



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, December 1, 2009

*Members of the City Council*

*Michael Martin, Mayor  
Woody Fridae, Mayor Pro Tempore  
Harold Anderson  
Cecilia Aguiar-Curry  
Tom Stone*

*John W. Donlevy, Jr., City Manager  
John Wallace, City Attorney  
Nanci Mills, City Clerk*

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**6:00 p.m.  
CITY COUNCIL EXECUTIVE SESSION  
AGENDA**

Section 54956.9 of the Government Code – Significant Exposure of Anticipated Litigation – APN 003-424-026-000

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**6:30 p.m.  
REGULAR MEETING OF THE CITY COUNCIL  
AGENDA**

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PLEASE NOTE – The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Mayor or Councilmembers. Public comments time may be limited and speakers will be asked to state their name.

Roll Call

Pledge of Allegiance

Approval of Agenda

COUNCIL/STAFF COMMENTS

### PUBLIC COMMENTS

At this time, any member of the public may address the City Council on matters, which are not listed on this agenda. Citizens should reserve their comments for matter listed on this agenda at the time the item is considered by the Council. An exception is made for members of the public for whom it would create a hardship to stay until their item is heard. Those individuals may address the item after the public has spoken on issues that are not listed on the agenda. Presentations may be limited to accommodate all speakers within the time available. Public comments may also be continued to later in the meeting should the time allotted for public comment expire.

### CONSENT CALENDAR

All matters listed under the consent calendar are considered routine and non-controversial, require no discussion and are expected to have unanimous Council support and may be enacted by the City Council in one motion in the form listed below. There will be no separate discussion of these items. However, before the City Council votes on the motion to adopt, members of the City Council, staff, or the public may request that specific items be removed from the Consent Calendar for separate discussion and action. Items(s) removed will be discussed later in the meeting as time permits.

- A. Minutes of the Regular Meeting of the Winters City Council Held on November 17, 2009 (pp 1-4)
- B. Approve Memorandum of Understanding (MOU) with Housing Authority of the County of Yolo for Sewer Services at El Rio Villa Housing Development and Authorize the Mayor to Sign (pp 5-19)
- C. Project Acceptance - Grant Avenue Widening & Safety Improvements, Project No. 09-01/Federal Aid Project No. ESPL 5110 (027) (pp 20)

### PRESENTATIONS

Francesca Wright regarding the HEALS Cities Campaign to Educate our Community about Healthy Eating, Active Living Communities

### DISCUSSION ITEMS

- 1. Staff Presentation on Draft Code Enforcement Ordinance (Information Item Only) (pp 21-41)

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COMMUNITY DEVELOPMENT AGENCY

1.

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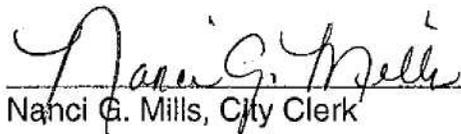
CITY MANAGER REPORT

INFORMATION ONLY

1. Update on Winters Farmers Market and the Winters Community Garden (pp 42-50)

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 1, 2009, regular meeting of the Winters City Council was personally delivered to each Councilmember's mail boxes in City Hall and posted on the outside public bulletin board at City Hall, 318 First Street on November 24, 2009, and made available to the public during normal business hours.

  
Nanci G. Mills, City Clerk

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*General Notes: Meeting facilities are accessible to persons with disabilities. To arrange aid or services to modify or accommodate persons with disability to participate in a public meeting, contact the City Clerk.*

*Staff recommendations are guidelines to the City Council. On any item, the Council may take action, which varies from that recommended by staff.*

*The city does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.*

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Winters Library – 201 First Street

City Clerk's Office – City Hall – 318 First Street

During Council meetings – Right side as you enter the Council Chambers

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Wednesday at 10:00 a.m.

Videotapes of City Council meetings are available for review at the Winters Branch of the Yolo County Library.



Minutes of the Regular Meeting of the Winters City Council  
Held on November 17, 2009

Mayor Michael Martin called the meeting to order at 6:30 p.m.

Present: Mayor Michael Martin, Council Members Cecilia Aguiar-Curry, Harold Anderson, Woody Fridae and Mayor Michael Martin

Absent: Council Member Tom Stone

Staff: City Manager John Donlevy, City Attorney John Wallace, Director of Financial Management Shelly Gunby, and City Clerk Nanci Mills.

Michael Lafferty of the Department of Consumer Affairs led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy said there were no changes to the agenda. Motion by Council Member Aguiar-Curry, second by Council Member Fridae to approve the agenda. Motion carried unanimously with one absent.

**COUNCIL/STAFF COMMENTS** Council Member Aguiar-Curry recently attended the Legislative briefings at the League of California Cities. Staff members Shelly Gunby and Dawn Van Dyke also participated in a webinar provided by the League of California Cities, and as per Shelly Gunby, the experience was positive and they were able to obtain the information without leaving the office. If anyone is interested in receiving the Legislative report from the League of California Cities, the cost is \$10. Council Member Aguiar-Curry will be attending the League of California Cities Leadership Conference and while there will also be attending a Policy Committee meeting. She also wanted to thank City Manager Donlevy for his hard work during the construction of the library. He stuck by it and a lot of people commented how nice the library is. Council Member Fridae echoed Council Member Aguiar-Curry's comments regarding the library. The Grand Opening was a tremendous affair. On Saturday, November 14, approximately 200 people were using the library. A great job all the way around and it was good to see Dale come back for the event. All partners did a great job. Council Member Anderson attended a Transportation District Meeting on 11/16 and a SACOG meeting on 11/12, where there was a briefing on the water bill. The consensus is the Delta is in trouble. Also, the TDA claim was awarded for road work. Council Member Aguiar-Curry

added that she attended a Water Resources Association Meeting and would like to ask them to give a presentation at a future City Council meeting. Mayor Martin reminded everyone about the upcoming annual Community Thanksgiving Dinner being held on November 22. Council members will be delivering to housebound residents from 4:30 to 5:00, with the dinner starting at 5:00 p.m. at the Community Center. Please contact Nanci Mills or Tracy Jensen at City Hall to be added to the delivery list. With the state of the economy, more people are expected than last year.

**PUBLIC COMMENTS:** None

### **CONSENT CALENDAR**

- A. Minutes of the Regular Meeting of the Winters City Council Held on November 3, 2009**
- B. Resolution 2009-58, a Resolution of the City Council of the City of Winters, Adopting a Memorandum of Understanding (MOU) for the Winters Police Officers Association**

City Manager Donlvey gave a brief overview. He stated the MOU is within the parameters of the budget and requested it be adopted. Motion by Council Member Aguiar-Curry, second by Council Member Anderson, to approve the consent calendar. Motion carried unanimously, with one absent.

### **PRESENTATIONS**

Michael Lafferty, the Outreach Manager of the California Department of Consumer Affairs (DCA), gave an informative presentation to the Council. He indicated he would be available to come back to Winters to give presentations to the Hispanic Advisory Committee and the Seniors at the Community Center. He also provided the phone number for the National Do Not Call Registry (1-888-382-1222).

Eagle Scout Morgan Dana Fjord was not able to attend the City Council meeting to receive a Proclamation from the City Council. Mayor Martin agreed to present the Proclamation at a ceremony to be held on November 29.

### **DISCUSSION ITEMS**

- 1. Second Reading and Adoption of Ordinance 2009-13, an Ordinance of the City Council of the City of Winters, Adding Chapter 17.120, Vacant and Abandoned Property Registration, to the Winters Municipal Code to Require Owners and Other Persons Responsible for Vacant and Abandoned Property to Register with the City and to Maintain Such Property**

City Attorney Wallace stated there have been no changes, public input or opposition since the introduction of this Ordinance on November 3.

Motion by Council Member Aguiar-Curry, second by Council Member Anderson, to adopt Ordinance 2009-13, adding Chapter 17.120, Vacant and Abandoned Property Registration to the Winters Municipal Code, to require owners and other persons responsible for vacant and abandoned property to register with the City and to maintain such property. Motion carried with the following vote:

**AYES:** Council Members Aguiar-Curry, Anderson, Fridae, and Mayor Martin  
**NOES:** None  
**ABSENT:** Council Member Stone  
**ABSTAIN:** None

## **2. Second Reading and Adoption of Ordinance 2009-14, an Ordinance of the City Council of the City of Winters, Allowing Billing for Multiple Police Calls, Driving Under the Influence, and Emergencies**

City Attorney Wallace stated there have been no changes, public input or opposition since the introduction of this Ordinance on November 3. He said this Ordinance would address unlawful or uncivil behavior and allow the police department to focus on their jobs. Mayor Martin asked if reimbursement could be obtained outside the City limits. City Attorney Wallace replied yes.

Motion by Council Member Fridae, second by Council Member Aguiar-Curry, to adopt Ordinance 2009-14, allowing billing for multiple police calls, driving under the influence and emergencies. Motion carried with the following vote:

**AYES:** Council Members Aguiar-Curry, Anderson, Fridae, and Mayor Martin  
**NOES:** None  
**ABSENT:** Council Member Stone  
**ABSTAIN:** None

## **3. Fiscal Sustainability Workshop**

City Manager John Donlevy said he would like to schedule a Fiscal Sustainability Workshop session for Council members and has recommended three dates. Senator Lois Wolk indicated in a recent conversation with City Manager Donlevy that the State will be coming after us in a very big way. Currently, sales tax and property tax are both down and only four building permits have been issued. City Manager Donlevy would like the opportunity to sit down with the Council

members in a workshop format in order to receive direction. The City will be facing some serious fiscal issues which we need to start addressing. After discussion by Council, it was decided to schedule the Fiscal Sustainability Workshop for Thursday, December 10, 2009 at 6:30 p.m.

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**COMMUNITY DEVELOPMENT AGENCY**

1.

