of way, as built. The CITY Engineer may reasonably require additional information on the as-as built drawings.

B. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by PROVIDER, PROVIDER shall, at its own cost and expense and in compliance with the CITY's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed. If PROVIDER fails to make restoration as required, CITY may cause the repairs to be made at the expense of PROVIDER.

C. Notification. PROVIDER shall comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

D. Relocation. CITY may require PROVIDER to relocate its Facilities, and any determination to require the relocation of Facilities shall be made in a reasonable manner. If the removal or relocation of Facilities is caused directly by an identifiable development of property or other third-party project and the removal or relocation of Facilities occurs within the area to be developed, or is made for the convenience of a customer, PROVIDER may charge the expense of removal or relocation to the developer or customer. PROVIDER shall be solely responsible for enforcing collection from the developer or customer. If the removal or relocation of Facilities results from

CITY's need to provide public facilities, is a CITY project, or is otherwise reasonably requested by CITY and is made for the purpose of improving a street to CITY standards or other improvement for the benefit of the public, PROVIDER will remove or relocate its Facilities at PROVIDER's expense within a reasonable time frame after 60 days advanced written notification by CITY. CITY will make a reasonable and good faith effort to provide PROVIDER with an alternate location for its Facilities with CITY rights of way. In cases of capital improvement projects undertaken by CITY, PROVIDER shall convert existing overhead distribution Facilities to underground (other than antennas and towers and poles that support antenna) at PROVIDER's expense if so required by applicable law within a reasonable time frame after 60 days advanced written notification by CITY or shall remove its facilities from any poles or other structures that will be eliminated as part of an undergrounding project. In the event that CITY receives third-party funding for a CITY project or improvement to a CITY street that covers PROVIDER's expenses, CITY shall remit payment to PROVIDER from the third-party funding for reimbursement for PROVIDER's relocation expenses.

E. Placement of Facilities. PROVIDER shall not knowingly place its Facilities where they will interfere with any existing or future CITY utility, gas, electric or telephone fixture, power, sanitary sewer, storm sewer or water facility. PROVIDER will consult with CITY Engineer prior to placement of Facilities, and will comply with all CITY ordinances, policies, rules and regulations in connection with its placement of Facilities. Whenever existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right of way of the CITY for reasons of compliance with applicable law, PROVIDER must also locate and relocate its Facilities, other than antennas and towers/poles that support antennas, underground. PROVIDER may install a new pole to support antennas or other facilities that must be above ground to function with written approval from the CITY.

G. Temporary Rearrangement of Facilities. PROVIDER shall, consistent with CITY policies, ordinances, rules and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the Person or entity wishing to move the building or other object makes a reasonable arrangement to reimburse PROVIDER for its expenses in rearranging its Facilities. Nothing in this section precludes CITY from reasonably requiring PROVIDER to move its Facilities at PROVIDER's expense when public convenience requires the move. Should the foregoing occur, then, to the extent not inconsistent with any applicable law, the CITY shall authorize PROVIDER to erect and maintain a new pole or other reasonable tower structure for the placement of the Facility in the right of way.

H. Removal. PROVIDER may at any time for any reason remove one or more Facilities from the CITY's right of way.

Section 7. Transfer of Franchise.

This Agreement and each permit under it may be sold, assigned or transferred by PROVIDER without any approval or consent of the CITY to any parent, subsidiary, affiliate, or any person, firm or corporation that shall control, be under the control of, or be under common control with PROVIDER, or to any entity into which PROVIDER may be merged or consolidated or which purchases substantially all of the assets of PROVIDER in the market defined by the Federal Communications Commission in which the Franchise is located. As to other parties, PROVIDER shall not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this Franchise or in the Facilities authorized by this Franchise, or any part of the Facilities, without prior written approval of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. The CITY may impose reasonable conditions on its approval of any transfer, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Franchise. CITY shall have the right to collect from PROVIDER CITY's reasonable administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. No change of stock ownership, partnership interest or control of PROVIDER or transfer upon partnership or corporate dissolution of PROVIDER shall constitute an assignment hereunder.

Notwithstanding the foregoing, PROVIDER may provide capacity across PROVIDER's Facilities to a third party without the consent required in this section, so long as PROVIDER retains control over and remains solely responsible for, such facilities. The use of PROVIDER'S Facilities by third parties (including, but not limited to, leases of dark fiber) that involves no additional attachment is not considered a sublicense to a third party subject to the provisions of this paragraph.

Section 8. CITY Rights in Franchise.

A. CITY Supervision and Inspection. CITY shall at its own expense have the right to supervise all construction or installation of PROVIDER's Facilities subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with governing laws, ordinances, rules and regulations.

B. Termination or Abandonment of Franchise. Upon any termination of this Franchise, all Facilities installed or used by PROVIDER shall be removed by PROVIDER at PROVIDER's expense and the property upon which the Facilities were used restored by PROVIDER to substantially the same that condition it was in before installation, reasonable wear and tear excepted.

Section 9. Franchise Fee.

PROVIDER shall pay quarterly to CITY the greater of (1) 7% of PROVIDER's gross revenues received for the delivery of services within the CITY or (2) $225.00 per Facility site located in CITY rights of way or on City Facilities.

Attachment Fee: PROVIDER shall pay Attachment Fees to CITY for each CITY Facility to which PROVIDER makes an Attachment or which is located within the CITY right of way. Such Attachment Fees shall be computed on the basis of the rates set forth in Exhibit B attached. Notwithstanding the foregoing, PROVIDER shall not be liable for payment of any Attachment Fee if for any reason CITY 's Facility is or subsequently becomes unusable for Facilities, or PROVIDER withdraws its application for Facilities to such CITY Facility before completing such attachment or putting the Facilities into productive service.

PROVIDER may remove any Facilities at any time and the corresponding Attachment Fees shall cease upon removal.

A. The fees required by this section shall be due and payable within 60 days after the end of each applicable quarter. Any payment not made when due shall bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid.

B. With each payment, PROVIDER shall furnish CITY with a written statement in the format as provided in Exhibit A, under oath, executed by an officer of PROVIDER, verifying the amount of gross revenues of PROVIDER within CITY for the monthly period covered by payment computed on the basis set out in Subsection A of this section.

C. CITY's acceptance of any payments due under this section shall not be considered a waiver by CITY of any breach of this franchise.

D. PROVIDER agrees and covenants that it will not challenge the validity of the franchise fees under this ordinance as long as they do not exceed the maximum amounts established by applicable statutes.

E. To the extent that franchise fee calculation is based on the existence of facilities within rights of way, if PROVIDER removes a Facility from a CITY right of way, the franchise fee calculation shall not be based on the removed Facility as of the date of removal. Any partial month shall be pro-rated.

