



Winters City Council Meeting  
City Council Chambers  
318 First Street  
Tuesday, December 15, 2009  
6:30 p.m.

**\*\*\* AMENDED AGENDA \*\*\***

*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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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 and Executive Session of the Winters City Council Held on December 1, 2009 (pp 1-5)
- B. Minutes of the Regular Meeting and Executive Session of the Winters City Council Held on November 17, 2009 (pp 6-9)
- C. Resolution No. 2009-60 of the City Council of the City of Winters Receiving from the Community Development Agency the Annual Redevelopment Report to Legislative Body, State Controller's Office and State Housing and Community Development Department for Fiscal Year Ending June 30, 2009 and Authorizing its Transmittal to the State Department of Housing and Community Development and the State Controller's Office (pp 10-48)
- D. Resolution 2009-57, A Resolution of the City Council of the City of Winters authorizing submittal of an application to the California Energy Commission's EECBG Program for funds to execute an energy efficiency project (pp 49-52)

### PRESENTATIONS

### DISCUSSION ITEMS

- 1. Public Hearing and Consideration by the Winters City Council of the City of Winters for Adoption of Ordinance 2009-18, Repealing Section 17.60.030 (B) and Adding Chapter 17.200 to the Winters Municipal Code Pertaining to Affordable Housing Requirements (pp 53-88)
- 2. Public Hearing and Consideration by the Winters City Council of the City of Winters for Adoption of Ordinance 2009-16, Amending Chapter 15.64 (Flood Damage Prevention) of the Winters Municipal Code (pp 89-114)
- 3. Continued Public Hearing and Adoption by the City Council of the City of Winters of Ordinance No. 2009-17, an Interim Urgency Ordinance Enacted Pursuant to Government Code Section 65858 to Extend Interim Urgency Ordinance No. 2009-15 for an Additional 10 Months and 15 Days and Continue for This Period the Temporary Prohibition

**Against Establishment and Operation of Medical Marijuana  
Dispensaries**

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COMMUNITY DEVELOPMENT AGENCY

1. Resolution 2009-60, a Resolution of the Community Development Agency of the City of Winters, Submitting the Redevelopment Annual Report for Fiscal Year Ending June 30, 2009 to the City Council of the City of Winters (Please see Documents Under Consent Item C)
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CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

Pending Litigation (Louie v. City of Winters), Government Code Section 54956.9

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 15, 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 December 9, 2009, and made available to the public during normal business hours.

*Jacy Jensen, Admin Asst. for Nanci Mills*  
Nanci G. Mills, City Clerk

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

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Wednesday at 10:00 a.m.

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**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** December 15, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager  
**FROM:** John C. Wallace, City Attorney  
**SUBJECT:** Ordinance No. 2009-17, Medical Marijuana Dispensaries  
Moratorium  
**Further Extension**

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**RECOMMENDATION:** (1) Open the continued public hearing; (2) Place the Council issued report into the record; (3) Hear from any members of the public; (4) Close the public hearing; (5) Council Discussion; (6) Adoption of the ordinance.

**BACKGROUND:** The City Council on November 3, 2009 adopted Ordinance 2009-15, an urgency interim ordinance establishing a moratorium on issuing permits, licenses or other entitlements for the operation of Medical Marijuana Dispensaries pending further study by the Planning Commission. That ordinance expires after 45 days, on December 18, 2009. State Law allows an extension of the moratorium initially for up to 10 months and 15 days. Staff needs additional time to determine, with the recommendation of the Planning Commission, siting for dispensaries.

**FISCAL IMPACT:** Staff time, publication costs.

**GOVERNMENT CODE SECTION 65858(d) WRITTEN REPORT:** State law requires that the City Council issue a written report at least 10 days before the expiration of the 45 day moratorium ordinance. The written report has been issued at least 10 days prior to this Council Meeting.

**Conclusion**

Staff recommends that Council approve City of Winters Ordinance No. 2009-17, an urgency ordinance extending the moratorium on the establishment and operation of medical marijuana dispensaries for a period of 10 months and 15 days in order to allow the City to continue to study the impacts of such uses.

Attachment:

Ordinance No. 2009-17

CITY OF WINTERS  
INTERIM URGENCY ORDINANCE NO. 2009-17

AN INTERIM URGENCY ORDINANCE OF THE CITY OF WINTERS ENACTED PURSUANT TO GOVERNMENT CODE SECTION 65858 TO EXTEND INTERIM URGENCY ORDINANCE NO. 2009-15 FOR AN ADDITIONAL 10 MONTHS AND 15 DAYS AND CONTINUE FOR THIS PERIOD THE TEMPORARY PROHIBITION AGAINST ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, on November 3, 2009, pursuant to section 65858 of the California Government Code, the City Council of the City of Winters ("City Council") adopted Ordinance No. 2009-15, an interim urgency ordinance, which temporarily prohibits the establishment and operation of medical marijuana dispensaries in all locations in the City of Winters; and

WHEREAS, Section 65858(a) of the California Government Code provides that Ordinance No. 2009-15 shall expire and be of no further force and effect forty-five (45) days from its date of adoption; and

WHEREAS, Section 65858(a) of the California Government Code provides that prior to the expiration of Ordinance No. 2009-15, the City may extend Ordinance No. 2009-15 for an additional ten (10) months and fifteen (15) days after giving notice pursuant to Section 65090 of the California Government Code and conducting a public hearing; and