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**CITY MANAGER REPORT:** City Manager Donlevy said he has e-mailed a copy to Council members of the letter sent to the Bureau of Reclamation regarding issues regarding the overall process at Lake Berryessa. Through this process, they have shut down and bankrupted five of the seven resorts and all of the trailers have been removed. Through a bidding process, and a decision to re-bid, the record of decision for the Berryessa Re-Use Plan basically gives the City of Winters the role of classroom observer and not necessarily privy to anything that's going on even though we're critical stakeholders. A letter has been sent to Mike Finnigan, Area Manager, with a copy going to Congressman Mike Thompkins' office. The Holiday Baskets are going fast, with a record number of people coming in to sign up, reflecting the tough time we're having in Winters. City Manager Donlevy also wanted to give Council members a heads-up regarding an anticipated article in the Express regarding a public notice taken out seeking a liquor license out at the freeway, although no application or plans have been submitted for a project.

**INFORMATION ONLY**

**EXECUTIVE SESSION**

Real Estate Negotiation per Government Code Section 54956.8 –  
APN 003-204-05-1, APN 003-204-06-1

The City Council authorized City Manager Donlevy to negotiate.

**ADJOURNMENT**

Mayor Martin adjourned the meeting into Executive Session at 7:08 p.m.

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Michael Martin, MAYOR

**ATTEST:**

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Nanci G. Mills, City Clerk



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Councilmembers  
DATE: December 1, 2009  
THROUGH: John W. Donlevy, Jr., City Manager *JWD*  
FROM: Carol Scianna, Environmental Services Manager *CS*  
SUBJECT: Approve the Memorandum of Understanding (MOU) with Housing Authority of the County of Yolo for Sewer Services at El Rio Villa Housing Development and authorize the mayor to sign

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**RECOMMENDATION:** Approve Memorandum of Understanding (MOU) with Housing Authority of the County of Yolo for Sewer Services at El Rio Villa Housing Development and authorize the mayor to sign

**BACKGROUND:** The current agreement for sewer services with YCH was executed in 1979 and has been inadequate for many years. The City and YCH have had several meetings to discuss the need for a new agreement / MOU that will accurately reflect the needs and of both the City and YCH at El Rio Villa. This MOU will enable the City to collect the fees associated with operating the sewer lift station at El Rio Villa. The MOU also specifies the obligations and responsibilities for the City and YCH for ongoing operation and maintenance of the sewer services at El Rio Villa

The MOU states that YCH shall pay the standard City rate for residential sewer service paid by residents within the City of Winters. The MOU also addresses annual operations costs and maintenance costs that are incurred in running the lift station at El Rio Villa. City and YCH staff have negotiated new fees to ensure that the true costs associated with the ongoing day to day operations will be paid by YCH to the City on a monthly basis.

Similarly, the new monthly maintenance fees will ensure that funds are available to complete the recently recommended improvements at the lift station facility and will also accumulate funds for future capital projects needs that may arise.

Annual costs may be adjusted by the City from time to time on an annual basis to make adjustments necessary due to:

- 1) increase in level of service caused by new regulations by the SWRCB, the State, Federal or Local government.
- 2) Increased flows causing a change in City operation
- 3) Increased costs to City arising from contractual obligations to the private contractor providing services to YCH

City staff including the City attorney have reviewed the MOU and found it acceptable.

**FISCAL IMPACT:** Total Monthly Fees to be paid by YCH to the City are \$10,881.64

**(Memorandum of Understanding Between the City of Winters  
and the Housing Authority of the County of Yolo  
for Sewer Services)**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is executed between the CITY OF WINTERS, a municipal corporation herein called "CITY", and the HOUSING AUTHORITY OF THE COUNTY OF YOLO , informally known as YOLO COUNTY HOUSING, a public body corporate and politic organized and existing under the laws of the State of California, hereinafter called "YCH."

**WITNESSETH:**

WHEREAS, YCH is currently using sewer services provided by CITY for its EL RIO VILLA HOUSING DEVELOPMENT, located at 62 Shams Way, Winters, California, hereinafter called "EL RIO VILLA"; and

WHEREAS, the parties wish to enter into this MOU to replace the existing agreement for purposes more specifically defining the obligations of CITY and YCH.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between CITY and YCH as follows:

**SECTION 1. SERVICE**

1. CITY agrees to continue to provide YCH's EL RIO VILLA, with domestic sewer services subject to maximum daily flow restrictions as hereinafter set forth. As part of said service:

- a. YCH confirms its grant to CITY of full rights of ingress and egress to YCH's pump station and YCH's lines and connections, at any time. The sewer service provided by CITY shall be restricted solely to domestic waste and shall not be sewage from commercial, industrial or any other type of waste discharges.
- b. YCH shall comply with all ordinances, rules and regulations of CITY related to control and discharge of sewage.
- c. YCH specifically agrees that it will not allow any discharges prohibited by the State Water Resources Control Board, hereinafter called "SWRCB".
- d. YCH acknowledges that CITY currently contracts with a third party vendor for its sewer services, and that contract sets forth the level of service provided to CITY. YCH specifically accepts the level of service set forth in said contract.
- e. For the parties' convenience, the CITY will collect fees as outlined in Section 5 of this MOU.

2. While CITY through its contracted sewer service shall provide for the operation of sewer services at EL RIO VILLA, YCH agrees, at its sole cost and at all times, to be financially responsible for the maintenance, repair and replacement of all sewer lines, sewer line force mains, lift station, and pumps necessary to transport wastewater from EL RIO VILLA to the MAIN PUMP

STATION to be located at the site of the existing Winters Wastewater Treatment Plant.

## **SECTION 2. INDEMNIFICATION**

1. YCH shall defend, indemnify and hold the CITY harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from YCH's the performance of this MOU, including liability arising from overflows or violations of CITY's SWRCB permit because of line blockages, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of the CITY, its officers, agents, employees, subcontractors or volunteers.

2. CITY shall defend, indemnify and hold YCH harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from CITY'S operations or the performance of this MOU, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of YCH, its officers, agents, employees, subcontractors, or volunteers.

## **SECTION 3. SEWER LINES/LIFT PUMP STATION**

1. YCH, as owner, shall be fully financially responsible for the security of the sewer lines, connections, clean-outs, and pump station, outside the city limits of the City of Winters, and for all electricity charges thereto.

2. At its own expense, YCH shall comply with any and all security requirements of the SWRCB, or the State, Federal, or Local government. CITY

shall be responsible for maintenance, repair and replacement of sewer lines within the city limits of the City of Winters.

3. YCH shall establish a schedule for line inspection, and provide to CITY information on the replacement of its sewer lines and connections when necessary. YCH shall provide to CITY funds for such replacement in a timely manner, to avoid any violation of SWRCB rules and regulations.

**SECTION 4. FLOW CAPACITY**

Notwithstanding anything to the contrary contained herein regarding delivery of sewer services, it is mutually agreed that the maximum sewer services to be provided to EL RIO VILLA by CITY shall be limited to a dry weather flow of 12,000 gallons per day. No sewer service above said quantities shall be guaranteed, but CITY upon its sole determination and election may provide EL RIO VILLA with additional flow capacity upon request, dependent upon available sewer facility capacities and limitations of the system, future anticipated requirements of CITY and any other factors that CITY may wish to consider. In such event, the sewer service charge shall be adjusted to reflect the increased cost of operation and maintenance.

**SECTION 5. RATES AND FEES**

1. Upon execution of this MOU, CITY agrees that YCH shall pay the CITY the standard CITY rate for residential service paid by the residents within the City of Winters. The current rate of \$43.11 per unit sewer service fee per month (\$5,345.64/month) will be adjusted annually, in the same manner as other residential units served by the CITY. In addition, CITY will adopt a schedule of

fees in excess of its base contract with its sewer service provider, for emergency call-outs or extra work caused by the line blockages and overflows of YCH's own lines or pump failure. Such fees shall be at CITY's actual cost paid to its private sewer service provider.

2. In addition, sewer charges may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to reflect annual costs, based upon the: (1) increase in level of service caused by new regulations of SWRCB, or the State, Federal or Local government; or (2) increased flows causing a change in CITY operation. Said charges shall not include a charge for capitalization or depreciation of existing or of CITY'S allocated portion of CITY sewer facilities, including collection and interceptor lines, and ponds, but shall include all other prorata costs of operation, maintenance and any subsequent capital improvements that may be added to the system which are used for YCH's sewage collection disposal and treatment.

3. YCH may request and CITY shall provide the cost figures used in computing YCH charges, but such request shall not be made more often than annually or upon a change of rate. Any cost incurred by CITY above normal costs incurred in establishing the annual rate shall be borne solely by YCH. All payments shall be made by YCH in accordance with YCH's standard payables policies and practices..

4. YCH shall pay annual operations costs of \$35,050 at the rate of \$2,921.00 per month. In addition, annual operating costs may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to

reflect annual costs, based upon the: (1) increase in level of service caused by the new regulations of SWRCB, or the State, Federal or Local government; (2) increased flows causing a change in CITY operation, or (3) increased costs to CITY arising from its contractual obligations to the private contractor providing sewer services to YCH YCH.

5. CITY and YCH agree that, in addition to the fees set forth in Paragraphs 1 through 4 of this section, pump station maintenance costs shall be paid by YCH at the rate of \$2,615.00 per month. Any future capital costs incurred solely to provide sewer services to EL RIO VILLA shall be paid by YCH, upon such other terms and conditions as the parties may hereafter agree; provided, however, that any funds held from time to time by CITY in its EL RIO VILLA capital reserve fund shall first be applied and credited to the costs of such future capital improvements to maintain current sewer facilities including replacement of current sewer facility components. In addition, pump station maintenance charges may be adjusted by CITY from time to time on an annual basis, including retroactive adjustment to reflect annual costs, based upon the: (1) increase in level of service caused by the new regulations of SWRCB, or the State, Federal or Local government; (2) increased flows causing a change in CITY operation, or (3) increased costs to CITY arising from its contractual obligations to the private contractor providing services to YCH.