Section 10. PROVIDER Records and Reports.

PROVIDER shall keep accurate books of financial accounts at an office within the State of Oregon throughout the term of this franchise and for three years after the expiration or termination of this Agreement. PROVIDER shall produce all books and records directly concerning its gross revenues and other financial information reasonably deemed necessary by CITY for purposes of calculation of the franchise fee for inspection by CITY, upon no less than 30 days prior written notice, during normal working hours. CITY may require reasonable, periodic reports from PROVIDER relating to its operation within CITY. PROVIDER may redact names of its customers but shall provide a unique identifier for each customer.

CITY shall have the right during the term of this franchise or within 180 days thereafter to conduct reasonable audits of PROVIDER's records for the period of three years prior to the audit. If the audit reveals intentional non-payment of the fee, the CITY may expand the audit to cover up to 25 years. Such audits shall be undertaken by a qualified person or entity selected by CITY. The cost of any such audit shall be borne by CITY, unless the results of any such audit reveal an underpayment of more than 8% of the franchise fee for the period audited. In the case of such underpayment, the full cost of such audit shall be paid by PROVIDER. PROVIDER shall dispute the audit or immediately pay the amount of the underpayment as determined by such audit to CITY together with 12% per annum interest from the date such payment should have been made to the date the payment is actually made.

Any audit information obtained by CITY under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the CITY from introducing audit results in any forum where enforcement of the provisions of this franchise is at issue.

Section 11. Permit and Inspection Fees.

Nothing in this ordinance shall be construed to limit the right of CITY to require PROVIDER to pay reasonable costs incurred by CITY in connection with the issuance of a franchise or permit, making an inspection, or performing any other service for or in connection with PROVIDER or its Facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect or hereafter adopted by CITY.

Section 12. Enforcement and Termination of Franchise for Violation.

A. Time of payment and performance are of the essence in the franchise. The following shall be events of default:

   1. <u>Default in Payments.</u> The failure of PROVIDER to pay CITY when due any amounts required by the franchise pursuant to Section 9 and such failure continues for a period of 10 days after.

   2. <u>Default in Other Covenants.</u> The material failure of any Party to perform any of the covenants and conditions required herein to be kept and performed by Party, and such failure continues for a period of 30 days after receipt of written notice from the non-breaching Party of such failure, provided the breaching Party shall have such extended period as may be required beyond the 30 days if the breaching Party commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. For each day default by PROVIDER continues past the period for cure, PROVIDER shall pay to CITY the sum of $200 per day, along with any additional damages directly suffered by CITY as a result of PROVIDER's default.

B. The CITY may terminate this Franchise for material defaults that are not cured within the time allowed by this section by providing notice to PROVIDER at least 30 days prior to termination. PROVIDER may avoid termination by completely curing the default, including payment of the penalty required by Subsection A.2 of this section, unless the notice of termination is the third notice of termination within a 12 month period for unrelated defaults. PROVIDER may challenge a notice of termination by providing a written protest to the CITY Manager within 10 business days of the date of the notice of termination. The CITY Manager, on receipt of the protest shall either grant the protest, in which case the franchise will remain in place, or refer the matter to the CITY Council for a decision. The termination will not become final until after the decision by the CITY Manager or CITY Council.

Section 13. Remedies not Exclusive; Waiver.

All remedies granted the CITY under this ordinance are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance are not exclusive and CITY reserves the right to enforce penal provisions of any ordinance and also use any remedy available to CITY at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this ordinance.

Section 14. Franchise Term.

This Franchise is granted for a term of five years beginning on the date on which required certificates and signed endorsements have been received and approved by CITY, provided, however, that unless PROVIDER provides written notice to CITY no less than 90 days prior to expiration of the term that PROVIDER will not renew the term, the term will automatically renew for up to three successive, five year periods, upon the same terms and conditions set forth in this Agreement.

Section 15. Severability.

If any section, subsection, sentence, clause or portion of this Franchise other than any obligation to pay or the grant of the right to use rights of way is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this ordinance.

Section 16. Notices.

Any notice required or permitted under this Franchise shall be in writing and deemed given when received or when deposited with postage prepaid in the United States Mail as registered or certified mail addressed as follows:

TO CITY: City Manager
444 SW 4th Avenue
Ontario, OR 97914

TO PROVIDER: ExteNet Systems, Inc.

3030 Warrenville Road, Suite 340

Lisle, Illinois 60532

Attn: CFO

With copy to General Counsel at same address

or to such other address as may be specified from time to time by either parties in writing.

Section 17. Interpretation/Jurisdiction.

Interpretation of the Franchise shall be governed by laws of the State of Oregon and any legal action relating to this Franchise shall be brought in Malheur County Circuit Court.

Section 18. Change of Law.

If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Franchise shall change after the beginning of the Franchise term (as defined in Section 14), and such change makes this Franchise noncompliant with those Laws, then the parties agree to promptly amend the Franchise as reasonably required to ensure compliance with any such legal or regulatory change.

(signatures on following page)

CITY OF ONTARIO	EXTENET SYSTEMS, INC.
____________________________	____________________________
Adam Brown, City Manager	
DATE: ____________________	DATE: ____________________

ATTEST:

____

Tori Barnett, MMC, City Recorder

EXHIBIT A

Company: ____

Reporting Period: ____

Description	Revenue and Fee Calculation
Gross revenues	$
Less: Revenues exempt from franchise fees	
Other adjustments to gross revenues	
Net revenues subject to franchise fees	$ x .07
Franchise fee: THE GREATER OF 7% of Net Revenues OR Number of Facilities x $225	$ $
Franchise fee remitted to City of Ontario Attn: Finance Department 444 SW 4th Street Ontario, OR 97914	$

Certification by Officer or Authorized Representative:

I declare under the penalties for perjury that the information provided herein is true, complete and accurate to the best of my knowledge and belief.

Signature: ___________________________________ Date: _____________________

Printed Name: _________________________________

Title: ____

AGENDA REPORT
NEW BUSINESS
November 27, 2018

TO: Mayor and City Council

FROM: Larry Sullivan, City Attorney

THROUGH: Adam J. Brown, City Manager

SUBJECT: **ORDINANCE #2747-2018: MARIJUANA BUSINESS LICENSE ORDINANCE AMENDMENT BY EMERGENCY PASSAGE**

DATE: November 26, 2018

PROPOSED MOTION:

I MOVE THE CITY COUNCIL APPROVE ORDINANCE NO. 2747-2018 AN ORDINANCE AMENDING PROVISIONS OF BALLOT MEASURE 23-16 AND CHAPTERS 23 AND 24 OF TITLE 3 CONCERNING THE REGULATION OF MARIJUANA BUSINESSES, INCLUDING BUSINESS LICENSES FOR MARIJUANA BUSINESSES, AND DECLARING AN EMERGENCY.