WHEREAS, prior to this hearing, the City Council authorized the issuance of a written report describing the measures and actions taken by the City to alleviate the circumstances and conditions which led to the adoption of the Ordinance No. 2009-15 since its adoption on September 26, 2006, as required by Government Code section 65858(d) ("Council Report"); and

WHEREAS, based on the Council Report, the City Council has determined that the circumstances and conditions that led to the adoption of Ordinance No. 2009-15, which are set forth in the recitals of Ordinance No. 2009-15 and are fully incorporated herein by this reference, have not been alleviated as of the date of this Ordinance and continue to create the concerns described in Ordinance No. 2009-15; and

WHEREAS, the City Council now seeks to extend the temporary prohibition on the establishment and operation of medical marijuana dispensaries, as currently authorized under Ordinance No. 2009-15, to continue studying possible amendments to the Winters General Plan and the City's zoning regulations to help ensure that medical marijuana dispensaries are regulated in a way that protects the community and complies with applicable law; and

WHEREAS, the purpose for extending Ordinance No. 2009-15 is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Ordinance No. 2009-15; and

WHEREAS, the City Council has determined there is a need to extend Ordinance No. 2009-15 for an additional ten (10) months and fifteen (15) days as authorized under section 65858(a) of the California Government Code; and

WHEREAS, the notice and public hearing required by section 65858(a) of the California Government Code for the extension of Ordinance No. 2009-15 has been provided in accordance with applicable law;

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

SECTION 1. Adoption of this urgency interim ordinance ("Ordinance") shall constitute an extension of Ordinance No. 2009-15 pursuant to section 65858 of the California Government Code.

SECTION 2. During the time this Ordinance is in effect, the City shall not any issue any use permit, variance, building permit, business license or other applicable entitlement for the establishment or operation of a medical marijuana dispensary in Winters.

SECTION 3. For purposes of this Ordinance, the terms defined below shall have the following meanings:

A. "Medical marijuana dispensary" shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver.

B. "Primary caregiver," "qualified patient," and "identification card" shall have the meanings set forth in Health and Safety Code section 11362.7.

SECTION 4. The City Council hereby finds and determines that adoption of this Ordinance and the extension of Ordinance No. 2009-15 is necessary for the current and immediate protection of the public health, safety, and welfare of the City and its residents for all the reasons set forth in the recitals above, the recitals of Ordinance No. 2009-15, and the agenda report prepared in connection with this Ordinance, which are hereby expressly incorporated as though fully set forth herein, and the following additional reasons:

A. The City continues to study the issue of regulation of medical marijuana dispensaries, and has collected studies, reports, and other information from other California cities concerning the effects created by the operation of medical

marijuana dispensaries, which have indicated that dispensaries can have negative effects on the surrounding areas if not properly regulated.

B. Establishment and/or operation of medical marijuana dispensaries under existing zoning and development standards will have a detrimental effect because the existing standards do not consider the unique impacts created by medical marijuana dispensaries, which would create the potential for severe land use incompatibilities, with associated impacts to adjacent residents and businesses. These adverse impacts on the public health, safety, and welfare can be avoided through careful study and proper planning for the regulation of medical marijuana dispensaries.

SECTION 5. The City Council hereby directs the Planning Division to consider and study possible means of regulating or prohibiting medical marijuana dispensaries, including zoning-based regulations and other regulations.

SECTION 6. The City Council hereby finds that this Ordinance is not subject to the California Environmental Quality Act (Pub. Resources Code, Sec. 21000 et seq.) ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 7. Ten days prior to the expiration of this Ordinance, the City Council shall issue a written report describing the measures which the City has taken to alleviate the conditions which led to the adoption of this Ordinance.

SECTION 8. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 9. This Ordinance shall be adopted by a four-fifths vote of the City Council. Upon adoption, the Mayor shall sign this Ordinance, and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Winters Courier, a semi-weekly newspaper of general circulation, printed, published and circulated in the City of Winters. The term of this Ordinance shall be in effect beginning November 9, 2006 for ten (10) months and fifteen (15) days and shall thereafter be of no further force and effect, unless earlier repealed or extended by the City Council as provided for in Government Code Section 65858.

PASSED, APPROVED, AND ADOPTED this 15<sup>th</sup> Day of December, 2009.

STATE OF CALIFORNIA  
COUNTY OF YOLO  
CITY OF WINTERS

I, Nanci G. Mills, City Clerk of the City of Winters, County of Yolo, State of California, hereby certify that the foregoing Urgency Ordinance No. 2009-17 was introduced, passed and adopted by said city council, signed by the mayor, and attested by the city clerk of said city, all at a regular meeting of said council held on the 15<sup>th</sup> day of December, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Michael Martin, MAYOR

ATTEST:

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



**CITY COUNCIL  
STAFF REPORT**

**TO:** Honorable Mayor and Councilmembers  
**DATE:** December 15, 2009  
**THROUGH:** John W. Donlevy, Jr., City Manager  
**FROM:** John C. Wallace, City Attorney  
**SUBJECT:** Executive Session – Pending Litigation (Louie v. City of Winters)  
(Government Code Section 54956.9)

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**RECOMMENDATION:** Hold an executive session, to hear from the City Attorney on the status of the Pending Litigation.

**BACKGROUND:** The City of Winters previously received a claim based on allegations that the City of Winters was not in compliance with the Americans with Disabilities Act (ADA). A lawsuit has been filed against the City. The City Council has the legal authority to hold an executive session to hear from its City Attorney advice and a report on the status of pending litigation.

**FISCAL IMPACT:** The City of Winters has exposure to liability arising from this litigation, with the amount of damages one of the subjects of the litigation.