#### **SECTION 6. TERM AND TERMINATION**

1. YCH may terminate this MOU at any time on ten (10) days' written notice to CITY. Notwithstanding the termination notice, the CITY shall retain the

right to continue the sewer service until relieved of its obligation as "operator" by SWRCB. Upon receipt of YCH's termination notice, CITY shall undertake all reasonable efforts to be relieved by SWRCB in as expeditious a manner as possible. YCH shall be obligated to continue compensation to CITY until such relief is granted by SWRCB.

2. The term of this MOU is ten (10) years, beginning on July 1, 2009 and ending on June 30, 2019, subject to YCH's right of prior termination under Paragraph 1 of this section, and thereafter shall be automatically renewed from year to year without further notice. However, after the initial 10-year term, CITY and YCH shall have the right to terminate this MOU by giving written notice of termination at least one (1) year in advance.

3. In addition, this MOU shall terminate at any time that performance of terms, covenants and conditions would be contrary to applicable Federal, State or local statutes, ordinance, rules and regulations.

#### **SECTION 7. INSURANCE**

1. During the term of this MOU, each party, at its sole cost and expense, shall obtain and maintain throughout the entire term of this MOU the following insurance policies: (A) General public liability insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage and Two Million Dollars (\$2,000,000) per aggregate, or equivalent self-insurance subject to approval by each party; (B) Automobile insurance in an amount of not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage, including

coverage for hired and non-owned vehicles; and (C) Worker's compensation insurance to the established California limits.

2. CITY, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by YCH other than workers' compensation insurance. Any insurance maintained by CITY shall apply in excess of, and not contribute with, insurance provided by YCH's self-insurance or liability insurance policy. YCH, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by CITY other than workers' compensation insurance. Any insurance maintained by YCH shall apply in excess of, and not contribute with, insurance provided by CITY's self-insurance or liability insurance policy. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the other party. Upon request, each party shall provide the other party proof of such insurance coverage.

#### **SECTION 8. INDEPENDENT CONTRACTOR**

1. Neither YCH nor any of its officers or employees shall have any control over the conduct of CITY or any of CITY's employees. YCH shall have no voice in the selection, discharge, supervision or control of CITY's employees, representatives or agents, or in fixing their compensation or hours of service.

CITY expressly warrants not to, at any time or in any manner, represent that it or any of its agents, representatives or employees, are in any manner agents, representatives or employees of YCH. CITY is, and shall at all times remain, a wholly independent contractor, and CITY's obligations to the YCH are solely such as are prescribed by this MOU.

2. Neither CITY nor any of its officers or employees shall have any control over the conduct of YCH or any of YCH's employees. CITY shall have no voice in the selection, discharge, supervision or control of YCH's employees, representatives or agents, or in fixing their compensation or hours of service. YCH expressly warrants not to, at any time or in any manner, represent that it or any of its agents, representatives or employees, are in any manner agents, representatives or employees of CITY. YCH is, and shall at all times remain, a wholly independent contractor, and YCH's obligations to the CITY are solely such as are prescribed by this MOU.

#### **SECTION 9. NOTICES**

Except as otherwise specified in this MOU, all notices to be sent pursuant to this MOU shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered in accordance with this Section. All such notices shall be sent by: (i) personal delivery; in which case notice shall be deemed delivered upon receipt; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; (iii) nationally recognized overnight

courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or (iv) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received as of the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day. The addresses of the parties are as follows:

CITY:	City of Winters Attn: City Manager 318 First Street Winters, CA 95694 Tel: (530) 795-4910 Fax: (530) 795-4935
YCH:	Yolo County Housing Attn: Executive Director 147 W. Main Street Woodland, CA 95695 Tel: (530) 662-5428 Fax: (530) 662-5429

**SECTION 10. WAIVER.**

The failure of any party to insist on strict compliance with any of the terms, covenants, or conditions of this MOU by another party hereto shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

**SECTION 11. AUTHORITY**

Each person executing this agreement on behalf of a party represents that s/he has full power and authority to so execute this document and to bind the party to the terms, covenants and conditions of this MOU.

**SECTION 12. ASSIGNMENT**

This MOU may be assigned by YCH to any successor public agency but shall not otherwise be assigned in whole or in part without the prior written consent of CITY.

**SECTION 13. SUCCESSORS AND ASSIGNS**

Subject to any provision under this MOU restricting assignment, the provisions of this MOU shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties to this MOU.

**SECTION 14. LEGAL FEES**

Each party will bear its own defense costs, including but not limited to, attorney's fees and costs, in the event a controversy or litigation occurs in connection with the performance by YCH or CITY of the terms, covenants and conditions of this MOU.

**SECTION 15. GOVERNING LAW**

This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed

and resolved in a court of competent jurisdiction located in Yolo County, California.

**SECTION 16. TIME IS OF THE ESSENCE**

Time is of the essence in the performance of every term, covenant, condition, and provision of this MOU.

**SECTION 17. SEVERABILITY**

If any provision of this MOU is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the MOU shall continue in full force and effect.

**SECTION 18. AMENDMENT**

This MOU may be amended only by a written instrument executed by all parties hereto, and any other purported amendment shall be of no force or effect.

**SECTION 19. COUNTERPARTS**

This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same one document.

**SECTION 20. ENTIRE AGREEMENT**

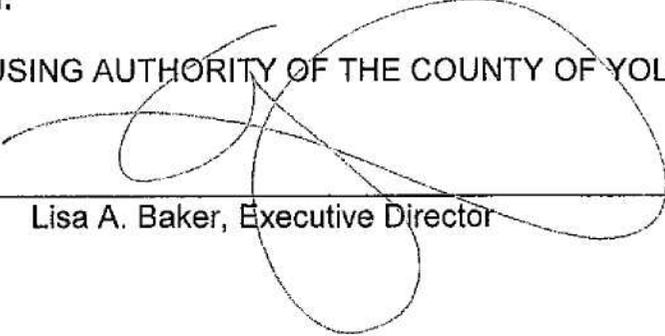
This MOU constitutes the entire agreement between the parties and supersedes all prior agreements, representations, warranties, statements; promises and understandings, whether oral or written, with respect to the subject matter hereof and no party shall be bound by any representations, statements, promises or understandings not specifically set forth in this MOU. In the event of a dispute between the parties as to the language of this MOU or the construction

or meaning of any term hereof, this MOU shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this MOU.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands this 1st day of October, 2009.

**YCH:**

HOUSING AUTHORITY OF THE COUNTY OF YOLO

  
By: Lisa A. Baker, Executive Director

Approved as to Form:

  
By: Sonia Cortés, Agency Counsel

**CITY:**

CITY OF WINTERS

By: Michael Martin, Mayor

**ATTEST:**

\_\_\_\_\_  
Nanci G. Mills, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John C. Wallace, City Attorney



## STAFF REPORT

**TO:** Honorable Mayor and Council Members  
**DATE:** December 1, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager  
**FROM:** Nick Ponticello, City Engineer  
**SUBJECT:** Project Acceptance - Grant Avenue Widening & Safety Improvements, Project No. 09-01/Federal Aid Project No. ESPL 5110 (027)

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**RECOMMENDATION:** Staff recommends that City Council accept the Grant Avenue Widening & Safety Improvements project as complete and direct the City Clerk to file a Notice of Completion.

**BACKGROUND:** On April 7, 2009, Council approved a \$455,000 project budget for the Grant Avenue Widening and Safety Improvements Project, with \$400,000 in ARRA funds and \$55,000 in TDA funds. The design was completed by Laugenour and Meikle and Caltrans issued the Notice to Proceed with Construction on June 23, 2009.

On August 4, 2009 City Council awarded a contract to Teichert Construction in the amount of \$282,306.40. Council authorized construction expenditures up to \$325,000, which included a 15% contingency. Teichert completed the project and demobilized on November 10, 2009. The construction portion of the project is complete and determined to be acceptable by Staff.

**ALTERNATIVES:** None recommended by staff.

**FISCAL IMPACT:** The final construction cost of the project is \$291,266 which is within the authorized amount. The balance of ARRA funds is approximately \$62,000, which will be re-programmed to the Grant Avenue Widening and Safety Improvements, Phase 2, Project No. 09-05 (Walnut Lane Realignment).



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Council Members  
DATE: December 1, 2009  
THROUGH: John W. Donlevy, Jr., City Manager  
FROM: Laura Hollender, Contract Attorney  
SUBJECT: Staff Presentation on Draft Code Enforcement Ordinance (Informational Item Only)

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**RECOMMENDATION:** Staff recommends that the City Council review and provide feedback to staff on the draft code enforcement ordinance. If adopted by the City Council, the code enforcement ordinance would add Title 19 to the Winters Municipal Code and would provide staff with a number of tools for preventing, discouraging, and addressing municipal code violations that occur within the City.

The feedback received from the City Council tonight will be incorporated into the final version of the code enforcement ordinance that will be presented to the City Council for first reading at a later date.

**BACKGROUND:**

The proposed code enforcement ordinance would provide City staff with a number of tools to prevent, discourage, abate, and otherwise address violations of the Winters Municipal Code that occur within the City. The tools provided for in the draft ordinance range from civil and criminal proceedings to administrative remedies, and nuisance abatement.

***Purpose of Code Enforcement***

The primary purpose of code enforcement is to obtain compliance with the provisions of the City's municipal code in order to protect and promote the public health, safety and general welfare. If an individual responsible for creating a code violation is unwilling to comply with the City's code, the City's code enforcement ordinance would provide City staff with a number of tools for obtaining compliance and prohibiting continued violations. The preferred type of code enforcement in a particular situation will depend on the scope of code violation and the desired outcome.

### *Code Enforcement Options*

The draft code enforcement ordinance provides for four different code enforcement options: (1) criminal enforcement; (2) civil actions; (3) summary abatement and nuisance abatement; and (4) administrative citations. Each of these options is discussed in detail below.