SUMMARY:

Initiative Ballot Measure 23-61, passed by the voters on November 6, 2018 and effective January 1, 2019 allowed certain marijuana businesses. Both the city's home rule authority under the Oregon Constitution and ORS 475B.486 authorize the City Council to impose reasonable regulations on marijuana businesses.

BACKGROUND:

One of the purposes of Ordinance No. 2747-2018 is to enforce the authority granted to the city by the voters to enforce the 3% marijuana retail sales tax. Ballot Measure 23-61 also added various sections to Chapter 23 of Title 3 of the Ontario Municipal Code dealing with the licensing and regulation of marijuana businesses by the city. In 2016, the Ontario City Council enacted Ordinance No. 2714-2016, which added Chapter 24 to Title 3 of the Ontario Municipal Code to establish a business license for medical marijuana dispensaries, in the event that Ontario legalized such dispensaries.

CURRENT SITUATION:

It is the intention of the Ontario City Council to amend or repeal some sections of Ballot Measure 23-61 in order to impose on marijuana businesses reasonable regulations which differ from those in Ballot Measure 23-61. This ordinance regulates the operation of marijuana businesses in the city in ways that protect and benefit the public health, safety, and welfare of existing and future residents and businesses in the city, by amending Chapter 24 of Title 3 of the Ontario Municipal Code to apply to all marijuana businesses in addition to medical marijuana dispensaries, and to impose additional reasonable regulations on those businesses.

The ordinance imposes a residency requirement for marijuana businesses to require the majority of owners to live in the 8C School District as recommended by the Marijuana Ad Hoc Committee.

ANALYSIS:

A. **FINANCIAL** The business license application fee will be $5,000. The ordinance also imposes a cash bond with the city to be used for any retailers that don't pay their taxes.

B. **TIMING** Because Ballot Measure 23-61 becomes effective on January 1, 2019, Ordinance 2747-2018 is intended to become effective immediately afterwards. Staff requests an emergency approval so that it is in place immediately after Ballot Measure 23-61 becomes effective on January 1, 2019.

C. **POLICY/LEGAL** The City Council has the authority to approve ordinances. The City Attorney has prepared the ordinance.

ALTERNATIVES:

Do Not Approve - If the Council elects to not approve on an emergency basis, problems may arise due to the timing of the ballot measure becoming approved an the business license adoption.

RECOMMENDATION:

Staff recommends adoption of Ordinance #2747-2018, an ordinance amending provisions of ballot measure 23-16 and chapters 23 and 24 of Title 3 concerning the regulation of marijuana businesses, including business licenses for marijuana businesses and declaring an emergency.

ATTACHMENTS:

1. ID #11-2018-2-I SEL 370 (City of Ontario)
2. Ord #2747-2018 Marijuana License

Feb

RECEIVED
5/31/2018
10:05 Am

11-2018-2-I

Prospective Petition

Local Initiative and Referendum

COPY

SEL 370

rev 01/18 ORS 250.045, 250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to $125,000 and/or prison for up to 5 years.

Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information		**Type**	
This filing is an ☒ Original	☐ Amendment	☐ Initiative	☐ Referendum

Jurisdiction		**Some Circulators may be Paid**	
☐ County ☒ City	☐ District	☐ Yes	☒ No

Title Subject or name you give your petition.
Measure to Allow Rercational and Medical Sales in Ontario

Website if applicable

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

☐ Correspondence Recipient ☒ Email Chief Petitioners ☒ Mail Chief Petitioners

Recipient Information

Name	Email Address
Dave Eyler	werope@q.com

Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name Byron Shock	**Contact Phone** (541) 212-5245
Residence Address street, city, state, zip 1059 SW 2ND AVE	
Mailing Address if different	**Email Address** broogle@gmail.com
Signature [signature]	**Date Signed** 5/22/2018

Name DAVE EYLER	**Contact Phone** 541-881-9461
Residence Address street, city, state, zip 925 RITTER AVE VALE, OR. 97918	
Mailing Address if different	**Email Address** werope@q.com
Signature Dave Eyler	**Date Signed** 5/23/18

Name Jahmel Cooke	**Contact Phone**
Residence Address street, city, state, zip 727 N. Oregon St., Ontario, OR, 97914	
Mailing Address if different	**Email Address** jah@thegasstations.com
Signature [signature]	**Date Signed** 5/23/2018

Chapter 3-23 - BANNING CERTAIN MARIJUANA-RELATED OPERATIONS AND ACTIVITIES is amended to read:

Chapter 3-23 - ALLOWING CERTAIN MARIJUANA-RELATED OPERATIONS AND ACTIVITIES

COPY

3-23-1 – Allowed licensed marijuana operations and activities.

The establishment and maintenance of any of the following operations and activities are allowed within the jurisdictional limits of the City of Ontario:

(A) Medical marijuana processors or processing sites required to be registered under Section 85 of House Bill 3400 (2015);

(B) Medical marijuana dispensaries required to be registered under ORS 475.314;

(C) Marijuana producers required to be licensed under Section 19, Chapter 1, Oregon Laws 2015;

(D) Marijuana processors required to be licensed under Section 20, Chapter 1, Oregon Laws 2015;

(E) Marijuana wholesalers required to be licensed under Section 21, Chapter 1, Oregon Laws 2015; and

(F) Marijuana retailers required to be licensed under Section 22, Chapter 1, Oregon Laws 2015

3-23-2 – Definitions.

MARIJUANA BUSINESS LICENSEE means any marijuana business entity licensed by Oregon Liquor Control Commission, whether it be a retailer, processor, producer, wholesaler, lab, or researcher.

MARIJUANA RETAILER means any marijuana business entity licensed by the Oregon Liquor Control Commission that is licensed to sell marijuana directly to a consumer.

MARIJUANA ITEM means any marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts as defined in Oregon Revised Statute 475B.015.

RETAIL SALE PRICE means the total consideration paid to a marijuana retailer for a marijuana item by or on behalf of a consumer, excluding any tax.

TAX ADMINISTATOR means the City Manager or a person designated by the City Manager to administer the marijuana retail tax program

CONSUMER means a person who purchases marijuana items from a Marijuana Retailer.

3-23-3 – Local License and Registration Required.

(A) Marijuana Business Licensees must possess a valid license issued under this Chapter to operate within the City. The license required by this Chapter facilitates the registration and the City's oversight of marijuana businesses. The license required by this Chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of City ordinance or local, regional, state or federal law.

