



Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, December 7, 2010
6:30 p.m.
AGENDA

Members of the City Council

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

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

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 Tuesday, November 16, 2010 (pp 1-7)

DISCUSSION ITEMS

1. Public Hearing, Waive First Reading, Read by Title Only and Introduce Ordinance 2010-10, an Ordinance of the City Council of the City of Winters Amending Title 2, Chapter 2.12 of the Winters Municipal Code to Establish the Office of Fire Chief and the Winters Fire Department (pp 8-10)
2. AT&T Mobility Claim Against the City of Winters - \$17,124.85 (pp 11-24)
3. Resolution 2010-59, the 2010-2011 SERAF (Supplemental Education Revenue Augmentation Fund) Shift (pp 25-27)
4. Resolution of Intention to Approve an Amendment to the Contract Between the Board of Administration of the Public Employees/Retirement System (CalPERS) and the City Council of the City of Winters to provide 2% @ 50 Retirement Formula for Local Police Members and Introduction of Ordinance Authorizing Amendment of the CalPERS Contract (pp 28-31)

COMMUNITY DEVELOPMENT AGENCY

- 1.
-

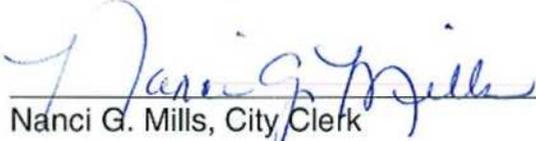
CITY MANAGER REPORT

INFORMATION ONLY

EXECUTIVE SESSION

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 7, 2010 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 1, 2010, and made available to the public during normal business hours.



Nanci G. Mills, City Clerk

Questions about this agenda – Please call the City Clerk's Office (530) 795-4910 ext. 101. Agendas and staff reports are available on the city web page www.cityofwinters.org/administrative/admin_council.htm

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.

How to obtain City Council Agendas:

View on the internet: www.cityofwinters.org/administrative/admin_council.htm

Any attachments to the agenda that are not available online may be viewed at the City Clerk's Office or locations where the hard copy packet is available.

Email Subscription: You may contact the City Clerk's Office to be placed on the list. An agenda summary is printed in the Winters Express newspaper.

City Council agenda packets are available for review or copying at the following locations:

Winters Library – 708 Railroad Avenue

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

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

City Council meetings are televised live on City of Winters Government Channel 20 (available to those who subscribe to cable television) and replayed following the meeting.

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 Tuesday, November 16, 2010

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

Present: Council Members Cecilia Aguiar-Curry, Harold Anderson, Michael Martin, Tom Stone, and Mayor Woody Fridae
Absent: None
Staff: City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Chief of Police Bruce Muramoto, Director of Financial Management Shelly Gunby, Community Development Director Nellie Dyer, and Administrative Assistant Tracy Jensen.

Casey Cox, an exemplary student from Shirley Rominger Intermediate School, led the Pledge of Allegiance.

Approval of Agenda: City Manager Donlevy requested that Discussion Item #5 be moved to #1. Motion by Council Member Stone, second by Council Member Aguiar-Curry to approve the agenda with the noted change. Motion carried unanimously.

COUNCIL/STAFF COMMENTS: Council Member Anderson attended a Lower Putah Creek Coordinating Committee meeting in Davis and on May 15, 2011, the Committee will celebrate its' 10-year anniversary at the Community Center.

Council Member Aguiar-Curry attended a WRA (Water Resource Association) technical meeting and discussed the IRWMP's (Integrated Regional Water Management Plan) processes regarding the Westside Regional Management Group. Ms. Aguiar-Curry also attended a WRA (Water Resource Association) Board of Directors Meeting, where an update regarding flood management activity was given. Ms. Aguiar-Curry has been elected treasurer of the Water Resource Association, effective January, 2011. Thanks to City staff and the Planning Commissioners who attended the League of California Cities 2010 Legislative Briefings webinar in Council Chambers today. Ms. Aguiar-Curry will be leaving tomorrow to attend the League of California Cities Board of Directors Orientation in San Diego.

Council Member Stone said the Board of Realtors is trying to arrange a presentation in the near future. Mr. Stone also noted that people were continuing to use the crosswalk at West Main & Grant although Cal Trans has "removed" it. City Manager Donlevy said Cal Trans had ground out the thermal plastic surface and filled it in with a different color of slurry, repainted it and removed the crosswalk signs, but the area is still being used as a crosswalk. There is a similar crosswalk near Waggoner Elementary that is also being used, both of which are very dangerous. City Manager Donlevy said he would check with the City Engineer regarding these crosswalks.

Mayor Fridae confirmed he would give a presentation on November 30th. Mayor Fridae asked if one of the Council Members would attend the PAWS (Performing Animal Welfare Society) meeting in Sacramento on Friday? It was decided that Council Member Anderson would attend on Mayor Fridae's behalf.

Council Member Aguiar-Curry added that the Wildlife Conservation Board has received \$5,000 in funding for Yolo Heritage.

PUBLIC COMMENTS: None

CONSENT CALENDAR

- A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, November 2, 2010
- B. Request for Street Closure on East Main Street - Winters Chamber of Commerce for Saturday, December 4, 2010

City Manager John Donlevy gave an overview. In response to Council Member Anderson's query, Nancy Myer confirmed that Santa Claus had been notified of the pending street closure. Motion by Council Member Martin, second by Council Member Anderson to approve the consent calendar. Motion carried unanimously.