#### **1. Criminal Enforcement**

The proposed ordinance provides that any violation of the Winters Municipal Code may be prosecuted as either a misdemeanor or an infraction in accordance with the procedures set forth in Chapter 1.16 of the Winters Municipal Code. Chapter 1.16 provides that any person failing to comply with any of the mandatory requirements of the Winters Municipal Code shall be guilty of a misdemeanor, unless by ordinance or statute the violation is made an infraction. Chapter 1.16 also provides that any person convicted of a misdemeanor shall be punished by a fine not to exceed One Thousand Dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months. Finally, Chapter 1.16 provides that such person shall be guilty of a separate offense for each and every day a code violation occurs.

Criminal prosecution of code violations is generally reserved for violations of a serious and on-going nature. For example, criminal prosecution may be appropriate in the following situations: (1) preventing a slumlord from operating within the City, or (2) illegal drug offenses.

#### **2. Civil Actions**

The proposed ordinance provides that the City Council may direct the City Attorney to institute a civil action to restrain, enjoin, or abate a violation of the Winters Municipal Code. Under this option, the City Attorney would seek an injunction or other court order to prevent an individual from engaging in the activity that is violating the Winters Municipal Code.

Instituting a civil action is also generally reserved for code violations of a serious and on-going and may be an appropriate tool in the following situations: (1) shutting down a business that is operating illegally within the City; (2) stopping gang related activities from occurring within the City.

The City may recover attorney fees and costs incurred with bringing a civil action.

#### **3. Nuisance Abatement**

The proposed ordinance provides that any violation of the Winters Municipal Code may be declared a public nuisance subject to abatement by the City, if the individual violating the code does not promptly cease the offending behavior.

The proposed code enforcement ordinance provides for two kinds of nuisance abatement: (1) summary abatement for emergency situations, and (2) nuisance abatement for non-emergency situations.

Summary abatement is reserved for those situations in which a code violation presents an imminent or immediate threat of harm to persons or property, or to the public health, safety and welfare. In these

situations, the City staff may act immediately to abate the violation and the City may recover the costs of this action from the property owner. If possible, the code enforcement officer will first notify the owner of the premises that an emergency situation exists which requires immediate abatement. After the emergency situation has been abated, the proposed ordinance provides that a hearing will be held at which time the owner of the premises may contest the abatement, and/or the cost of the abatement.

Nuisance abatement may be used in all other situations in which a code violation is occurring. The procedures for abating a nuisance through nuisance abatement are set forth in Chapter 19.08 of the Municipal Code. The procedures consist of first issuing a Notice of Violation to the individual responsible for the code violation. The Notice of Violation serves as a written warning of responsibility and requires action by the individual responsible for the code violation to cease and abate the violation. If the individual does not cease and abate the violation within a given time, a hearing on the matter will be held and an abatement order may be issued. The abatement order will require the individual to abate the nuisance and allow the City to obtain an abatement warrant authorizing the City to abate the violation, if compliance by the individual is not achieved.

Summary abatement and nuisance abatement costs may be recovered by City in the form of a lien or special assessment.

#### **4. Administrative Citations**

Finally, the proposed code enforcement ordinance provides that a violation of the Winters Municipal Code may be addressed through an administrative citation process according to the procedures set forth in Chapter 19.16 of the proposed ordinance. The administrative citation process consists of issuing a First Offense Warning to the individual responsible for creating code violation. If the code violation is not remedied within the time for compliance stated in the First Offense Warning, the City may issue an administrative citation requiring the individual to pay a fine.

Costs associated with issuing an administrative citation may be recovered by City in the form of a lien or special assessment.

**FISCAL IMPACT:** The costs associated with code enforcement actions are recoverable from the individual responsible for the municipal code violation.

**ATTACHMENTS:** Draft Code Enforcement Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF WINTERS ADOPTING  
TITLE 19 OF THE WINTERS MUNICIPAL CODE PERTAINING TO  
CODE ENFORCEMENT, AMENDING SECTION 1.12.010(B), SECTION  
1.16.010, SECTION 8.16.030, SECTION 15.40.070, AND SECTION 17.108.130 OF  
THE MUNICIPAL CODE, AND REPEALING SECTION 8.16.040 OF THE  
MUNICIPAL CODE TO CONFORM TO NEW CODE ENFORCEMENT  
PROVISIONS IN TITLE 19

The City Council of the City of Winters does ordain as follows:

**SECTION 1. Adoption of Title 19**

Title 19, entitled, "Code Enforcement" is hereby added to the Winters Municipal Code to read as follows:

**Chapter 19.04            CODE ENFORCEMENT GENERALLY**

- 19.04.010            Purpose and authority.**
- 19.04.020            Definitions.**
- 19.04.030            Code violations.**
- 19.04.040            Criminal enforcement.**
- 19.04.050            Civil actions.**
- 19.04.060            Public nuisance.**
- 19.04.070            Administrative citations.**
- 19.04.080            Reservation of rights.**
- 19.04.090            Service procedures.**
- 19.04.100            Authority to inspect property.**
- 19.04.110            Authority to obtain records.**

**19.04.010            Purpose and authority.**

The City Council establishes the procedures set forth in this Title for declaring and addressing violations of the Winters Municipal Code, pursuant to California Government Code Sections 36900 *et seq.*, 38660, 38771 through 38775, inclusive, 53069.4, 54988, and all other statutes and laws referenced herein. The purpose of this Title is to provide criminal, civil and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the city, to prevent, discourage, abate, or otherwise address any violation of this Code.

**19.04.020            Definitions.**

For the purposes of this Title, the words and terms set forth in this Section shall have the following definitions:

- A. “Affected Property” means any real property or portions thereof within city boundaries, including any buildings or other improvements located on such property, where Code violations allegedly exist or have previously existed.
- B. “Code” means the Winters Municipal Code, as it may be amended from time to time.
- C. “Code Enforcement Officer” means any person authorized or directed by the city manager to enforce any provision of this Code.
- D. “Compliance” means all actions required to remove, alleviate, eliminate, halt, or mitigate a violation of this Code in the manner and in the time frame prescribed by a Code enforcement officer, Hearing Officer, or the Director.
- E. “Day” and “Days” mean calendar days.
- F. “Director” means the Community Development Director.
- G. “Enforcement Action” means any notice of violation, hearing, citation, investigation, complaint or petition, or any administrative or judicial order under authority of this Title or any other legal authority.
- H. “Hearing Officer” means any person appointed by the Director to conduct a hearing pursuant to this Title.
- I. “Responsible Party” means any person, or parent or legal guardian of any person under eighteen years of age, whose acts or omissions have caused or contributed to a violation of this Code, and shall include any owners(s) or occupant(s) of the Affected Property.

**19.04.030 Code violations.**

It is unlawful for any person to violate any provision or fail to comply with any requirement of this Code. Any Responsible Party (including, without limitation, any agent, employee, or contractor of the Responsible Party) violating or contributing to the violation of any Code requirement or such term or condition shall be subject to an Enforcement Action as provided in this Title and in any other applicable law. The owner of any property, building, or structure within the city has the responsibility for keeping such property, building, or structure free of violations related to its use or condition. The owner of such property, building, or structure is separately liable for violations committed by occupants relative to the use or condition of the property.

**19.04.040 Criminal enforcement.**

In addition to the remedies set forth in this Title, any violation of this Code may be subject to criminal prosecution according to the procedures set forth in Chapter 1.16 of this Code. Upon entry of a second or subsequent criminal judgment against the same owner or other Responsible Party within a two-year period for a condition of real property constituting a public nuisance (except for conditions abated pursuant to Health and Safety Code Section 17980), the court issuing the judgment may order said owner or other Responsible Party to pay treble the cost of the abatement, pursuant to Government Code Section 38773.7.

**19.04.050 Civil actions.**

In addition to the remedies set forth in this Title, the city attorney, at the discretion of the city council, may institute an action in any court of competent jurisdiction to restrain, enjoin, or abate any violation of this Code. The City in any such civil action shall be entitled to recovery of attorney's fees and costs incurred in such action. Upon entry of a second or subsequent civil judgment against the same owner or other Responsible Party within a two-year period for a condition of real property constituting a public nuisance (except for conditions abated pursuant to Health and Safety Code Section 17980), the court issuing the judgment may order said owner or other Responsible Party to pay treble the cost of the abatement, pursuant to Government Code Section 38773.7.

**19.04.060 Public nuisance.**

Any violation of this Code is hereby declared to be a public nuisance. In addition to the remedies set forth in this Title, any public nuisance may be abated by the city according to the procedure set forth in Chapter 19.08, except as otherwise provided in Chapter 8.08 (Abandoned Vehicles), Chapter 8.12 (Weed and Rubbish Abatement), Chapter 12.08 (Trees), and Chapter 15.56 (Abatement of Dangerous Buildings).

**19.04.070 Administrative citations.**

In addition to the remedies set forth in this Title, any violation of this Code may be subject to the administrative citation process according to the procedures set forth in Chapter 19.16.

**19.04.080 Reservation of rights.**

In addition to the remedies provided in this Title, the city expressly reserves the right to utilize enforcement remedies available under any applicable state or federal statute or pursuant to any other lawful power the city may possess. The election of remedies provided by this Title or other applicable law shall be at the sole discretion of city officials.

**19.04.090 Service procedures.**

A. Whenever notice or other document is required to be given under this Title, it shall be personally served or served by mail pursuant to the provisions of Section 1.04.110 of this Code. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of mail, service shall be deemed complete as provided in Section 1.04.110 of this Code.

B. Where service of a notice of violation, first offense warning, or administrative citation is by mail, a copy of the notice of violation, first offense warning, or administrative citation shall also be conspicuously posted at the Affected Property.

C. Proof of service of any notice or other document required to be given under this Title shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time and manner of service, and the place of posting, if applicable. The declaration shall be affixed to a copy of the notice or other document and retained by the Code enforcement officer.

D. The failure of a Responsible Party to receive any notice or other document served in accordance with this Section shall not affect the validity of any proceedings taken under this Title.