(B) Marijuana Business Licensees must register with the city under Section 3-4-2 and notwithstanding the license fee in this Section, shall not pay more for a business registration fee than any regular, non-exempt business registered with the City.

3-23-4 – State Registration Required.

Marijuana business licensees must have received approval by the Oregon Liquor Control Commission before operating in the City.

3-23-4 – City Application Requirements.

Applications for new and renewed licenses must be submitted to the City Manager on forms provided by the City. A separate application must be submitted for each proposed marijuana business. The initial or renewal application must include the same information required by the Oregon Liquor Control Commission.

3-23-5 - License determination.

(A) Determination. Within twenty-five (25) days after receiving a complete application and application fee for a marijuana business license, the City Manager will issue the license if the City Manager finds that the business is properly licensed as a marijuana licensee with the Oregon Liquor Control Commission and that all other requirements under this Chapter have been met.

(B) Denial. The City Manager may deny for failure to meet the requirements of this Chapter.

(C) Appeal. An applicant may appeal the City Manager's denial of a license in accordance with Section 3-23-12(B). Any aggrieved person may appeal the City Manager's issuance of a license in accordance with Section 3-23-12(B).

3-23-6 - Application fee.

An initial license application and a renewal application must be accompanied by a nonrefundable application fee in the base amount of two hundred dollars ($200.00). The City Council may revise the fee amount by resolution of the Council only to adjust for inflation.

3-23-7 - Display of license.

The license issued under this Chapter must be prominently displayed at all times in an easily visible location inside the marijuana business.

3-23-8 - Termination of license.

(A) Termination. A license terminates automatically one year from the date of issuance, unless a license renewal application has been approved.

(B) Renewal. A license may be renewed for additional annual terms as provided by this Chapter.

(C) Renewal Application. Renewal applications shall be submitted, with the required application fee, to the City Manager not less than thirty (30) days prior to the expiration date of the existing license.

(D) Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the marijuana business under this Chapter.

(E) Surrender. A licensee may surrender a marijuana business license by delivering written notice to the City that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

3-23-9 – Transferability

Licenses issued under this Chapter shall not be transferred to any other person. The City Manager may waive this restriction and authorize a transfer if it is to a limited liability company, corporation or partnership in which the names of principals have been included in the most recent license application for the marijuana.

3-23-10 - Indemnification.

(A) Waiver. By accepting a marijuana business license issued under this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a dispensary owner or operator, principal, person or legal entity with a financial interest in the dispensary, person or entity that has leased real property to the dispensary, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.

B) Indemnification. By accepting a marijuana business license issued under this Chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the City, its officers, elected officials, employees, volunteers, and agents, insurers, and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical marijuana dispensary that is the subject of the license.

3-23-11 - Standards of operation.

(A) Registration and Compliance with Oregon Liquor Control Commission and other state agency Rules. The marijuana business licensee's registration as a marijuana business must be in good standing with the Oregon Liquor Control Commission, and the marijuana business must comply with all applicable laws and regulations administered by the Oregon Liquor Control Commission, the Oregon Health Authority, the Oregon Department Agriculture, the Oregon Department of Revenue, and any and all state agencies that regulate any aspect of Oregon's marijuana laws.

(B) Compliance with Other Laws. The marijuana business licensee must comply with all applicable City laws and regulations, including, but not limited to, the building and fire codes.

(C) Marijuana Business Licensees shall not operate within fully residentially zoned areas, unless provided a waiver by the City.

(D) Marijuana retail stores, other than in accordance with Oregon Revised Statute 475B.109, may not be licensed within 1,000 feet of a school as defined by state law.

(E) Hours of Operation. Marijuana business licensees shall only operate within the hours allowed by the Oregon Liquor Control Commission.

3-23-12 - Enforcement and penalties.

(A) Revocation or Suspension of License. The City Manager may deny, suspend or revoke a license issued under this Chapter for failure to comply with this Chapter, for submitting falsified information to the City, the Oregon Liquor Control Commission or another Oregon state agency, or for continued noncompliance with any other City ordinances or state law. Every marijuana business licensee shall first get a warning as to any matter of noncompliance, except for illegally selling marijuana to a minor or over state lines, and get thirty (30) days to correct the issue

(B) Appeal of Issuance, Denial, Revocation or Suspension. Any person aggrieved by the City Manager's issuance, denial, suspension or revocation of a license may appeal it to the City Council by delivering a written notice of appeal to the City Manager within thirty (30) days of the date of the denial, suspension or revocation. The appeal shall be heard by the City Council in a public meeting scheduled within sixty (60) days of the date that the notice of appeal is delivered to the City Manager. The appellant shall be given at least a five (5) day notice of the public meeting, and shall be entitled to appear and be heard. The City Council's decision on the appeal shall be final.

(C) Civil Penalty. In addition to the other remedies provided in this Section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this Chapter or the terms of a license issued under this Chapter, who undertakes an activity regulated by this Chapter without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this Chapter, or who fails to comply with state law commits an unclassified civil violation which shall be processed according to the procedures established in Chapter 4 "General Penalty" of Title 1 of this Code.

(D) Remedies not Exclusive. The remedies provided in this Section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under City ordinance or state law.

COPY

3-23-13 – Retail Tax on Marijuana Items.

(A) The City imposes a tax on each marijuana item sold to a consumer within the city by a marijuana retailer to be used for general government purposes. The tax shall equal three percent of the retail sale price for each marijuana item sold.

(B) The consumer shall pay the tax to the Marijuana Retailer at the time of the purchase or sale of the marijuana item. Every Marijuana Retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The Marijuana Retailer shall remit the tax to the Tax Administrator.

(C) Every Marijuana Retailer must keep, preserve and make available to the tax administrator detailed records of all sales made and all taxes collected consistent with administrative regulations adopted by the City Manager.

(D) The City Manager shall adopt administrative rules to specify the amount of penalties and interest that a retailer must pay if the retailer fails to timely remit any tax imposed by this code. The amount of penalties and interest established by administrative regulation shall be consistent with comparable provisions of state law.

(E) Any person aggrieved by any decision of the Tax Administrator under this code may appeal the decision in the manner provided in Section 3-23-12 of this code. The appeal shall be heard and determined as provided in Section 3-23-12 of this code. However, if the City Manager contracts with the State of Oregon to administer the tax, then in lieu of processing an appeal as provided in Section 3-23-12, the city manager may provide that the appeal shall be processed in accordance with procedures adopted by the State.

3-23-44 - Severability.

If any part or section of this ordinance from which this Chapter is derived is invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Chapter shall not be in any way impaired.