PRESENTATIONS: None

DISCUSSION ITEMS

- 1. Public Hearing – Acquisition of Real Property at 201 First Street, Winters, California Yolo County APN 03-203-16, pursuant to California Government Code 37351

Mayor Fridae and Council Member Anderson recused themselves due to a possible conflict of interest.

City Manager Donlevy gave an overview. The property at 201 First Street was appraised at \$207,000 and staff, who is recommending purchase of the building, has requested the purchase should not exceed \$210,000. The funding for the purchase will come from Park Development funds.

Mayor Pro-Tem Aguiar-Curry opened the public hearing at 6:42 p.m. and closed the public hearing at 6:42 with no public comment and said she appreciated the County giving us the first right to the building, which will be a great asset to the community.

Motion by Council Member Stone, second by Council Member Martin to approve Resolution 2010-55 approving the purchase of real property located at 201 First Street, Winters, California. Motion carried with the following vote:

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

Council Member Anderson and Mayor Fridae returned to the dais.

2. Approval of Radio Communications Tower to L.D. Strobel Company Corporation for Public Safety Facility

City Manager Donlevy gave a brief overview and turned it over to Police Chief Muramoto for a more in-depth overview. The City received a Homeland Security Grant in 2008 to erect a 140 foot radio communication tower. Once a variance was given by the Planning Commission, City staff and the JPA (Joint Powers Authority) had to jump through hoops with the FAA and FCC to meet all requirements.

Chief Muramoto introduced JPA Board Member Ray Groom and Executive Director Patricia Williams, who were present and available for questions. YECA (Yolo Emergency Communications Agency) plans to install a microwave communications system that would link the cities and county with a voice and limited data system. Chief Muramoto acknowledged Dawn Van Dyke, City of Winters grant writer for coordinating the grant, Marianne Wolf, the YECA project manager for the communications tower project on the City's behalf, and Steve Overacker, the YECA Radio Systems Manager.

Council Member Martin asked if the emergency generators will be hooked up to the radio communications system. Chief Muramoto confirmed there would be an uninterrupted power supply available. Council Member Aguiar-Curry asked if residents might experience cell phone interference. Chief Muramoto said it is not anticipated. Mayor Fridae said he appreciated the efforts of all participants on this project.

Motion by Council Member Stone, second by Council Member Aguiar-Curry to award the construction contract for a radio communications systems tower project to L.D. Strobel Company, Inc. in the amount of \$114,880.00 and authorize the City Manager to execute the construction contract on the City's behalf. Motion carried unanimously.

3. Gateway Planning and Economic Development Program

City Manager Donlevy gave an overview, noting the enclosed timeline is very aggressive and the Gateway Planning and Economic Development has been moved up to highest priority. During December, the City will advertise for participation on the Economic Development Advisory Committee, members will be appointed in January, and February through July will be spent developing a syllabus to include planning and design issues to accomplish along with economic development. The committee will be comprised of seven individuals; one member appointed by each Council member, one member of the Planning Commission appointed by the City Council, and one member from either the Chamber of Commerce or Valley Vision.

Council Member Aguiar-Curry asked if committee members would be required to complete the Form 700 and take ethics training. City Manager Donlevy said yes, a sample Form 700 will be provided to all applicants and this requirement information would be included in the newspaper.

Council Member Anderson referred to the staff report (pg 36), which reads the Economic Development Advisory Committee will be an advisory body to the City Manager. City Manager Donlevy confirmed the committee would advisory to the City Council. Council Member Anderson also questioned the number of committee members and did not want to appoint regional planning agency members at the expense of the Chamber of Commerce. Council Member Anderson asked if the size of the committee could be expanded, if possible. Mayor Fridae asked if the members would be required to live in Winters and City Manager Donlevy said residency would not be required.

Council Member Anderson asked how the City Council would be appraised of the committee's actions and progress. City Manager Donlevy said the City Council will approve the syllabus, minutes of the meetings will be taken and provided to the City Council and committee recommendations will go before the Planning

Commission and City Council. Connectivity will also be discussed, and the committee will be coming back to City Council on a regular basis.

Council Member Aguiar-Curry confirmed she and Council Member Martin will attend committee meetings as non-voting liaisons. Council Member Anderson asked about Complete Streets. City Manager Donlevy said Cal Trans has sent a preliminary draft of the final report, which will go to the Planning Commission and then back to Council. Council Member Aguiar-Curry said the 6-month timeline is aggressive and flexibility may be needed.

Council Member Stone said if this is a 6-month ad hoc committee, members would be exempt from completing the Form 700. The bigger issue is the ethics training. For those applicants who have property or stock interest in town, we should ask those questions and get answers from the applicants, make it an ad hoc committee and still have the transparency we want without formalizing it. Don't shy away from using the ad hoc. Council Member Anderson said this will not be done in 6 months.

Motion by Council Member Aguiar-Curry to approve the parameters given in the staff report, with the exception that the committee report to the City Council and not to the City Manager, and that the number of committee members may be expanded at the will of the Council. Motion seconded by Council Member Stone. Motion carried unanimously. Council Member Martin asked that updates by the committee to Council be included in future agenda packets.

