APPENDIX G
DRAFT ORANGE MUNICIPAL CODE AMENDMENT

ORDINANCE NO. 12-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE ADDING SECTIONS 17.38.030 AND 17.38.040 OF THE ORANGE MUNICIPAL CODE RELATING TO USES MADE NONCONFORMING DUE TO GENERAL PLAN UPDATE AND TERMINATION OF NON-CONFORMING USES.

WHEREAS, the City is in the process of updating its general plan; and

WHEREAS, depending on the ultimate action taken by the City Council, the general plan and any zoning adopted to be consistent with the general plan, may result in some existing uses becoming non-conforming with the zoning and general plan; and

WHEREAS, the Orange Municipal Code permits nonconforming uses to continue, but does not permit structural improvements or physical expansion of nonconforming uses and also provides that if the nonconforming use is discontinued for a period of more than six months, that the non-conforming use must be abandoned and that any future use of the land must be in conformity with the Orange Municipal Code; and

WHEREAS, some property owners have raised a concern that the limitations on nonconforming uses in the Orange Municipal Code coupled with the general plan revisions will substantially reduce the value of their property and that under existing economic conditions it may be difficult to replace tenants in a six-month time frame causing property owners to lose a substantial portion of their financial investment in existing structures; and

WHEREAS, while desiring to ensure that property owners are not deprived of recovering their investments in the property made non-conforming by the general plan update, the very nature of updating a general plan is to look to the future and the eventual elimination of nonconforming uses to accommodate changed circumstances; and

WHEREAS, property owners are entitled to notice and an opportunity to be heard prior to having their legal non-conforming uses terminated.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES ORDAIN AS FOLLOWS:

SECTION I:

Section 17.38.030 D. is added to the Orange Municipal Code to provide as follows:

"D. Continuation of Uses Made Non-Conforming by 2009 General Plan Update. The 2009 General Plan Update re-designated the allowable uses on numerous properties throughout the City. Notwithstanding other provisions of this Code, those

industrial properties within the Katella Avenue Corridor, Lemon Street Corridor and Old Towne and Santa Fe Depot focus areas, the use of which was re-designated by the 2009 General Plan Update and as a result the use existing at the time of the adoption of the 2009 General Plan Update became non-conforming, shall be permitted to continue unless such nonconforming use is discontinued voluntarily or involuntarily for a period exceeding 12 consecutive months provided that such property meets all of the following conditions:

1. The property is included on the map of "Properties Made Non-Conforming by the 2009 General Plan Update" (hereafter, "Map"), which Map shall be a public record, be provided to all property owners whose property is on the Map and be on file with the Community Development Director.
2. The type of use has not changed since the use most recent in time prior to the adoption of the 2009 General Plan Update.
3. The property remains in compliance with all applicable development standards for such use.

Prior to the expiration of 12-month period or any extension thereof, a property owner of a property listed on the Map may make application to the Community Development Director for an extension of the 12-month period upon making a showing that the use has been discontinued on an involuntary basis and that reasonable efforts have been made during the previous 12 months to continue the use. The Community Development Director shall review the application and if complete, set the request for hearing before the Planning Commission for review and determination. The Planning Commission may extend the period of discontinued use for a period no greater than 24 consecutive months. Any use which has been discontinued past the applicable expiration period shall be set for hearing before the Planning Commission in accordance with Section 17.38.040 of this Code or its successor."

Section 17.38.040 D. is added to the Orange Municipal Code to provide as follows:

"D. No property shall lose its right to continue as a nonconforming use unless and until the Community Development Director has made a determination that the property has been or was discontinued for such a period as to lose its legal non-conforming status as set forth in this Code. In the event of such a determination, the Community Development Director shall set the matter for hearing before the Planning Commission and notify the property owner of the time and place of the hearing, which notice shall be mailed by first-class mail and certified mail, return receipt requested, to the owner of record as listed on the latest property tax assessment roll, as well as the property address. Failure to follow the notice requirement shall not invalidate any Planning Commission determination if in fact the property owner received notice."

SECTION II:

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

SECTION III:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. A summary of this Ordinance shall also be published once within fifteen (15) days after this Ordinance's passage in a newspaper of general circulation, published, and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk a certified copy of the full text of such adopted Ordinance along with the names of those City Council members voting for and against the Ordinance in accordance with Government Code Section 36933. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2009.

_____
Carolyn V. Cavecche, Mayor, City of Orange

ATTEST:

_____
Mary E. Murphy, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ___ day of _____, 2009, and thereafter at the regular meeting of

said City Council duly held on the ___ day of _____, 2009, was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

_____
Mary E. Murphy, City Clerk, City of Orange

DAD – General Plan Non-Conforming Uses