#### **19.04.100 Authority to inspect property.**

A. A Code Enforcement Officer may enter and inspect any Affected Property pursuant to the provisions of Chapter 1.12 of this Code to perform any duty imposed upon him or her by this Title whenever the Code Enforcement Officer has cause to believe a violation is occurring, provided that:

1. If entry is denied, pursuant to Section 1.12.010, the Code Enforcement Officer may seek a court ordered inspection warrant pursuant to the Code of Civil Procedure Sections 1822.50 *et seq.* Upon issuance of an inspection warrant, the Code Enforcement Officer shall cause such warrant to be executed in accordance with the procedures set forth in Code of Civil Procedure Section 1822.56.
2. If entry and inspection pursuant to a court ordered inspection warrant is denied, the Code Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

B. Inspections performed pursuant to Chapter 1.12 and/or an inspection warrant may include, but not be limited to, the taking of photographs, samples, measurements, surveys, or obtaining other physical evidence, and/or conferring with any person(s) present at the Affected Property, as permitted by law and consistent with legally recognized privacy rights.

#### **19.04.110 Authority to obtain records.**

The city shall have the right and authority to request and review records from the Responsible Party or any third party that is, or may be, related to the subject matter of the

enforcement action, and to make copies of the same at the expense of the city, in any manner authorized by law.

**Chapter 19.08        NUISANCE ABATEMENT**

- 19.08.010        Nuisance abatement (non-emergency).**
- 19.08.020        Summary abatement (emergency).**
- 19.08.030        Notice of violation; stop work order.**
- 19.08.040        Time allowed for abatement by the Responsible Party.**
- 19.08.050        Abatement hearing.**
- 19.08.060        Abatement order and abatement warrant.**
- 19.08.070        Appeal of an abatement order.**
- 19.08.080        Recovery of abatement costs.**
- 19.08.090        Report and confirmation of abatement costs.**

**19.08.010        Nuisance abatement (non-emergency).**

Whenever a Code Enforcement Officer determines that a Code violation exists, the Code Enforcement Officer may pursue the abatement of such violation according to the procedures provided in this Chapter.

**19.08.020        Summary abatement (emergency).**

Notwithstanding any other provision of this Code, whenever, in the reasonable discretion of the Code Enforcement Officer, the existence or continuance of any violation poses an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, a Code Enforcement Officer may act immediately and without prior notice or hearing to abate or cause the abatement of such violation on behalf of the city pursuant to this Section. Notwithstanding the foregoing, a reasonable effort shall be made to notify the owner of the premises in advance of abatement.

The city's director of financial management shall keep an itemized account of the costs incurred by the city in abating the violation and shall submit a report of the abatement costs to the Director in accordance with Section 19.08.100 of this Title. The report of abatement costs shall also be served on the Responsible Party and shall include notice of the time and place when a hearing will be conducted in which the Responsible Party may contest the validity of the summary abatement and the costs incurred by the city in abating the violation pursuant to the procedures in Section 19.08.100 of this Title. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered pursuant to Section 19.16.060 of this Title.

**19.08.030        Notice of violation; stop work order.**

A.     A notice of violation serves as a written warning of responsibility and requires action by the Responsible Party to cease and abate the violation. A notice of violation is

not required if the Code Enforcement Officer determines that summary abatement is necessary pursuant to Section 19.08.020.

- B. The notice of violation shall include the following information:
1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring;
  2. The name(s) of the Responsible Party(ies), if known;
  3. The Code section(s) violated and a description of the violation(s);
  4. An order prohibiting the continuation or repeated occurrence of the violation;
  5. A description of the action necessary to abate the violation;
  6. A period of time during which the action necessary to abate the violation shall be commenced and completed, which shall be determined pursuant to Section 19.08.040;
  7. A statement that the period of time during which the action necessary to abate the violation shall be commenced and completed may be extended pursuant to the procedure set forth in Section 19.08.040;
  8. A statement informing the Responsible Party that he or she may dispute the violation by contacting the city clerk to set up a meeting with the Director to discuss the matter within ten (10) Days of receiving the notice of violation;
  9. An order requiring the Responsible Party to appear at an abatement hearing upon the expiration of the period of time to abate the violation or any extension of that time period granted by the Director pursuant to Section 19.08.040 in the event that the Responsible Party fails to abate the violation;
  10. The time, date and place for the abatement hearing;
  11. A description of the abatement process, including the types of evidence that may be submitted at the abatement hearing; and
  12. The name and signature of the Code Enforcement Officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party.

C. If the violation is related to a permit, license, or other city approval of a project, the notice of violation may be accompanied by a stop work order which orders the Responsible Party to immediately stop any and all work on the project that is subject to the permit, license or approval until the violation is corrected.

#### **19.08.040 Time allowed for abatement by the Responsible Party.**

A. Any notice of violation issued pursuant to Section 19.08.030 or abatement order issued pursuant to Section 19.16.040 shall provide a reasonable time during which the action necessary to abate the violation shall be commenced and completed based upon the circumstances of the particular violation, taking into consideration the following factors:

1. The means required to abate the violation;
2. The period of time that the violation has existed; and
3. The potential threat to public health and safety created by the violation.

B. If a violation pertains to building, plumbing, electrical, mechanical, or other similar structural or zoning issues and does not pose an imminent threat of harm to persons or property, or to the public health, welfare, or safety, the Responsible Party shall be provided an appropriate amount of time to abate the violation as determined by the Code Enforcement Officer, but in no event shall that amount of time be less than seven (7) Days.

C. Any Responsible Party receiving a notice of violation may file a written request for extension with the city clerk for consideration by the Director for an extension of time to abate the violation identified in the notice of violation, provided that the written request is received before the end of the period set forth in the notice of violation to abate the violation. The Director may grant an extension of time to abate the violation if the person requesting the extension of time has supplied sufficient evidence showing that the abatement cannot reasonably be made within the period set forth in the notice of violation.

#### **19.08.050 Violation Disputes**

If a person designated as the Responsible Party in the notice of violation wishes to dispute the alleged Code violation, he or she may contact the city clerk to set up a meeting with the Director to discuss and seek resolution of the matter within ten (10) Days of receiving the notice of violation. If the concerns of the person designated as the Responsible Party in the notice of violation are not satisfactorily addressed in this meeting, he or she will be entitled to present those concerns at an abatement hearing as described in this Title.

#### **19.08.060 Abatement hearing.**

All abatement hearings shall be conducted pursuant to the procedures set forth in Chapter 19.16 and shall be subject to all of the provisions of this Title.

#### **19.08.070 Abatement order and abatement warrant.**

A. An abatement order issued pursuant to Section 19.16.040 may include any combination of the following remedies:

1. Issue a "cease and desist order" requiring the Responsible Party to immediately stop the violation.
2. Require the Responsible Party to abate the violation according to a proposed schedule to abate the violation within a reasonable time as determined according to Section 19.08.040.

3. Require the Responsible Party to restore a site or location that has been damaged or disturbed as a result of the violation to a pre-violation condition.
4. Require the Responsible Party to mitigate any damage or disturbance to protected or environmentally sensitive areas as a result of any violation, including, without limitation, off-site replacement of damaged or destroyed natural resources where on-site restoration or mitigation is not feasible, as determined by the city.
5. Impose conditions that restrict or regulate the development of, use of, or activity on real property where a nexus exists between the violation and the development, use, or activity. Conditions may be imposed until the violation is fully abated. Restrictions and regulations on current or future development, use, or activity may include site restoration and/or the suspension or revocation of any entitlements issued by the city.
6. Authorize the city to abate or cause the abatement of the violation where the Responsible Party has refused or otherwise neglected to abate the violation or is unable to take steps to abate the violation. The abatement order shall specify that if the city undertakes the abatement of the violation, the city shall be entitled to recover all costs of abatement incurred in performing such work and other costs necessary to enforce the order. Any abatement costs incurred as a result of the city actions to abate a violation pursuant to an abatement order may be recovered by the city as a personal obligation and/or through a lien or a special assessment on the Affected Property pursuant to Section 19.16.060.
7. Any other order or remedy that serves the interests of justice.

B. If an abatement order is issued pursuant to Section 19.16.040 authorizing the city to abate a violation, an authorized representative of the city may petition a court of competent jurisdiction for an abatement warrant authorizing a Code Enforcement Officer or any employee, authorized agent, representative, or contractor of the city to enter onto any Affected Property to abate the violation. An abatement warrant, as contemplated in this section, shall be requested in the same manner, and be in substantially the same form, as an inspection warrant pursuant to the Code of Civil Procedure Sections 1822.50 *et seq.* The city shall seek the written consent of the Responsible Party to allow the city to perform the necessary work prior to seeking an abatement warrant from a court. Upon issuance of an abatement warrant, as described in this Section, the Code Enforcement Officer shall cause such warrant to be executed in accordance with the procedures set forth in Code of Civil Procedure Section 1822.56.

**19.08.080 Appeal of an abatement order.**

An abatement order issued pursuant to Section 19.16.040 may be appealed to the city manager pursuant to Section 19.16.050.

**19.08.090 Recovery of abatement costs.**

The city may elect to recover its costs to abate a violation, including, without limitation, the costs of any abatement hearing (including staff time necessary to prepare for and attend an abatement hearing), any costs incurred by the city in performing or contracting for work required to achieve Compliance with an abatement order, any re-inspections required to determine or confirm that Compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the Code Enforcement Officer, third party inspection(s) or consultant services as deemed necessary by the city and any attorneys' fees incurred in pursuing enforcement. Any abatement costs incurred may be recovered even if the nuisance is abated by the Responsible Party. If the city elects at the initiation of an administrative enforcement action or proceeding to seek recovery of attorneys' fees, pursuant to Government Code Section 38773.5, the prevailing party shall be entitled to recover attorneys' fees in an amount not to exceed the amount of attorneys' fees incurred by the city in such action.