4. Approval of Resolution No. 2010-54, A Resolution of the City Council of the City of Winters Affirming Support for Exploration of Shared Service Opportunities between Local/Public Entities in Yolo County

City Manager Donlevy gave an overview and said during a recent Yolo County Leadership Forum, shared services between local/public entities have come up. This would be a cooperative venture between the County, Cities, and School Districts and used the recent combination of the UCD and City of Davis Fire Department as an example. The City Managers met at the County building where City Manager Donlevy presented the Yolo Shared Services Program that he had structured.

Council Member Anderson asked if the Rancheria had been contacted regarding life safety. City Manager Donlevy confirmed the resolution includes governing agencies. Council Member Aguiar-Curry said there is a lot of good collaboration occurring and asked if shared services might be a threat to staff. City Manager Donlevy said there were no worries, as we don't have available staff to share. The City's biggest negative is our proximity to other agencies. City Manager Donlevy used fleet maintenance as an example, where Chief Dozier provides this service.

Council Member Anderson asked about street striping being shared from the County and City Manager Donlevy said this was a perfect example. Mayor Fridae asked about engineering services. City Manager Donlevy said it's possible, as the City of West Sacramento has two traffic engineers and is currently sharing their City Architect with us.

Mayor Fridae confirmed the Yolo Shared Services Program is exploratory and asked that a final model be brought back to Council.

Motion by Council Member Anderson, second by Council Member Stone to approve Resolution 2010-54, affirming support for exploration of shared service opportunities between local/public entities in Yolo County. Motion carried with the following vote:

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

5. Status of Utility User Tax

In response to Council Member Aguiar-Curry's request, Director of Financial Manager Shelly Gunby gave an update regarding the status of the Utility Users Tax. Once the results of the election were certified at the end of June, all utilities were notified of the utility user tax increase from 4.25% to 9.5%. The City's municipal code was also updated. Some utilities have submitted the correct amount but others have not. Based on receipts for the months of July, August & September, Ms. Gunby sent out 56 notices during these three months for a total of \$58,000.

City Attorney Wallace has also sent out notices by certified mail to major service providers as an additional notice. PG&E has not started to remit the correct amount and they are the largest part of the outstanding amount due. Most cell phone, telephone and small energy companies have made the correction. Mr. Wallace also stated the Public Utility Commission's (PUC) website said all service providers in the 530 area code received notice sent by priority mail that included a bar code as proof of receipt. Under PUC code, the utility has 60 days to make the correction.

Mayor Fridae asked for a future update. Ms. Gunby said another update will be given at the second Council meeting in January, as the 4th quarter returns will have been received by then.

COMMUNITY DEVELOPMENT AGENCY

1.

CITY MANAGER REPORT: City Manager Donlevy confirmed that both December City Council meetings will be held. Next week is Thanksgiving and City Hall offices will be closed on Thursday and Friday.

Council Member Stone asked Council members if they were delivering meals to shut-ins on Sunday for the Community Dinner and asked that they be at the Community Center between 4:00 and 4:30p.m.

INFORMATION ONLY: None

EXECUTIVE SESSION: None

ADJOURNMENT: Mayor Fridae adjourned the meeting at 7:35 p.m.

Woody Fridae, MAYOR

ATTEST:

Nanci Mills, City Clerk



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: December 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager
FROM: John C. Wallace, City Attorney
SUBJECT: Public Hearing, Introduction and First Reading of Ordinance 2010-10,
Amending Title 2, Chapter 2.12 of the Winters Municipal Code to
Establish the Office of Fire Chief and the Winters Fire Department

RECOMMENDATION: Hold the Public Hearing, introduce the ordinance by title only, and make corrections to the ordinance as needed.

BACKGROUND: Pursuant to the Agreement for Fire Protection Services with the Winters Fire District, the City of Winters on January 1, 2011 will have its own fire department, and will provide fire protection services to the Winters Fire District. This ordinance will formalize the Winters Fire Department.

FISCAL IMPACT: This ordinance, with the agreement, changes responsibility for fire protection services in Winters from the Winters Fire District to the City of Winters. The same personnel are expected to continue, as City employees beginning January 1, 2011. The City Manager will address fiscal impacts of the change on January 1, 2011.

CITY OF WINTERS ORDINANCE NO. 2010-10

AN ORDINANCE AMENDING TITLE 2, CHAPTER 2.12 OF THE WINTERS MUNICIPAL CODE TO ESTABLISH THE OFFICE OF FIRE CHIEF AND THE WINTERS FIRE DEPARTMENT

The City Council of the City of Winters, State of California does ordain as follows:

SECTION 1: PURPOSE

The purpose of this ordinance is to amend a section of the Winters Municipal Code to Establish the Office of Fire Chief and the Winters Fire Department. Fire protection services have to this time been provided by contract with the Winters Fire Protection District. This ordinance will amend the section to designate the Winters Fire Chief as an official of the City of Winters and formally establish the Winters Fire Department, a Department of the City of Winters, as the provider of fire protection services in Winters.

SECTION 2: AMENDMENT OF TITLE 2, CHAPTER 2.12

Title 2, Chapter 2.12, Section 2.12.090 of the Winters Municipal Code is hereby amended to read as follows:

2.12.090 City Fire Chief.

The office of fire chief of the city is created and established. He or she shall be appointed by and hold office at the pleasure of the City Manager.