ORDINANCE NO. 2747-2018

**AN ORDINANCE AMENDING PROVISIONS OF BALLOT MEASURE 23-16
AND CHAPTERS 23 AND 24 OF TITLE 3 CONCERNING
THE REGULATION OF MARIJUANA BUSINESSES, INCLUDING
BUSINESS LICENSES FOR MARIJUANA BUSINESSES, AND
DECLARING AN EMERGENCY**

WHEREAS, Initiative Ballot Measure 23-61, passed by the voters on November 6, 2018, and effective January 1, 2019 under ORS 475B.474, renamed the title of Chapter 23 of Title 3 in the Ontario Municipal Code from "Banning Certain Marijuana-Related Operations and Activities" to "Allowing Certain Marijuana-Related Operations and Activities"; and

WHEREAS, Ballot Measure 23-61 amended Chapter 23 of Title 3 by explicitly replacing all sections of Chapter 23 of Title 3 as they existed prior to the effective date of Ballot Measure 23-61, thereby effectively repealing all those sections; and

WHEREAS, Section 3-23-1 of the Ontario Municipal Code, which banned all marijuana businesses, was replaced by Section 3-23-1 in Ballot Measure 23-61 allowing certain marijuana businesses; and

WHEREAS, Under ORS 475B.968, the effect of the passage of Ballot Measure 23-61 overturning the City's ban on marijuana businesses is to prohibit the Ontario City Council from reimposing a ban on marijuana businesses except by a referral to the voters at a statewide general election; and

WHEREAS, Section 3-23-13 of Ballot Measure 23-61, as approved by the voters, imposed a 3% retail sales tax on the sale of marijuana items by marijuana retailers; and

WHEREAS, One of the purposes of this Ordinance No. 2747-2018 is to exercise the authority granted to the City by the voters to enforce the 3% marijuana retail sales tax; and

WHEREAS, Ballot Measure 23-61 also added various sections to Chapter 23 of Title 3 of the Ontario Municipal Code dealing with the licensing and regulation of marijuana businesses by the City; and

WHEREAS, Both the City's home rule authority under the Oregon Constitution and ORS 475B.486 authorize the City Council to impose reasonable regulations on marijuana businesses; and

WHEREAS, Through zoning Ordinance No. 2748-2018, which was enacted by the City Council on October 23, 2018, and becomes effective January 1, 2019, and through this Ordinance No. 2747-2018, it is the intention of the Ontario City Council to amend or repeal some sections of Ballot Measure 23-61 in order to impose on marijuana businesses reasonable regulations which differ from those in Ballot Measure 23-61; and

WHEREAS, In 2016, the Ontario City Council enacted Ordinance No. 2714-2016, which added Chapter 24 to Title 3 of the Ontario Municipal Code to establish a business license for medical marijuana dispensaries, in the event that Ontario legalized such dispensaries; and

WHEREAS, It is in the best interest of the residents of Ontario to regulate the operation of marijuana businesses in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the City, by amending Chapter 24 of Title 3 of the Ontario Municipal Code to apply to all marijuana businesses in addition to medical marijuana dispensaries and to impose additional reasonable regulations on those businesses; and

WHEREAS, Because Ballot Measure 23-61 becomes effective in less than 30 days, and many of the provisions of this Ordinance No. 2747-2018 are intended to become effective immediately after Ballot Measure 23-61 becomes effective, an emergency is hereby declared to become effective in less than 30 days, immediately after Ballot Measure 23-61 becomes effective on January 1, 2019.

NOW THEREFORE, The Common Council For The City Of Ontario Ordains As Follows**:**

Section 1. Ballot Measure 23-61 renamed the title of Chapter 23 of Title 3 of the Ontario Municipal Code from "Banning Certain Marijuana-Related Operations and Activities" to "Allowing Certain Marijuana-Related Operations and Activities." Ballot Measure 23-61 also explicitly replaced all Sections of Chapter 23 of Title 3 as they existed prior to the effective date of Ballot Measure 23-61. All the replacement Sections of Chapter 23 of Title 3 in Ballot Measure 23-61 are hereby repealed, with the exceptions of sections 3-23-1, 3-23-2, 3-23-13 and 3-23-44, which are not repealed. Original Sections 3-23-2, 3-23-3 and 3-23-4 of Chapter 23 of Title 3 of the Ontario Municipal Code as they existed prior to the effective date of Ballot Measure 23-61 are not reinstated but are also repealed.

Section 2. Section 3-23-1 of Ballot Measure 23-61 replaces current Section 3-23-1 of Chapter 23 of Title 3 banning marijuana businesses so that all marijuana businesses identified in Section 3-23-1 are explicitly allowed. Section 3-23-1 as it appears in Ballot Measure 23-16 is hereby amended by adding those portions that are underlined, as follows:

3-23-1 Allowed licensed marijuana operations and activities. The establishment and maintenance of any of the following operations and activities are allowed within the jurisdictional limits of the City of Ontario, <u>subject to zoning restrictions in the Ontario Zoning Code, Chapter 24 of Title 3 of the Ontario Municipal Code for marijuana business licenses, and any other applicable provisions in the Ontario Municipal Code</u>:

(A) Medical marijuana processors or processing sites required to be registered under Section 85 of House Bill 3400 (2015);

(B) Medical marijuana dispensaries required to be registered under ORS 475.314;

(C) Marijuana producers required to be licensed under Section 19, Chapter 1, Oregon Laws 2015;

(D) Marijuana processors required to be licensed under Section 20, Chapter 1, Oregon Laws 2015;

(E) Marijuana wholesalers required to be licensed under Section 21, Chapter 1,Oregon Laws 2015; and

(F) Marijuana retailers required to be licensed under Section 22, Chapter 1, Oregon Laws 2015.

Section 3. Section 3-23-44 as set forth in Ballot Measure 23-16 is hereby incorporated into Chapter 23 of Title 3 of the Ontario Municipal Code under the same section number.

Section 4. Section 3-23-2 of Ballot Measure 23-16 is renumbered as Section 3-23-45 and hereby incorporated into Chapter 23 of Title 3 of the Ontario Municipal Code. Said Section 3-23-45 is hereby amended by adding those portions that are underlined:

3-23-45 Definitions.
MARIJUANA BUSINESS LICENSEE means any marijuana business entity licensed by <u>the</u> Oregon Liquor Control Commission <u>or the Oregon Health Authority</u>, whether it be a retailer, processor, producer, wholesaler, lab, or researcher.

MARIJUANA RETAILER means any marijuana business entity licensed by the Oregon Liquor Control Commission that is licensed to sell marijuana directly to a consumer.