**19.08.100 Report and confirmation of abatement costs.**

- A. The city's director of financial management shall keep an accounting of all abatement costs as described in Section 19.08.080.
- B. The city's director of financial management shall submit an itemized report of the abatement costs to the Director for confirmation.
- C. The city clerk shall serve a copy of such report upon the Responsible Party pursuant to Section 19.04.090. The report of abatement costs shall be accompanied by a notice of the time and place when a hearing will be conducted by the Director to consider confirmation of such report. The report and notice shall be served upon the Responsible Party at least ten (10) Days prior to the scheduled date of the hearing.
- D. At the time and place fixed in the notice of the confirmation hearing, the Director shall consider the report of abatement costs submitted by the city's director of financial management and hear any protests or objections thereto by the Responsible Party or any other interested persons. The hearing may be continued from time to time without further written notice.
- E. Upon the conclusion of the hearing, the Director shall make such revisions, corrections, or modifications to the report as may be necessary or appropriate, based upon the evidence presented at the hearing, and shall thereafter confirm the report as submitted or modified by issuing an order for collection of the abatement costs pursuant to Section 19.16.060. The decision of the Director shall be final and conclusive, unless timely appealed to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

**Chapter 19.12 ADMINISTRATIVE CITATIONS**

- 19.12.010 First offense warning.**
- 19.12.020 Administrative citation.**
- 19.12.030 Administrative fines.**
- 19.12.040 Payment of fines; late payment charges.**

**19.12.050 Hearing contesting an administrative citation.**

**19.12.010 First offense warning.**

A. Whenever a Code Enforcement Officer determines that a violation of this Code exists, the Code Enforcement Officer may serve a first offense warning to the Responsible Party. The first offense warning shall be served as a prerequisite to the issuance of a first administrative citation and serves as a written warning of responsibility.

B. The first offense warning shall include the following information:

1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring;
2. The name(s) of the Responsible Party(ies), if known;
3. The Code section(s) violated and a description of the violation(s);
4. An order prohibiting the continuation or repeated occurrence of the violation;
5. A description of the action necessary to abate the violation;
6. A period of time during which the action necessary to abate the violation shall be commenced and completed, which shall be determined pursuant to Section 19.08.040;
7. A statement that the period of time during which the action necessary to abate the violation shall be commenced and completed may be extended pursuant to the procedure set forth in Section 19.08.040;
8. A statement that an administrative citation shall be issued to the Responsible Party upon the expiration of the period of time during which the action necessary to abate the violation or any extension of that time period granted by the Director pursuant to Section 19.08.040 in the event that the Responsible Party fails to abate the violation;
9. The amount of the administrative citation in the event that an administrative citation is issued for the violation;
10. The name and signature of the Code Enforcement Officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party; and
11. A statement informing the Responsible Party that he or she may dispute the violation by contacting the city clerk to set up a meeting with the Director to discuss the matter within ten (10) Days of receiving the notice of violation.

**19.12.020 Violation Disputes**

If a person designated as the Responsible Party in the first offense warning wishes to dispute the alleged Code violation, he or she may contact the city clerk to set up a meeting with the Director to discuss and seek resolution of the matter within ten (10) Days of receiving the first offense warning.

**19.12.030 Administrative citation.**

A. In the event that the Responsible Party fails to abate the violation upon the expiration of the period of time identified in the first offense warning during which the action necessary to abate the violation shall be commenced and completed or any extension of that time period granted by the Director pursuant to Section 19.08.040, the Code Enforcement Officer shall have the authority to issue an administrative citation to the Responsible Party for the violation.

B. Each administrative violation shall include the following:

1. The date, approximate time and location of the violation, including the address or other description of the location where the violation occurred or is occurring and a brief description of the conditions observe that constitute a violation;
2. The name(s) of the Responsible Party(ies), if known;
3. The Code section(s) violated and a description of the violation(s);
4. The amount of the fine for the Code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine must be paid;
6. An order prohibiting the continuation or repeated occurrence of the violation of this Code;
7. A description of the administrative citation process, including the time within which the administrative citation may be appealed and the procedure for requesting an appeal hearing;
8. A description of the waiver of deposit process set forth in Section 19.16.020, including the time within which a written request for a deposit waiver may be made; and
9. The name and signature of the enforcement officer, city contact information (address, telephone number) for additional information and, if possible, the signature of the Responsible Party.

**19.12.040 Administrative fines.**

A. The amounts of fines that may be imposed for a violation shall be set forth in a schedule of fines established by resolution of the city council. The amount of such fines shall not exceed:

1. The amount of any fine that may be imposed for a violation that would otherwise be an infraction shall not exceed the amounts set forth in Government Code Section 36900, as amended from time to time.
2. The amount of any fine that may be imposed for a violation that would otherwise be a misdemeanor shall not exceed one thousand dollars (\$1,000).

B. A separate violation shall be deemed committed on each Day a violation of this Code occurs or continues for purposes of setting the amount of a fine to be imposed. Any fine imposed will accrue on a daily basis from the date the fine

becomes effective until the violation is corrected. Any condition of real property that constitutes a violation where the same, or substantially similar, violation has been the subject of two or more enforcement actions within any three-month period is deemed a continuing violation.

**19.12.050 Payment of fines; late payment charges.**

- A. Fines shall be paid directly to the city within thirty (30) Days from the date of the administrative citation.
- B. Payment of a fine under this Section shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative citation.
- C. Fines that remain unpaid thirty (30) Days after the due date shall be subject to a late payment penalty of ten percent (10%) plus interest at the rate of one percent (1%) per month on the outstanding balance, which shall be added to the fine amount from the date that payment is due.

**19.12.060 Hearing contesting an administrative citation.**

A. Any person issued an administrative citation may contest the administrative citation by filing a written request for a hearing with the city clerk within thirty (30) Days of the date of the administrative citation. The fine issued by the administrative citation shall be deposited with the written request for a hearing or a written request for a waiver of the deposit shall be filed with the written request for a hearing. A hearing to contest the administrative citation shall be conducted pursuant to the procedures set forth in Chapter 19.16 and shall be subject to all of the provisions of this Title. A hearing to contest the administrative citation shall not be held unless and until the fine has been deposited or a waiver of the deposit has been granted pursuant to Section 19.16.020. If the fine or written request for a waiver of the deposit are not filed with the written request for a hearing, the hearing request shall not be considered timely submitted.

B. When a written request for hearing is filed with the city clerk to contest an administrative citation, the city clerk shall set the time and place for the hearing and shall serve a notice of hearing on the requesting party. A hearing to contest the administrative citation shall be conducted pursuant to the procedures set forth in Chapter 19.16.

**Chapter 19.16 HEARING PROCEDURE**

- 19.16.010 Preservation of the status quo pending hearing.**
- 19.16.020 Waiver of deposits and fees.**
- 19.16.030 Administrative hearing.**
- 19.16.040 Decision of the Hearing Officer.**
- 19.16.050 Appeal of Hearing Officer decision.**
- 19.16.060 Collection of fines and costs.**

- 19.16.070 Requirement to exhaust administrative remedies.**
- 19.16.080 Judicial review.**

**19.16.010 Preservation of the status quo pending hearing.**

If a timely request for any hearing is filed, any Compliance obligations that may be imposed shall be stayed until a final decision is rendered, unless an emergency situation exists requiring summary abatement pursuant to Section 19.08.020.

**19.16.020 Waiver of deposits and fees.**

A. Any person who is financially unable to make the deposit required by Section 19.12.050 or the fee required by Section 19.16.050 may seek a waiver from such payment.

B. In order to seek a waiver from a deposit or fee, a written request for a waiver shall be filed with the city clerk. The written request for a waiver shall be filed with any written request for a hearing for which the deposit or fee is required as required by Sections 19.12.060 and 19.16.050. The request for a waiver shall be submitted with any supporting documents demonstrating to the satisfaction of the city clerk that the person is financially unable to deposit the full amount of the fine in advance of the hearing or pay the full amount of the fee.

C. If the city clerk denies the request for a waiver, the city clerk shall provide the requesting party a written determination of facts and findings supporting the determination to not issue the waiver. If the request for a waiver is denied, the person shall submit the required deposit or fee to the city clerk within ten (10) Days of service of the city clerk's determination, or may appeal the determination of the city clerk to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

**19.16.030 Administrative hearing.**

A. The hearing shall be set for a date not less than ten (10) Days from the date of service of the notice of violation, and not more than sixty (60) Days from the date a written request for a hearing to contest the administrative citation is filed with the city clerk, unless the Code Enforcement Officer determines that the matter is urgent or that good cause exists for an extension of time based on the circumstances of the particular situation, in which case the hearing date may be shortened or extended.

B. If the Code Enforcement Officer submits a written report concerning the notice of violation or administrative citation to the Hearing Officer for consideration at the hearing, then a copy of the report shall be served on the person issued the notice of violation or administrative citation at least five (5) Days before the hearing.

C. At the place and time set forth in the notice of hearing or the notice of violation, the Hearing Officer shall conduct a hearing on the alleged violation(s). Any Responsible

Party or other interested person(s) may appear and offer written or oral testimony or other evidence as to whether a violation has occurred and/or whether the violation continues to exist, whether the person served the notice of violation or the administrative citation is the Responsible Party for any such violation, whether an administrative fine or the fine amount is warranted, and/or any other matter pertaining thereto. Evidence presented by the Code Enforcement Officer or other official of the city tending to show that a violation occurred and that the person served the notice of violation or administrative citation is the Responsible Party shall establish a prima facie case that a violation, as charged, actually existed and that the person served the notice of violation or administrative citation is the Responsible Party for the violation. The burden of proof shall then be on the Responsible Party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of the evidence.

D. The Hearing Officer shall consider all written and oral testimony and other evidence regarding the violation presented by the Responsible Party, the owner, the occupant, any officer, employee, or agent of the city, and any other interested party. Evidence offered during a hearing must be credible and relevant in the estimation of the Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply.

E. The Hearing Officer shall conduct the hearing, order the presentation of evidence and make any rulings or determinations necessary to address procedural issues presented during the court of the hearing.

#### **19.16.040 Decision of the Hearing Officer.**

A. After considering all of the written and oral testimony and other evidence presented at the hearing, the Hearing Officer shall, within ten (10) Days following the conclusion of the hearing, issue a written decision. The written decision of the Hearing Officer and any abatement order shall be served upon the Responsible Party and any interested party requesting a copy pursuant to Section 19.04.090.