(a) The fire chief shall, under administrative direction of the City Manager, plan, organize and direct the activities of the Winters Fire Department in preventing and extinguishing fires and in the protection of life and property against fire.

(b) The fire chief shall be responsible for the maintenance and care of all property and equipment used by his or her department.

(c) The fire chief shall plan, organize, direct and coordinate the activities of the fire department personnel, including volunteer firemen and all fire-fighting and fire prevention apparatus and equipment. The fire chief shall be responsible for the enforcement of all applicable fire ordinances and codes.

(d) The fire chief shall formulate departmental rules, procedures and policies in respect to the department; shall interview and, subject to City Manager approval, hire prospective fire department employees; and shall supervise a training program of his or her department and do related work as required.

(e) The fire chief shall attend meetings, conferences and conventions of fire-fighting and fire prevention personnel, shall confer with agents of other governmental jurisdictions, with the board of fire underwriters, with fire prevention bureaus and with the office of the State Fire Marshal.

(f) The fire chief shall formulate an annual budget and estimate and recommend purchases of equipment and supplies for his or her department.

(g) The fire chief shall devote his entire time to the duties of his or her office and the interests of the City of Winters.

(h) The fire chief shall perform such other related duties and exercises and such other related powers as may be delegated to him or her from time to time by the City Manager, by the provisions of this Municipal Code or other ordinances, or by Resolution of the City Council.

Title 2, Chapter 2.12, Section 2.12.100 is hereby added to the Winters Municipal Code to read as follows:

2.12.100 Bonding of Officers.

The City Council shall determine by resolution which officers and employees of the City of Winters shall be bonded, the amounts of such bonds, and any regulations or procedures necessary to facilitate the bonding process and protect the interests of the City of Winters.

SECTION 3: EFFECTIVE DATE

This ordinance shall become effective January 1, 2011, provided it is published in full or in summary within fifteen (15) days after its adoption in a newspaper of general circulation.

This ordinance was introduced, after public hearing, and the title thereof read at the regular meeting of the City Council on December 7, 2010, and the second reading occurred at the regular meeting of the City Council on December 21, 2010.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing ordinance was passed and adopted by the City Council of the City of Winters, State of California, this 21st day of December, 2010, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

MAYOR KEITH FRIDAE

ATTEST:

NANCI G. MILLS, CITY CLERK



CITY ATTORNEY MEMORANDUM

TO: John W. Donlevy, City Manager, Shelly Gunby, Director of Finance
DATE: December 7, 2010
FROM: John C. Wallace, City Attorney
SUBJECT: AT&T Mobility Claim Against the City of Winters - \$17,124.85

BACKGROUND: AT&T Mobility (aka Cingular Wireless) has filed a claim dated November 1, 2010 with the City of Winters for a tax refund (overpayment of the City's Utility Users Tax). In simple terms, AT&T Mobility sold internet access to its customers "Data Services", collected our UUT taxes, and paid us. Under federal law, wireless internet services, and fees for internet access are not subject to local taxation. Some enterprising lawyers across the country have found out about this, and a number of "class-action" lawsuits have resulted. Class actions are a way of maximizing attorney's fees, with some minimal payment to the "class" of people affected usually the result. A federal district court in Illinois in this case approved a class-action lawsuit and a settlement. Under the settlement, AT&T Mobility has to file claims everywhere it collected taxes on "Data Services." Winters is one of these jurisdictions. Winters now has to respond to this claim.

ANALYSIS: Under the City's Utility Users Tax procedures, claims for refund are subject to the City's Claims Ordinance, under which a claim for tax refund based on overpayment or unrequired payment can only go back one year. This claim is for a period of almost 5 years, from November 1, 2005 to September 30, 2010. Beginning October 1, 2010, AT&T Mobility stopped billing for taxes on "Data Services." Under the terms of the Claims ordinance, the correct amount claimed would be for the period from November of 2009 to September 30, 2010, roughly 11 months. Taking the average monthly tax refund sought and multiplying yields \$3,192.77. The exact figures are being sent on a DVD, still forthcoming. In addition, under current Court interpretation of the California Government Code on claims against public agencies (Sections 900 et seq.), class action claims are not authorized by California law. Rather, individual taxpayers must file individual claims. Service providers are not claimants. It is not clear whether there is a federal order or federal statute in the Illinois action that pre-empts these state and local statutory limitations.

CONCLUSION: Under the City's ordinances, any claim for tax refund is limited to the one year monetary limitation for accrual, and this claim has not been filed by an individual taxpayer. The claim is not in compliance with City ordinances or state law, and should be rejected entirely.

RECOMMENDATION: Place this claim on the December 7, 2010 City Council meeting agenda, under the consent calendar, for Denial. Use this Memorandum as the agenda report.

ATTENTION: CITY/COUNTY CLERK

Enclosed please find a copy of the tax refund claim submitted to your jurisdiction's taxing authority. This copy includes all materials submitted to the taxing authority other than the DVD-stored data and power of attorney form.

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Margaret C. Wilson
Attorney at Law
mwilson@mwe.com
+1 212 547 5743

November 3, 2010

To: REFUND CLAIM PROCESSING UNIT

Re: AT&T Mobility Claim for Refund of Tax Attributable to Internet Access Services

To Whom It May Concern:

The documentation included in this mailing constitutes a refund claim seeking a refund of tax that was previously remitted with respect to charges for various wireless services providing Internet access ("Data Services") to customers in your jurisdiction. The Data Services are described in detail in the enclosed statement in support of the refund claim.

