ORDINANCE NO. 2979

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO. CALIFORNIA, APPROVING FILE NO. PDCA13-005, A DEVELOPMENT CODE AMENDMENT REVISING TITLE 9 (DEVELOPMENT CODE), ARTICLE 13. **TABLE** 13-1 (PERMITTED, CONDITIONAL **ANCILLARY** LAND USES-ALL ZONING DISTRICTS) CONDITIONALLY PERMIT HOOKAH ESTABLISHMENTS WITHIN THE C2 (CENTRAL BUSINESS DISTRICT COMMERCIAL) AND (COMMERCIAL SERVICE) ZONING DISTRICTS, AND **MAKING** FINDINGS IN SUPPORT THEREOF.

WHEREAS the City of Ontario ("Applicant") has initiated a Development Code Amendment, File No. PDCA13-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application proposes to revise the provisions of Ontario Municipal Code Title 9 (Development Code), Chapter 1 (Zoning and Land Use Requirements), Part 3 (Zoning Districts and Land Use), Article 13 (Land Use and Special Requirements), Table 13-1 (Permitted, Conditional and Ancillary Land Uses – All Zoning Districts) which regulates the establishment of land uses, activities and facilities within each zoning district within the City; and

WHEREAS, the Application proposes to allow hookah establishments as a conditionally permitted use within the C2 (Central Business District Commercial) and C3 (Commercial Service) zoning districts; and

WHEREAS, the C2 (Central Business District Commercial) and the C3 (Commercial Service) zoning districts are to allow the development of commercial establishments typically found in shopping centers serving the day-to-day shopping and service needs of residents and the business community. Further, the corresponding land use in TOP identifies General Commercial as "local and regional serving retail, personal service, entertainment, dining, office, tourist-serving, and related commercial uses"; and

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

WHEREAS, on November 18, 2013, the Planning Commission of the City of Ontario conducted a duly noticed public hearing to consider and concluded said hearing on that date. After deliberating the matter, the Commission voted to recommend approval of the application to the City Council; and

- WHEREAS, on December 3, 2013, the City Council conducted a duly noticed public hearing and concluded said hearing on that date; and
- WHEREAS, on December 17, 2013, the City Council conducted a duly noticed public hearing and concluded said hearing on that date; and
- WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.
- NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:
- SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record of the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:
- a) The proposed Development Code amendment is exempt from the California Environmental Quality Act (codified as Public Resources Code Sections 21000 et seq.) ("CEQA") and the State CEQA Guidelines, pursuant to CEQA Guidelines Section 15061(b)(3), which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- b) The determination of CEQA exemption reflects the independent judgment of the City Council.
- <u>SECTION 2</u>. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:
- a) The proposed Development Code Amendment is consistent with the goals and policies of the Policy Plan component of The Ontario Plan;
- b) The proposed Development Code Amendment will provide land use flexibility in the city and it will assist in the goal of creating a complete community; and
- c) The proposed Development Code Amendment will allow the city to provide land use flexibility, and the amendment will also allow the City to be consistent with what other surrounding agencies are already doing; and
- d) The propose Development Code Amendment will support the vision of the City to be a leader within Southern California and the Inland Empire; and

- e) The proposed development code amendment will not have a significant adverse impact on the environment.
- SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council approves File No. PDCA13-005, amending Development Code Chapter 1, Article 13, Table 13-1 to allow hookah establishments as a conditionally permitted use within the C2 (Central Business District Commercial) and C3 (Commercial Service) zoning districts subject to the following restrictions and as shown on Exhibit "A" attached:
 - 1) The use can be a standalone use (lounge); and
 - 2) The use can be part of a sit-down restaurant with an outside open patio area for outside smoking or as part of an ABC licensed bona-fide eating establishment; and
 - 3) Hookah cannot be associated with live entertainment; and
 - 4) Hookah cannot be part of a bar or nightclub; and
 - 5) The establishment must be in compliance with state laws and regulations pertaining to a smoking facility (limitation on numbers of paid staff, must meet CAL-OSHA requirements for air filtration and circulation and meet fire standards for smoking lounges); and
 - 6) The use must dispose of ash and coals in accordance with fire department requirements.
- SECTION 4. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.
- <u>SECTION 5</u>. The documents and materials that constitute the record of proceedings on which these findings have been based upon are located at the City of Ontario City Hall, 303 East B Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.
- SECTION 6. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 17th day of December 2013.

ATTEST:

APPROVED AS FOLEGAL FORM:

BEST BEST & KRIEGER LLP

CITY ATTORNEY

STATE OF CALIFORNIA	`
COUNTY OF SAN BERNARDINO	Ś
CITY OF ONTARIO	Ś

I, MARY E. WIRTES, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 2979 was duly introduced at a regular meeting of the City Council of the City of Ontario held December 3, 2013 and adopted at the regular meeting held December 17, 2013 by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS: LEON, BOWMAN, WAPNER,

DORST-PORADA AND AVILA

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

mary E. Wirtes, MMC, City Clerk

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2979 duly passed and adopted by the Ontario City Council at their regular meeting held December 17, 2013 and that Summaries of the Ordinance were published on December 10, 2013 and December 24, 2013, in the Inland Valley Daily Bulletin newspaper.

MARY E. WIRTES, MMC, CITY CLERK

(SEAL)

Exhibit "A"

Table 13-1: Permitted, Conditional, and Ancillary Land Uses – All Zoning Districts (excerpt)

Use Legend:

P: Permitted C: Conditional Use Permit required U: Refer to underlying zoning district ---: Prohibited

Uses	Professional and Commercial Districts						
	AP	NC	C1	C2	С3	C4	EA
Tobacco products stores (excluding hookah bars, smoking lounges and similar facilities)			Р	Р	Р	Р	
Hookah establishments				С	С		