MARIJUANA ITEM means any marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts as defined in Oregon Revised Statute 475B.015.

RETAIL SALE PRICE means the total consideration paid to a marijuana retailer for a marijuana item by or on behalf of a consumer, excluding any tax.

TAX ADMINISTRATOR means the City Manager or a person designated by the City Manager to administer the marijuana retail tax program.

CONSUMER means a person who purchases marijuana items from a marijuana retailer.

Section 5. Section 3-23-13 of Ballot Measure 23-61 is renumbered as Section 3-23-47 and hereby incorporated into Chapter 23 of Title 3 of the Ontario Municipal Code. Said Section 3-23-47 is hereby amended by adding those portions that are underlined and deleting those portions that are lined out:

3-23-47 Retail Tax on Marijuana Items.

(A) The City imposes a tax on each marijuana item sold to a consumer within the city by a marijuana retailer to be used for general government purposes. The tax shall equal three percent of the retail sale price for each marijuana item sold.

(B) The consumer shall pay the tax to the marijuana retailer at the time of the purchase or sale of the marijuana item. Every marijuana retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The marijuana retailer shall remit the tax to the tax administrator.

(C) Every marijuana retailer must keep, preserve and make available to the tax administrator detailed records of all sales made and all taxes collected consistent with administrative regulations adopted by the City Manager.

(D) The City Manager shall adopt administrative rules to specify the amount of penalties and interest that a retailer must pay if the retailer fails to timely remit any tax imposed by this code. The amount of penalties and interest established by administrative regulation shall be consistent with comparable provisions of state law.

(E) Every marijuana retailer shall maintain with the City the sum of $**** as a cash bond to guarantee compliance with this Section 3-23-47 as long as the marijuana retailer continues to engage in marijuana retail sales. The City Council may change the bond amount from time to time by Council resolution. In the event of noncompliance, the tax administrator is authorized to: 1) apply so much of the bond to the marijuana retailer's tax liability, penalties and interest as the tax administrator reasonably determines is owed by the marijuana retailer to the City; and 2) require the marijuana retailer to replenish any bond amount so applied. This is in addition to any other remedies available to the City for noncompliance.

~~(E)~~(F) Any person aggrieved by any decision of the tax administrator under this code may appeal the decision in the manner provided ~~in Section 3-23-12 of this code. The appeal shall be heard and determined as provided in Section 3-23-12 of this code~~.in this subsection. The appeal shall made by delivering a written notice of appeal to the City Manager within thirty (30) days of the adverse decision by the tax administrator. All appeals shall be conducted by a hearings officer as a contested case proceeding pursuant to the provisions of Article V of Chapter 5 of Title 1 of the Ontario Municipal Code. However, if the City Manager contracts with the State of Oregon to administer the tax, then in lieu of processing an appeal as provided in ~~Section 3-23-12~~ this subsection, the city manager may provide that the appeal shall be processed in accordance with procedures adopted by the State.

Section 6. Chapter 24 of Title 3 is hereby renamed "MANDATORY BUSINESS LICENSES FOR MARIJUANA BUSINESSES". The following Sections of Chapter 24 of Title 3 of the Ontario Municipal Code are hereby amended by lining out those portions that are deleted and adding those portions that are underlined:

3-24-1 DEFINITIONS

1. City Manager means the City Manager or the designee of the City Manager authorized to handle any matters arising under this Chapter on the City Manager's behalf.

2. Marijuana ~~or medical marijuana~~ means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. ~~As used in this Chapter, "marijuana" or "medical marijuana" refers to marijuana dried, produced, processed, kept, stored, delivered, transferred, dispensed or otherwise provided for the exclusive benefit of and use by a person to mitigate the symptoms or effects of a person's debilitating medical condition as defined in ORS 475.302.~~

~~3. Medical marijuana dispensary means a facility designed, intended or used for purposes of delivering, dispensing, or transferring marijuana to Oregon medical marijuana registry identification card holders pursuant to ORS 475.300-475.346. The dispensary includes all premises, buildings, curtilage or other structures used to accomplish the storage, distribution and dissemination of marijuana~~.

3. "Marijuana business licensee" or "licensee" means any marijuana business entity licensed by the Oregon Liquor Control Commission (OLCC) or Oregon Health Authority (OHA), including but not limited to the following license categories: retailer, medical marijuana dispensary, producer, processor, wholesaler, laboratory, or researcher.

~~4. Operator means a person who owns, operates or otherwise has legal responsibility for a dispensary and who meets the qualifications established by the Oregon Health Authority and has been approved by the Oregon Health Authority to operate a medical marijuana dispensary.~~

4. "Marijuana business premises" or "premises" includes all buildings, curtilage or other structures used to accomplish the sale, storage, distribution and dissemination of marijuana.

5. Principal means members, partners or corporate officers, and all stockholders holding more than 10 percent of the voting stock for any applicant who is not a natural person.

~~6. Registration identification card means a document issued by the Oregon Health Authority that identifies a person authorized to engage in the medical use of marijuana, and the person's designated caregiver, if any~~.

3-24-2 LOCAL LICENSE REQUIRED

~~Medical marijuana dispensaries~~ Marijuana business licensees must possess a valid license issued under this Chapter to operate within the City. The license required by this Chapter facilitates the registration and the City's oversight of ~~a medical marijuana dispensary~~ marijuana businesses. The license required by this Chapter should not be construed to constitute an authorization to engage in any activity prohibited by law nor a waiver of any other regulatory or license requirement imposed by any other provision of City ordinance or local, regional, state or federal law. Unless exempt, marijuana business licensees shall pay an annual application fee and an annual business license fee in the amounts set forth in Section 3-24-6 of this Chapter, or in any resolutions adopted by the City Council changing the amount of those fees.

3-24-3 STATE REGISTRATION REQUIRED

~~To be eligible to apply for a license under this Chapter, medical marijuana dispensaries must be registered with the Oregon Health Authority and authorized by state law to operate.~~ Marijuana business licensees must have received approval by the OLCC or OHA before operating in the City.

3-24-4 LICENSE APPLICATION

(A) Contents of Applications. Applications for new and renewed licenses must be submitted to the City Manager on forms provided by the City. A separate application must be submitted for each proposed dispensary. The initial or renewal application must include the following information:

1. Certification that the proposed ~~dispensary~~ marijuana business licensee is registered at that location ~~as a medical marijuana dispensary~~ with the ~~Oregon Health Authority~~ State of Oregon. ~~pursuant to ORS 475.314.~~

2. The applicant's name, residence address, and date of birth, with photo identification such as a driver's license or other government-issued identification.