This refund claim is filed by or on behalf of the specific AT&T Mobility affiliate that remitted the tax, as identified on the enclosed refund claim form, and is joined in by the customers from whom tax amounts were collected, to the extent and as explained in the enclosed statement in support.

Specifically, this refund claim package includes:

- (1) A refund claim form identifying the particular AT&T Mobility affiliate that is filing the claim and the total amount of tax on Data Services for which a refund is being claimed (that amount includes only taxes on relevant Data Services; previously remitted taxes related to charges for other goods or services are not included in the refund claim amount);
- (2) A statement in support of the refund claim, which provides background regarding both the Data Services and the basis for claiming a refund of previously remitted taxes on Data Services;
- (3) If applicable, a copy of a waiver agreement executed by the relevant AT&T Mobility affiliate at the request of your jurisdiction;
- (4) A DVD containing encrypted data in support of the refund claim for your jurisdiction, including:
 - a. A listing of the customers from whom AT&T collected tax on Data Services on bills issued from November 1, 2005 through September 7, 2010, which tax amounts are included in the refund claim amount. This schedule provides the total amount of tax on Data Services charged to each customer (net of adjustments), with customers identified at the billing account number level.
 - b. A listing of the total monthly amounts of tax billed on Data Services (net of adjustments) for your jurisdiction from November 1, 2005 through September 7, 2010, which amounts were remitted by AT&T in accordance with your jurisdiction's periodic remittance requirements and which in total equal the aggregate by-customer listing of tax billed on Data Services.
- (5) A power of attorney form appointing specified attorneys at McDermott Will & Emery LLP as the representatives of AT&T Mobility and its affiliates for purposes of this refund claim (PLEASE NOTE: THIS POWER OF ATTORNEY IS NOT INTENDED TO REPLACE OR SUPERCEDE OTHER POWERS OF ATTORNEY THAT MAY BE ON FILE WITH YOUR JURISDICTION FOR THE APPLICABLE COMPANY).

You will receive a separate mailing enclosing a decryption code and instructions for accessing the data files contained on the enclosed DVD. Questions related to the DVD and the data contained therein may be directed to Linda Fisher, AT&T, lf2212@att.com, (561) 775-4319.

Other questions related to the refund claim may be directed to Margaret Wilson, McDermott, Will & Emery LLP, mwilson@mwe.com, (212) 547-5743.

Sincerely,


Margaret C. Wilson

U.S. practice conducted through McDermott Will & Emery LLP.

340 Madison Avenue New York, New York 10173-1922 Telephone: +1 212 547 5400 Facsimile: +1 212 547 5444 www.mwe.com

Winters UUT Refund Claim (form used per municipality's request)

BOE-101 (FRONT) REV. 7 (11-09)

CLAIM FOR REFUND OR CREDIT

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

(Instructions on back)

NAME OF TAXPAYER(S) OR FEEPAYER(S) New Cingular Wireless PCS LLC	
TAXPAYER'S OR FEEPAYER'S ACCOUNT NO.	GENERAL PARTNER (if applicable)
TAXPAYER'S OR FEEPAYER'S SOCIAL SECURITY NUMBER(S)* OR FEDERAL EMPLOYER IDENTIFICATION NUMBER 22-3330080	

According to

- Chapter 7, Article 1, of the California Sales and Use Tax Law, and where applicable, Uniform Local Sales and Use Tax Ordinances and the Transit District Transactions (Sales) and Use Tax Ordinances, or
- Chapter 6, Article 1, of the California Use Fuel Tax Law, or
- Chapter 8, Article 1 and 2, of the Diesel Fuel Tax Law,
- Other form used per your direction _____ (please specify the applicable tax law or fee program)

the undersigned hereby makes claim for refund or credit of \$ 17,124.85 (may be left blank), or such other amounts as may be established, in tax, interest and penalty in connection with:

- Return(s) filed for the period November 1, 2005 to September 30, 2010
- Determination(s) dated _____ and paid _____
- Other (describe fully)

The overpayment described above was caused by
Please see enclosed documentation.

Supporting Documentation:

- is attached
- will be provided upon request

BUSINESS NAME New Cingular Wireless PCS LLC			
SIGNED BY 			DATE SIGNED 11-1-10
PRINT NAME OF SIGNATORY Linda A. Fisher		CONTACT PERSON (if other than signatory) See enclosed power of attorney	
TITLE OR POSITION Assistant Secretary and Director of Tax	TELEPHONE NUMBER (561) 775-4319	TITLE OR POSITION OF CONTACT PERSON	TELEPHONE NUMBER ()

Credit interest is available under certain circumstances. If you would like to be considered for credit interest, please check here.

*See BOE-324-GEN, Privacy Notice, regarding disclosure of the applicable social security number.

FOR BOE USE ONLY
Case ID No. _____

**STATEMENT IN SUPPORT OF CLAIM FOR
REFUND OF TAX ATTRIBUTABLE TO
AMOUNTS PAID FOR INTERNET ACCESS**

This refund claim is being filed by or on behalf of AT&T Mobility or one of the affiliates of AT&T Mobility that provides various wireless services to customers in your jurisdiction, including but not limited to "Data Services" (described in detail below) (hereinafter, the "Refund Claim").