B. If the Hearing Officer's written decision addresses an administrative citation, the Hearing Officer may uphold the administrative citation, uphold the administrative citation and modify the amount of the fine, or cancel the administrative citation. The written decision shall state the reasons for the decision. If the Hearing Officer modifies the amount of the fine or cancels the administrative citation, the city shall promptly refund any amount of the fine deposited.

C. If the Hearing Officer's written decision addresses a notice of violation and/or stop work order, the Hearing Officer may uphold, modify, or cancel the notice of violation and/or stop work order. The written decision shall state the reasons for the decision. If the Hearing Officer upholds or modifies the notice of violation and/or stop work order, the Hearing Officer shall issue a written abatement order in accordance with Section 19.08.070. The city may seek to enforce any abatement order by confirmation from a court of competent jurisdiction. Any abatement order that is judicially confirmed

may be enforced through all applicable judicial enforcement measures, including, without limitation, contempt proceedings upon a subsequent violation of such order.

**19.16.050 Appeal of Hearing Officer decision.**

A. The Responsible Party may appeal any decision of the Hearing Officer to the city manager by filing a written request for appeal stating the grounds for the appeal with the city clerk within seven (7) Days after the date on which the decision or determination is rendered by the Hearing Officer. The written request for an appeal hearing shall include payment of the appeal processing fee set forth by resolution of the city council or a request for waiver of the fee pursuant to Section 19.16.020. An appeal hearing shall not be held unless and until the appeal processing fee has been paid or a waiver of the fee has been granted pursuant to Section 19.16.020.

B. The city clerk shall serve, pursuant to Section 19.04.090, notice of the time and place when the hearing will be conducted by the city manager to consider the Hearing Officer's decision upon the Responsible Party at least ten (10) Days prior to the scheduled date of the hearing. The hearing may be continued to a later date, at the discretion of the city manager.

C. The city manager may uphold, modify, or cancel the decision of the Hearing Officer. Any determination by the city manager shall be in writing and served to the appellant pursuant to Section 19.04.090 within ten (10) Days of the conclusion of the hearing. The decision of the city manager may be appealed to the city council in accordance with the procedures provided in Chapter 2.44 of this Code.

**19.16.060 Collection of fines and costs.**

The city may pursue any and all legal and equitable remedies for unpaid administrative fines, late payment charges, abatement costs and/or other costs, including, but not limited to, a lien as prescribed by Government Code Section 38773.1 or a special assessment as prescribed by Government Code Section 38773.5.

**19.16.070 Requirement to exhaust administrative remedies.**

A. The failure of any person to do the following shall constitute a failure to exhaust administrative remedies and shall preclude the person from obtaining judicial review of the validity of the administrative citation or abatement order:

1. Failure to timely file a written request for a hearing to contest an administrative citation pursuant to Section 19.12.060.
2. Failure to timely file a written request for appeal of a decision by a hearing officer pursuant to Section 19.16.050.

**19.16.080 Judicial review.**

Any Responsible Party who is aggrieved by a decision of the city council and who has exhausted the administrative remedies provided by this Code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Sections 1094.5 1094.6 and Government Code Section 53069.4.

**SECTION 2. Amendment of Code.**

Section 1.12.020(B) of Chapter 1.12 of the Winters Municipal Code entitled, “Right of Entry,” is hereby amended to read as follows:

B. If the building or premises to be inspected is occupied, the authorized officer or employee shall first present proper credentials and seek written consent to enter. If such building or premises is unoccupied, the officer or employee shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and seek written consent to enter. If consent to such entry is not given, the authorized officer or employee shall have recourse to every remedy provided by law to secure entry.

**SECTION 3. Amendment of Code.**

Section 1.16.010 of Chapter 1.16 of the Winters Municipal Code entitled, “General Penalty,” is hereby amended to read as follows:

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code or the provisions of any Code adopted by reference by this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor unless by ordinance or statute the violation is made an infraction. Any person convicted of a misdemeanor under the provisions of this Code shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code, or the provisions of any Code adopted by referenced by this Code, is committed, continued or permitted to exist.

**SECTION 4. Amendment of Code.**

Section 8.16.030 of Chapter 8.16 of the Winters Municipal Code entitled, “Nuisance,” is hereby amended to read as follows:

Any place where stagnant water is allowed to accumulate within the city is declared to be a public nuisance, and shall be abated in accordance with Title 19 of this Code.

**SECTION 5. Repeal of Section 8.16.040 of Code.**

Section 8.16.040 of Chapter 8.16 of the Winters Municipal Code entitled, "Abatement by City," is hereby repealed in its entirety.

**SECTION 6. Amendment of Code.**

Section 15.40.070 of Chapter 15.40 of the Winters Municipal Code entitled, "Nuisance declaration—Abatement," is hereby amended to read as follows:

Every violation of this chapter is a public nuisance. To abate the public nuisance, the City may take an action provided for in Title 19 of this Code. In addition, the community development Director may, upon a finding that the condition of any moved structure is a present and imminent menace to public safety, take such measures as are necessary to protect life and limb, without notice to any person and without further process. The cost of performing such measures shall be a charge upon the holder of the permit and a lien upon the building and property.

**SECTION 7. Amendment of Code.**

Section 17.108.130 of Chapter 17.108 of the Winters Municipal Code entitled, "Violation—Nuisance—Abatement" is hereby amended to read as follows:

A person who violates the provisions of this chapter is guilty of maintaining a public nuisance. An authorized employee of the building department may mail written notice to the owner that the violation exists. The owner then shall have thirty (30) days to remedy the violation. The notice shall state that if the violation is not corrected within the time specified, the nuisance will be abated in accordance with Title 19 of this Code.

**SECTION 8. Severability.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Winters hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

**SECTION 9. Effective Date.**

This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on \_\_\_\_\_, 2009, and was passed and

adopted at a regular meeting of the City Council held on \_\_\_\_\_, 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

1284651.2



CITY COUNCIL  
STAFF REPORT

TO: Honorable Mayor and Council members  
DATE: December 1, 2009  
THROUGH: John W. Donlevy, Jr., City Manager *JWD*  
FROM: Dan Maguire, Housing Programs Manager *DM*  
SUBJECT: Update on the Winters Farmers Market and Winters Community Garden

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**RECOMMENDATION:**

Staff recommends that the City Council receive the staff report on: 1) the future of the Winters Farmers Market; and 2) an update on the formation of the community garden.

**BACKGROUND:**

In the first quarter of 2008, the Winters Healthcare Foundation (WHF), in collaboration with the Davis Farmers Market Association (DFMA) and the City of Winters, successfully applied for a grant from the TIDES Foundation under the Networking for Community Health. The grant established start up funding for the development of a farmers market and formation of a community garden.

The first year of operation (May through October, 2009) of the Winters Farmers market was deemed a success. Market Manager Ana Kormos is in the process of compiling and analyzing a post first-year market survey to determine what changes are recommended by the community for next year's market. This year's participating growers and vendors were also separately surveyed and the vendor responses have been very positive, with most vendors indicating a desire to participate in next year's market.

Staff met with representatives from WHF and the DFMA at the end of the first year of the market to analyze the sustainability of the market for next year. Based on projections that next year's market would have income and expenses similar to that of the first year of the market, it is anticipated the market will be self sustaining. Inasmuch as the grant expires at the end of June 2010, the project partners agreed the DFMA would replace the WHF as the lead agency for the Winters Farmers Market.

At the May 19, 2009 City Council meeting, Council approved locating the community garden on City-Owned property directly west of the East Street Lift Station Facility. Subsequently, the site's garden plots have been staked off, irrigation has been installed, and the fencing for the garden has been constructed. The Winters Rotary Club has committed funding and manpower for the construction of 4 raised beds for disabled citizens and/or senior citizens.

Outreach for the community garden has been limited to the WHF Promotora program and at the Winters Farmers Market. Among the next steps prior to the Spring 2010 start of the garden will be public meeting(s) to inform and receive comments about the garden.

Included with this report is a draft of the Rules and Procedures for the Winters Community Garden. Staff requests direction from City Council regarding those proposed rules and procedures, the costs of the provision of water, and direction on plot selection procedures in the event the garden is over-subscribed.

**FISCAL IMPACT:**

None by this action

**ATTACHMENTS:**

Rules and Procedures for the Winters Community Garden

Concept Plan for the Winter Community Garden

## **RULES**

1. Garden plots are available for the personal use of Winters residents. Plots may not be used to grow crops for sale. Sharing or swapping produce is allowed.
2. Plots are limited to one (1) per house address, and must be used by the gardeners that the plot was assigned to. There will be no absentee gardeners; plots will not be assigned to persons in name only.
3. Invasive plants, poisonous plants, trees, bamboo, and illegal plants may not be planted.
4. In consideration of food grown in the garden and of children who visit, gardeners shall not use chemical fertilizers, pesticides, or herbicides. Organic methods will be used. The Garden Committee may approve the use of round-up in the common spaces of the garden to control unwanted weeds and greenery that may be spreading in the garden.
5. Organic seeds are not required to be used at the garden. Plants or seedlings are not required to be organic to be planted in the garden. GMO seeds or plants are not allowed.
6. Fresh manures are not allowed as it may contain ecoli. All manures must be aged for at least 6 months. Manures shall not be infested with ants or other insects. Dog, cats, bird or human manures shall NOT be used.
7. Gardening and watering is restricted to your own plot only; but gardeners can water others plots when they are sick or out of town if directed to by the registered plot owner. Otherwise, you must be present while watering. Water conservation must be observed while gardening; the use of mulches, soaker hoses and drip irrigation are encouraged to help to conserve water. The use of water timers will be reviewed each year for allowance, so as not to create an absentee garden.
8. Garden plots must be kept clear of weeds and debris at all times throughout the year. Be careful not to drag hoses and tools over other plots.
9. Gardeners of poorly maintained plots will be given written notification to their address on record. A 7 day grace period from the date of the notice will be given to allow correction of problems. Agreements for garden plots that are not adequately maintained will be terminated and reassigned at the discretion of the Garden Committee. Decisions of the Committee may be appealed for reconsideration.
10. Each plot holder is responsible for maintaining the pathways around their plot and keeping them clear of weeds. Plots shall not be widened to encroach on pathways or common areas.
11. Children must be accompanied by an adult and well supervised while on site for their safety and to prevent damage to anyone's plot. Adults will be responsible for any damage.
12. Pets are not allowed in the garden under any circumstances, with the exception of service dogs. Dog and cat wastes are not to be used as a fertilizer.
13. Tools must be put away when you are finished with them. Turn off water faucets, lock the tool shed, and scramble the lock combinations if you are last one to leave.
14. No cars are allowed to drive into the garden. Access may be granted by the Garden Committee during construction or for special events or as needed for deliveries.