3. The names and residence addresses of:

a. Any person or legal entity that has an ownership interest in the ~~dispensary~~ marijuana business, including all principals of the applicant;

b. Any person or legal entity with a financial interest that has loaned or given money or real or personal property to the applicant, or principal of the applicant, for use by ~~the proposed dispensary~~ marijuana business licensee within the preceding year;

c. Any person or legal entity that has leased real property to the applicant for use by the ~~dispensary~~ marijuana business and any person who manages that property; and

d. Any person who is anticipated at the time of the application to be an employee ~~or volunteer~~ at the proposed ~~dispensary~~ marijuana business.

4. The business name.

5. The address and telephone number of the proposed ~~dispensary~~ marijuana business.

6. The mailing address for correspondence about the license.

7. A detailed description of the type, nature and extent of the business.

8. The proposed days and hours of operation.

9. A detailed description of the proposed accounting and inventory system of the ~~dispensary~~ marijuana business.

10. Certification that the ~~dispensary~~ marijuana business has met all applicable requirements of the City development code, land use code and sign code.

11. Certification that all applicable taxes and fees have been paid.

12. A complete application for a criminal background check for the applicant, and all principals, persons with a financial interest, and employees~~, and volunteers~~ of the proposed ~~medical marijuana dispensary~~ marijuana business.

13. The names of at least three natural persons who can give an informed account of the business and moral character of the applicant and principals.

14. The signature, under penalty of perjury, of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person.

15. Other information deemed necessary by the City Manager to complete review of the application.

16. Certification that one or more named natural persons who own at least 51% and have majority control of the marijuana business have, and will maintain, principal residences within the boundaries of the Ontario 8C School District throughout the term of the license. If, after obtaining a business license, the marijuana business falls out of compliance with the residency requirement during the license term for any reason, including as a result of a change in ownership or ownership percentage of the business or because one or more of the named persons have changed residences, the marijuana business shall immediately notify the City Manager, and may request a temporary waiver of the residency requirement. The City Manager may temporarily waive the residency requirement if the City Manager reasonably finds that there are extenuating circumstances beyond the reasonable control of the marijuana business and the marijuana business is taking reasonable steps to return to compliance. If a marijuana business otherwise fails to comply with this section at any time, the City Manager shall have the authority to deny, revoke or suspend the marijuana business license.

(B) Information Shall be Kept Current. All information provided in an initial or renewal application must be kept current at all times, including after a license is issued. Each licensee shall notify the City Manager in writing within ten business days of any change in the information provided to obtain the license.

3-24-5 LICENSE DETERMINATION

(A) Determination. Within 25 days after receiving a complete application and application fee ~~for a medical marijuana dispensary license~~, the City Manager will issue the license if the City Manager finds that the ~~dispensary is registered as a medical marijuana dispensary with the Oregon Health Authority pursuant to ORS 475.314~~ is properly licensed as a marijuana business licensee with the State of Oregon and that all other requirements under this Chapter have been met.

(B) Denial. In addition to denial for failure to meet the requirements of this Chapter, the City Manager may deny a license if:

1. The applicant made an untrue, misleading, or incomplete statement on, or in connection with, the application for the license or a previous application for a license;

2. Notwithstanding the federal Controlled Substances Act, the applicant fails to meet all requirements of local, state, and federal laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations; or

3. The applicant, principals, employees~~, volunteers,~~ or persons with a financial interest in the ~~dispensary~~ marijuana business have been convicted of a felony for the manufacture or delivery of a Schedule I or Schedule II controlled substance~~; or~~

~~4. The operation of the medical marijuana dispensary is subject to the ban on dispensaries in City Code Section 3-23-1~~.

(C) An applicant may appeal the City Manager's denial of a license in accordance with Section 3-24-12(B). Any aggrieved person may appeal the City Manager's issuance of a license in accordance with Section 3-24-12(B).

3-24-6 APPLICATION FEE; BUSINESS LICENSE FEE

(A) An initial license application and a renewal application must be accompanied by a nonrefundable application fee in the base amount of $1,200 for a ~~dispensary~~ marijuana business with five or fewer employees ~~and volunteers~~. For ~~dispensaries~~ marijuana businesses with more than five employees ~~and volunteers~~, the fee shall be the base fee plus $220 for each additional employee ~~or volunteer~~. If at any time the ~~dispensary~~ marijuana business employs a new employee ~~or volunteer~~ not named in the last application, the ~~dispensary~~ marijuana business shall pay the City a new fee of $220 to screen that individual. The City Council may revise the fee amount from time to time by resolution of the Council. A marijuana business whose sole license through the State of Oregon is as a medical marijuana producer must submit an application for a marijuana business but is exempt from the application fee.

B) Prior to issuance of an initial or renewal marijuana business license, the City Manager shall collect from each licensee a business license fee of $5,000 annually. The City Council may revise the fee amount from time to time by resolution of the Council. A marijuana business licensee shall pay a separate marijuana license fee for each separate marijuana business location within the city limits. A marijuana business whose sole license through the State of Oregon is as a medical marijuana producer must possess a marijuana business license but is exempt from the business license fee.

3-24-7 DISPLAY OF LICENSE

The license issued under this Chapter must be prominently displayed at all times in an easily visible location inside the ~~dispensary~~ marijuana business.

3-24-8 TERMINATION OF LICENSE

(A) Termination. A license terminates automatically one year from the date of issuance, unless a license renewal application has been approved.

(B) Renewal. A license may be renewed for additional annual terms as provided by this Chapter.

(C) Renewal Application. Renewal applications shall be submitted, with the required application fee, to the City Manager not less than 30 days prior to the expiration date of the existing license.

(D) Termination Due to Change in Law. A license terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the ~~dispensary~~ marijuana business under this ordinance.

(E) Surrender. A licensee may surrender a ~~medical marijuana dispensary~~ license by delivering written notice to the City that the licensee thereby surrenders the license. A licensee's surrender of a license under this section does not affect the licensee's civil or criminal liability for acts the licensee committed before surrendering the license.

3-24-9 TRANSFERABILITY

Licenses issued under this Chapter shall not be transferred to any other person. The City Manager may waive this restriction and authorize a transfer if it is to a limited liability company, corporation or partnership in which the names of principals have been included in the most recent license application for the ~~dispensary~~ marijuana business and the City has already completed criminal background checks on those principals.

3-24-10 INDEMNIFICATION

(A) Waiver. By accepting a ~~medical marijuana dispensary~~ license issued under this Chapter, the licensee waives and releases the City, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of a ~~dispensary~~ marijuana business owner or operator, principal, person or legal entity with a financial interest in the ~~dispensary~~ marijuana business, person or entity that has leased real property to the ~~dispensary~~ marijuana business, employee, volunteer, client or customer for a violation of federal, state or local laws and regulations.