A list of all AT&T Mobility affiliates that have sold Data Services is attached as Exhibit A. Tax was remitted to your jurisdiction by the specific AT&T Mobility affiliate that had a contractual relationship with customers in your jurisdiction, and that same AT&T Mobility affiliate is hereby seeking a refund of tax previously remitted with respect to amounts the affiliate charged those customers for Data Services. AT&T Mobility and the various AT&T Mobility affiliates each sold the same types of Data Services, and so the affiliated companies will be referred to collectively in this statement as "AT&T Mobility."

As discussed in detail below, this Refund Claim is made pursuant to a "Settlement Agreement" and to the extent permitted under the laws of your jurisdiction the "Settlement Class" (customers of AT&T Mobility) joins in the making of this Refund Claim, as contemplated under the Settlement Agreement. The Settlement Agreement obligates AT&T Mobility to transfer all refunded monies related to tax on Data Services, including any refund granted in response to this Refund Claim, to certain Escrow Accounts that are for the sole benefit of the Settlement Class -- and not for the benefit of AT&T Mobility. One hundred percent (100%) of the amount refunded will be for the benefit of customers of AT&T Mobility who remitted the tax payments to AT&T Mobility.

I. Overview

This Refund Claim relates solely to receipts from Data Services sold to customers who used various types of wireless devices. Data Services are distinct from and sold separately from the various types of voice telecommunications services that are also sold by AT&T Mobility to customers for use with such wireless devices. In contrast to typical voice services, Data Services permit the customer to transmit electronic data across the Internet -- thus enabling the customer to "surf" the Internet, send electronic mail, and make numerous other uses of the Internet. These Data Services are described more fully below.

Several months ago, various plaintiffs filed lawsuits against AT&T Mobility in numerous jurisdictions claiming that the AT&T Mobility Data Services the plaintiffs had purchased were the sale of "Internet access" as it is defined under the federal Internet Tax Freedom Act ("ITFA"), and thus could not be subjected to state or local taxation. The lawsuits were filed as putative class actions and alleged that AT&T Mobility had improperly collected tax on Data Services from the plaintiffs in violation of the ITFA.

As described below in “II – The Internet Tax Freedom Act,” the ITFA is a federal law that prohibits the imposition of state and local taxes on Internet access. As described below in “III – AT&T Mobility Data Services,” the Data Services sold by AT&T Mobility fall within the definition of protected “Internet access” under the ITFA. Finally, in “IV – The National Class Action Settlement,” we describe the process by which all amounts refunded or credited pursuant to this Refund Claim will be submitted to a specially administered escrow fund for the benefit of (and to be distributed to) the class action plaintiffs.

This Refund Claim reflects tax remitted to your jurisdiction in connection with separately stated charges for Data Services because even to the extent, if any, that the laws of your jurisdiction sought to impose tax on charges for Internet access, the imposition of that tax was barred by the ITFA.

II. The Internet Tax Freedom Act

The ITFA provides that no state or political subdivision of a state may impose a tax on Internet access during the period beginning November 1, 2003, and ending November 1, 2014. The current language in the ITFA is the product of several different Congressional Acts, as follows:

- P.L. 105-277: effective Oct. 21, 1998 (the Internet Tax Freedom Act)
- P.L. 107-75: effective Nov. 28, 2001 (extended the ITFA to Nov. 1, 2003)
- P.L. 108-435: effective Nov. 1, 2003 (Internet Tax Nondiscrimination Act, amending ITFA)
- P.L. 110-108: effective Nov. 1, 2007 (further amendments to ITFA)

The language from the ITFA that is relevant to this Refund Claim is set forth below.

1. Definition of the “Internet”

The definition of “Internet” reads:

INTERNET.—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.¹

Thus, to fall within this definition, the computer or telecommunications facilities at issue must be: (1) part of the “world-wide network of networks,” (2) must be an “interconnected” part of that network, and (3) must employ the Transmission Control Protocol/Internet Protocol or a predecessor or successor protocol.

¹ ITFA Section 1105(4).

2. Definition of "Internet access"

The ITFA defines "Internet access" as follows:

(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

(i) to provide such service; or

(ii) to otherwise enable users to access content, information or other services offered over the Internet;

(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity;

(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), (C), or (E)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), (C), or (E); and

(E) includes a homepage, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity, that are provided independently or not packaged with Internet access.²

Subpart "A" of the definition of "Internet access" emphasizes that a qualifying service will "enable" "users" to connect to the Internet, for various purposes. The term "enable," which is not defined in ITFA, is commonly defined as providing someone with "means or opportunity."³ As discussed below, the AT&T Mobility Data Services enable customers to connect to the Internet and, as such, are Internet access subject to the ITFA tax moratorium.

While subpart "B" provides that certain telecommunications are included within the scope of protected Internet access, those types of sales are not at issue and are not included in this Refund Claim. For example, the Refund Claim does not include sales of telecommunications to Internet service providers used to transport data being sent or received by the Internet service provider's customer.

² ITFA Section 1105(5).

³ Merriam-Webster's Online Dictionary.