15. Gardening hours are dawn to dusk; or what ever is safe.
16. Gardeners shall advise the Garden Committee of animals in the garden including snakes, raccoons, possums, coyotes or other potentially dangerous animals. No animals shall be buried in the garden.
17. Each gardener agrees to participate as a member of the garden community. This includes assisting in caring for equipment, contributing time toward general maintenance of the common areas, and participating in group workdays. Gardeners are expected to cooperate in respect for all members of the garden and the security of each others garden plots. Gardeners will attend at least two (2) meetings per year and contribute two (2) hours per month on the common areas of the garden.
18. Gardeners will not pick others produce; or prune others plants or crops. Pruning of all trees, roses, grapes and shrubs in the common areas of the community garden shall be approved by the Garden Committee or pruning sub-committee.
19. Common area plantings are for the use of all gardeners; so only take a few grapes, fruits or citrus as they are maturing so that all can sample the crops.
20. All personal items are there at your own risk. Report any thefts in the garden to the Garden Committee.
21. No household furniture may be used in the garden.
22. Loud radios, CD players or other electronic devices must not be heard from over 20 feet away.
23. Items or materials over 50 pounds shall be approved by the Garden Committee before purchase, donation or delivery to the garden.
24. Livestock shall not be kept at the garden ie chickens, goats, cows, rabbits, horses.
25. Common sense and decency will guide other issues on the garden. Gardeners will abide by all rules of the garden. Not following the rules or not participating in work days may lead to loss of your plot.
26. Be aware of heights of plants that you grow and place them in places that will not shade adjacent plots. Plants causing problems for other gardens may be subject to topping by the Garden Committee.
27. Gardeners shall compost the waste from their plots as much as possible. A composting orientation will be required with plot sign up. Compost bins are not allowed in individual plots.
28. Gardeners ending their agreement or leaving the garden shall clear their plot and leave it in an acceptable condition for re-assignment.
29. The Community Garden Committee shall be made up of an odd number of board members with the least amount of board members being three (3). The position on the committee may include chairperson, vice-chair, secretary, past chairperson. A treasurer can be added if funds are held by this group. Garden Committee members may be elected or appointed. All sub-committee chairpersons will be placed on the Garden Committee for as long as they head up a committee.

30. The Community Garden Committee is responsible for:

- Assigning plots – and gardener orientation
- Collection of registration forms each year
- Collection of waiver forms each year
- Holding garden meetings – setting date, time and location
- Setting a yearly budget and goals for the year
- Setting workdays in the garden on common spaces
- Approving non-gardening events at the community garden
- Reviewing the garden plots quarterly for compliance
- Review of gardener disputes and concerns
- Soliciting donations for the garden
- Coordinating expansion of the garden to completion
- Approve all trees and plants that are planted in the common areas of the garden
- Review of all business relating to the garden

31. In addition, the Garden Committee shall advise ALL gardeners of the fact that the recycled water is being used in the garden and shall show gardeners where it is being used. The locations of non-potable drinking water shall also be clearly marked Not for Drinking. The Garden Committee shall maintain the signage and make sure that it is in place.
32. Gardeners shall advise all non-gardeners, visitors and volunteers of the use of non-potable recycled water and point out where it is being used in the garden; and also point out sources of drinkable water and that is to be used for hand and produce washing.
33. All persons doing work in the garden MUST sign a waiver form. This includes one time, and short term volunteers, as well as registered gardeners. Get forms from the Garden Committee or at a location designated in the garden, ie tool shed.
34. Revisions to these rules may occur and updates made on a yearly basis at renewal time each year (based on the calendar year).
35. Contact information for the Winters Community Garden Committee:

References:

American Community Gardening Association, [www.communitygarden.org](http://www.communitygarden.org)

Sacramento Area Community Garden Coalition, [www.SacCommunityGardens.org](http://www.SacCommunityGardens.org) 916 508-6025

UC Master Gardeners of Yolo County,

**Registration and Plot Sign Up Form**

**Winters – Community Garden**

Read carefully the rules and procedures before signing it. Understand that failure to follow them can result in termination of this agreement and forfeiture of any payments that have been made.

Payment is due with this form. **Make check or money order payable to:** \_\_\_\_\_

Gardener(s) must attend workshops / orientation on the garden procedures, safety, composting, organic gardening before working in the garden and receiving the gate combinations.

Gardener(s) Names: \_\_\_\_\_  
List all family members that will be gardening

\_\_\_\_\_  
\_\_\_\_\_

Residence Address in Winters: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_ Other: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Emergency Contact: Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Information on this form will be used by the garden committee for communication with the gardeners.

- I give permission to include information on this registration form in the gardeners directory.
- I do not give permission to include information on this registration form in the gardeners directory.

The undersigned, in consideration of participation in the Winters Community Garden, agree to indemnify and hold the City of Winters, \_\_\_\_\_ and its developers, designers, owners, partners or agencies harmless, and release them from any and all liability for all injury which may be suffered by the above registered persons and their guests, arising out of, or in any way connected with participation in the garden. I have read and signed the Winters Community Garden Waiver and Liability of Release.

I HAVE READ THE ABOVE APPLICATION AND AGREEMENT AND FULLY UNDERSTAND THAT I (WE – for Families) ASSUME ALL RISKS FOR ANY INJURIES RECEIVED. I have also read the Rules and Procedures and agree to abide by them.

\_\_\_\_\_  
Gardener(s) Signature(s) (Date)

\_\_\_\_\_  
Gardener(s) Signature(s) (Date)

Assigned Plot(s) Number: \_\_\_\_\_ Amount Paid: \_\_\_\_\_ For Year: \_\_\_\_\_

Cleaning Deposit \$25 \_\_\_\_\_ (New gardeners), or Returning Gardener \_\_\_\_\_ Plot Fee: \_\_\_\_\_  
On file

# WAIVER AND LIABILITY OF RELEASE

While working at the Community Garden

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Zip Code: \_\_\_\_\_

For Participant(s):

I, the undersigned, understand that the Community Garden, sponsored by the Winters \_\_\_\_\_, involves physical activity. I further understand that accidents can occur during unsupervised gardening activities and that participants can occasionally suffer serious injury and / or death. **I HEREBY ASSUME THESE RISKS OF PARTICIPATING at the FOUR SEASONS COMMUNITY GARDEN**

In return for allowing me to participate, I hereby waive, release and discharge any and all claims for damages of death, personal injury, disability or property damage or vandalism of any kind which may hereafter accrue to me as a result of my participation in this activity. This release is expressly intended to discharge in advance and all liability arising out of or connected in any way with my participation in this activity. **THIS RELEASE WILL APPLY EVEN THOUGH LIABILITY MAY ARISE OUT OF NEGLIGENCE OR CARELESSNESS ON THE PART OF THOSE DISCHARGED INCLUDING THEIR EMPLOYEES, AGENTS AND VOLUNTEERS.**

I further agree to indemnify and hold harmless the entities and person-herein released from any and all claims made by other individuals or entities as a result of any of my actions during my participation in this activity / event.

This Waiver and Liability Release, shall apply to me, as well as anyone assisting me in this activity, my family, my heirs, executors, or administrators.

By my signature below, I hereby certify and acknowledge that I have read this document and understand its content. I am aware that it is a full release if liability on behalf of the City of Winters, and \_\_\_\_\_ and its owners, partners and agencies, as described above, and sign it on my own free will.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# WAIVER AND LIABILITY OF RELEASE

VOLUNTEER working at the Garden on: \_\_\_\_\_  
Dates

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Zip Code: \_\_\_\_\_

For Participant(s):

I, the undersigned, understand that the Community Garden, sponsored by the City of Winters \_\_\_\_\_, involves physical activity. I further understand that accidents can occur during unsupervised gardening activities and that participants can occasionally suffer serious injury and / or death. **I HEREBY ASSUME THESE RISKS OF PARTICIPATING at the WINTERS COMMUNITY GARDEN**

In return for allowing me to participate, I hereby waive, release and discharge any and all claims for damages of death, personal injury, disability or property damage or vandalism of any kind which may hereafter accrue to me as a result of my participation in this activity. This release is expressly intended to discharge in advance and all liability arising out of or connected in any way with my participation in this activity. **THIS RELEASE WILL APPLY EVEN THOUGH LIABILITY MAY ARISE OUT OF NEGLIGENCE OR CARELESSNESS ON THE PART OF THOSE DISCHARGED INCLUDING THEIR EMPLOYEES, AGENTS AND VOLUNTEERS.**

I further agree to indemnify and hold harmless the entities and person-herein released from any and all claims made by other individuals or entities as a result of any of my actions during my participation in this activity / event.

This Waiver and Liability Release, shall apply to me, as well as anyone assisting me in this activity, my family, my heirs, executors, or administrators.

By my signature below, I hereby certify and acknowledge that I have read this document and understand its content. I am aware that it is a full release if liability on behalf of the City of Winters and its owners, partners and agencies, as described above, and sign it on my own free will.

\_\_\_\_\_  
Signature of Volunteer or Guardian of minor below

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of minor(s)

\_\_\_\_\_  
Date