(B) Indemnification. By accepting a ~~medical marijuana dispensary~~ license issued under this Chapter, the licensee(s), jointly and severally if there is more than one, agree to indemnify and hold harmless the City, its officers, elected officials, employees, volunteers, and agents, insurers,
and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the ~~medical marijuana dispensary~~ marijuana business that is the subject of the license.

3-24-11 STANDARDS OF OPERATION

(A) Registration and Compliance with ~~Oregon Health Authority~~ Oregon Administrative Rules for marijuana businesses. The ~~dispensary's~~ Oregon license ~~registration as a medical marijuana dispensary under ORS 475.314~~ of a marijuana business must be in good standing with the ~~Oregon Health Authority~~ State of Oregon, and the ~~dispensary~~ marijuana business must comply with all applicable laws and regulations administered by the ~~Oregon Health Authority for dispensaries~~ OLCC, OHA, the Oregon Department of Agriculture and any and all state agencies that regulate any aspect of Oregon's marijuana laws.

(B) Compliance with Other Laws. The ~~dispensary~~ marijuana business must comply with all applicable City laws and regulations, including, but not limited to, the zoning, building and fire codes.

(C) ~~Registry Identification Card Required. All persons allowed within the dispensary, except employees of the City performing their official duties, must have a valid registry identification card and be in compliance with rules adopted by the Oregon Health Authority~~.

(D) Retail Sales ~~in Dispensary~~. Retail ~~S~~sales or any other transfers of marijuana on the ~~dispensary~~ premises must occur inside ~~the dispensary~~ buildings ~~and must be conducted only between the dispensary and individuals with registry identification cards~~.

(E) On-Site Use. Marijuana and tobacco products must not be smoked, ingested, consumed or otherwise used on the premises ~~of a medical marijuana dispensary~~.

(F) On-Site Manufacturing. Manufacturing or production of any extracts, oils, resins or similar derivatives of marijuana is prohibited at a medical marijuana dispensary ~~or recreational retail outlet~~. Use of open flames or gases in the preparation of any products is prohibited at a dispensary or retail outlet.

(G) Outdoor Storage. Outdoor storage of merchandise, raw materials or other material associated with the ~~dispensary~~ marijuana business is prohibited.

(H) Secure Disposal. The ~~dispensary~~ marijuana business must provide for secure disposal of marijuana remnants or byproducts; marijuana remnants or by-products shall not be placed within ~~the dispensary's~~ exterior refuse containers.

(I) Home Occupation. A ~~dispensary~~ marijuana business may not be operated as a home occupation.

(J) Screening from Public. All transactions shall occur within the interior of ~~the dispensary~~ buildings, out of the view of the public. All doorways, windows and other openings shall be located, covered or screened in such a manner to prevent a view into the interior from any exterior public or semipublic area. Walk-through windows, drive-through windows or other outside delivery systems are prohibited.

(K) Objectionable Odors. The ~~dispensary~~ marijuana business must use an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the ~~dispensary~~ marijuana business to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

(L) Permanent Structure. The ~~dispensary~~ marijuana business shall be located in a permanent building, not in a trailer, cargo container or motor vehicle.

(M) Blight. The ~~dispensary~~ marijuana business shall have an exterior consistent with other buildings on abutting lots in the neighborhood so as not to cause blight.

(N) Security Devices. A ~~dispensary~~ marijuana business must install and maintain all security devices required by ~~the Oregon Health Authority~~ Oregon law.

(O) Lighting. A medical marijuana dispensary and a recreational retail outlet must maintain adequate outdoor lighting over each exterior exit.

(P) Hours of Operation. ~~No dispensary~~ All marijuana businesses shall have operating hours ~~earlier than 10 a.m. or later than 7 p.m. of the same day~~ that comply with OLCC rules.

3-24-12 ENFORCEMENT AND PENALTIES

(A) Revocation or Suspension of License. The City Manager may deny, suspend or revoke a license issued under this Chapter for failure to comply with this Chapter, for submitting falsified information to the City or ~~the Oregon Health Authority~~ any state agency, or for noncompliance with any other City ordinances or state law, including a failure of a marijuana retailer to timely pay any retail sales tax on marijuana items or to pay or maintain the deposit imposed under Section 3-23-47 of Chapter 23 of Title 3 of the Ontario Municipal Code.

(B) Appeal of Issuance, Denial, Revocation or Suspension. Any person aggrieved by the City Manager's issuance, denial, suspension or revocation of a license may appeal it ~~to the City Council~~ by delivering a written notice of appeal to the City Manager within 30 days of the date of the denial, suspension or revocation. ~~The appeal shall be heard by the City Council in a public meeting scheduled within 60 days of the date that the notice of appeal is delivered to the City Manager. The appellant shall be given at least a five day notice of the public meeting, and shall be entitled to appear and be heard. The City Council's decision on the appeal shall be final.~~ All appeals shall be conducted by a hearings officer as a contested case proceeding pursuant to the provisions of Article V of Chapter 5 of Title 1 of the Ontario Municipal Code.

(C) Civil Penalty. In addition to the other remedies provided in this section, any person or entity, including any person who acts as the agent of, or otherwise assists, a person or entity who fails to comply with the requirements of this Chapter or the terms of a license issued under this Chapter, who undertakes an activity regulated by this Chapter without first obtaining a license, who fails to comply with a cease and desist order issued pursuant to this Chapter, or who fails to comply with state law commits an unclassified civil violation which shall be processed according to the procedures established in Chapter 4 "General Penalty" of Title 1 of this Code.

(D) Public Nuisance. Any premises, house, building, structure or place of any kind where ~~medical~~ marijuana is grown, processed, manufactured, sold, bartered, distributed or given away in violation of state law or this Chapter, or any place where ~~medical~~ marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this Chapter, is a public nuisance. The City many institute an action in circuit court in the name of the City to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The City shall not be required to give bond in such an action.

(E) Remedies not Exclusive. The remedies provided in this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under City ordinance or state law.

Section 7. Severability. The sections, subsections, paragraphs, and clauses of this Ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

Section 8. Effective Date. An emergency having been declared, this ordinance shall become effective in less than 30 days. It shall go into effect on January 1, 2019, immediately after Ballot Measure 23-61 becomes effective.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ____ day of _________________, 2018, by the following vote:

AYES:
NAYS:
ABSENT:

APPROVED by the Mayor this ____ day of ____________________, 2018.

ATTEST:

____
Ronald Verini, Mayor

____
Tori Barnett, MMC, City Recorder