Subpart "C" states that the provision of any services that are incidental to enabling an Internet connection will also be considered to be within the scope of protected "Internet access." This provision gives a list of examples of such permissible incidental services. The types of incidental services expressly listed are a home page, electronic mail, instant messaging, video clips and personal electronic storage capacity. Permissible electronic mail and instant messaging includes forms of those services that are voice-capable and video-capable. The provision of such incidental services as part of an Internet access service does not cause sales of Internet access service to fall outside the ITFA moratorium on state and local taxes. In fact, subpart "E" of the definition of Internet access explicitly provides that these products and services qualify as protected Internet access even when those services are "provided independently or not packaged with Internet access."

Subpart "D" of this definition expressly excludes voice, audio programming, video programming, and any "other products and services" not described in the other parts of the Internet access definition. Taxes related to charges for such services are not included in this Refund Claim.

III. AT&T Mobility Data Services

This Refund Claim seeks the refund or credit of taxes remitted by AT&T Mobility with regard to charges it made for Data Services because those Data Services constitute protected Internet access under the ITFA.

1. The Nature of AT&T Mobility Data Services

AT&T Mobility's Data Services are separate and distinct from the voice calling services that AT&T Mobility sells. Many AT&T Mobility customers purchase both voice calling services and Data Services for use on the same mobile device.

Each of the Data Services sold by AT&T Mobility provides access to the public Internet from various types of devices, including smart-phones, laptops, and other devices capable of housing a SIM card (subscriber identity module, or smart card) to enable the user to utilize his or her mobile network subscription. These Data Services enable a customer to connect to and browse the public Internet. Specifically, the AT&T Mobility Data Services are used to access a particular access point name ("APN") on the Internet and to identify and connect to a wireless application protocol ("WAP") server. From that point, the AT&T Mobility customer can browse the public Internet or access the appropriate server that will enable the customer, among many other things, to send or receive electronic mail.

For the purposes of accessing the Public Internet, the Data Service is essentially the same for each particular device (whether a smart-phone, air-card for a laptop, etc.). In each case, the Data Service provided by AT&T Mobility enables the customer to access the public Internet.

The Data Services are sold under numerous different names and in numerous different formats that vary depending on the type of use the customer desires and the type of device(s) that the

customer will be using. The pricing varies as well, with the customer either paying a flat monthly charge or a varying charge based on actual usage (e.g., a pay-per-use basis). These are pricing distinctions that do not reflect distinctions in the nature of the Data Service being sold – just the quantity.

2. AT&T Mobility Data Services Are Internet Access Under the ITFA

All of the AT&T Mobility Data Services give customers the ability to browse anywhere on the public Internet. As such, the Data Services are a “service that enables users to connect to the Internet to access content, information, or other services offered over the Internet” for purposes of the ITFA.⁴ Thus, except for jurisdictions specifically grandfathered under the ITFA to charge tax on Internet access, no state or local taxes may be imposed on charges for AT&T Mobility’s Data Services.

3. Taxes Not Included in this Refund Claim

The taxes sought in this Refund Claim relate solely to charges for Data Services, and do **not** include taxes collected and remitted with respect to charges for voice, text messaging (neither SMS (short message services) nor MMS (multimedia message services)) or other services or equipment sold by AT&T Mobility. This Refund Claim does **not** seek the refund of taxes collected on any charges for Data Services that were bundled with charges for other services that are otherwise sold separately by AT&T Mobility.

This Refund Claim also does **not** relate to telecommunications services sold to an Internet service provider in order to facilitate the provision of Internet access services to its customers. Instead, this Refund Claim relates solely to the Data Services sold by AT&T Mobility directly to residential or business consumers.

IV. The National Class Action Settlement

As mentioned above, AT&T Mobility has been the subject of numerous lawsuits over the past several months claiming that state and/or local taxes were incorrectly imposed on charges to customers for Data Services because those taxes are barred by the ITFA. Those cases were consolidated and transferred to the United States District Court for the Northern District of Illinois pursuant to transfer orders from the Judicial Panel on Multidistrict Litigation.

After reviewing both the precise terms of the ITFA and the nature of the Data Services, AT&T Mobility has agreed that the taxes relating to charges for Data Services that were previously collected and remitted to your jurisdiction were taxes on Internet access and are thus barred by the ITFA. As such, AT&T Mobility:

⁴ ITFA §1105(5)(A) (definition of Internet access, as in effect since November 1, 2007). This definition replaced an earlier ITFA definition of Internet access that had been effective November 1, 2003, which provided that “‘Internet access’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. The term ‘Internet access’ does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access.”

- has ceased collecting and remitting the taxes that are the subject of this Refund Claim on any charges for Data Services, and
- now seeks the recovery of previously remitted taxes attributable to Data Services, as set forth in this Refund Claim.

These matters are addressed in the Settlement Agreement entered into among AT&T Mobility and the class of all its past and present Data Services customers who do not choose to opt out of the settlement (the "Settlement Class"). What follows are the pertinent terms of that Settlement Agreement and notice of other matters relevant to this Refund Claim.

1. The Settlement Class Consents to and Joins in this Refund Claim

Pursuant to the Settlement Agreement, the Settlement Class has consented to, and has assigned to AT&T Mobility its rights related to, this Refund Claim, as follows:

The Settlement Class hereby consents to AT&T Mobility's filing of the claims for refund of Internet Taxes contemplated by this Settlement Agreement and to the payment of refunds or issuance of tax credits to AT&T Mobility in accordance with the terms of the Settlement Agreement. ... To the extent required by the law of any state or local jurisdiction at issue, the Settlement Class assigns AT&T Mobility all rights of the Settlement Class members to file the refund claims for Internet Taxes contemplated by this Settlement Agreement.

The Settlement Class has thus expressly joined in the making of this Refund Claim, as contemplated under the Settlement Agreement.

2. All Funds to be Paid to Escrow for Benefit of the Settlement Class

The Settlement Agreement obligates AT&T Mobility to transfer all refunded monies related to tax on Data Services, including any refund granted in response to this Refund Claim, to certain Escrow Accounts that are for the sole benefit of the Settlement Class – and not for the benefit of AT&T Mobility. To that end, AT&T Mobility is required to assign to the Settlement Class all of its rights, title and interest in all amounts obtained through Refund Claims.

With respect to those refund claims filed in the name of AT&T Mobility, to the extent that the Taxing Jurisdiction grants AT&T Mobility a refund, AT&T Mobility shall assign all of its rights, title and interest in such refund to the Settlement Class, subject to any claims or conditions that may be imposed on such refund by the Taxing Jurisdiction. In accordance with this assignment, AT&T Mobility shall seek to have the refunded monies paid directly to the Escrow Accounts by the Taxing Jurisdictions. All monies that are nonetheless received by AT&T Mobility relating to the refund claims filed with the Taxing Jurisdictions shall be transferred by AT&T Mobility to the Escrow Accounts

established at the Depository Bank within seven (7) business days of receipt. The monies transferred by AT&T Mobility to the Escrow Accounts for refunds from a Taxing Jurisdiction shall be segregated by the Escrow Agent pursuant to the Escrow Agreement into separate accounts, each designated as originating from the specific jurisdiction for which the monies in question were received and each for the benefit of those Settlement Class Members who remitted Internet Taxes to AT&T Mobility for payment to such Taxing Jurisdiction making the refund.

All sums deposited in the Escrow Accounts will be assigned to and solely for the benefit of the Settlement Class in accordance with the distribution procedures under the Settlement Agreement.

3. Request that Cash Refunds Be Paid Directly to Settlement Class Escrow Accounts

Under the terms of the Settlement Agreement, and in accordance with AT&T Mobility's assignment of its refund rights to the Settlement Class, AT&T Mobility requests that any payment of a cash refund in response to this Refund Claim be made directly to the Escrow Accounts established by the Settlement Agreement. Instructions for such direct payment will be provided upon request.

4. Settlement Class Acknowledges AT&T Mobility Satisfies Any Pre-Payment Requirement

The Settlement Class has acknowledged that its members have already received effective payment of the refund amounts sought in this Refund Claim by virtue of AT&T Mobility's assignment of refund rights to the Settlement Class and its obligation to transfer all refunds received to the Settlement Class, under the terms of the Settlement Agreement and under the supervision of the United States District Court for the Northern District of Illinois.

In light of AT&T Mobility's obligation to pay the refunded or credited Internet Taxes received by AT&T Mobility to the Escrow Accounts, the Settling Parties agree that AT&T Mobility has assigned and refunded to the Settlement Class all Internet Tax refunds to be sought pursuant to the Settlement Agreement.

The Settlement Class thus waives any requirement that AT&T Mobility pay cash refunds to the Settlement Class prior to obtaining a refund or credit from this taxing jurisdiction.

5. Interest

In addition to taxes AT&T Mobility also seeks the payment (or credit) of interest with respect to all amounts sought in the Refund Claim.

6. Credit, Instead of Cash, Refund

In lieu of a cash payment to satisfy this Refund Claim, AT&T Mobility is willing to accept an effective refund of all tax, interest, and any other amounts sought in this Refund Claim through the issuance of credits to be applied to satisfy future tax liabilities of AT&T Mobility ("Credits").

Pursuant to the terms of the Settlement Agreement, upon the receipt from or acknowledgement of such Credits from this taxing jurisdiction AT&T Mobility will make a payment of cash representing the agreed upon value of those Credits to the Escrow Accounts for the benefit of the Settlement Class Members.

* * *

AT&T Mobility and the Settlement Class have consented to the filing of this Refund Claim and to all requests made herein, join in the filing of this Refund Claim to the extent that is permitted, assign to the other party any of its rights necessary to the filing and perfection of this Refund Claim, to the extent possible have waived any requirement that AT&T Mobility pay refunds to the Settlement Class prior to obtaining a refund or credit from this Taxing Jurisdiction, and have waived any other rights that might be inconsistent with the refund claim or the manner in which it has been filed.

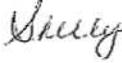
EXHIBIT A

Acadiana Cellular GP
AT&T Mobility II LLC
AT&T Mobility of Galveston LLC
AT&T Mobility Puerto Rico Inc
ATC Custom Services, Inc.
Bellingham Cellular Partnership
Bloomington Cellular Telephone Company
Bradenton Cellular Partnership
Bremerton Cellular Telephone Company
Cagal Cellular Communications Corporation
Cagal Cellular Communications Corporation
Cellular Retail LLC
Champaign CellTelCo
Chattanooga MSA LP
Cincinnati SMSA LP
Cingular Wireless Of Texas RSA #11 LP
Cingular Wireless Of Texas RSA #16 LP
Citrus Cellular Limited Partnership
Decatur RSA LP
Florida RSA No 2B
Georgia RSA #3 LP
Hood River Cellular Telephone Company Inc
Houma - Thibodaux Cellular Partnership
Lafayette MSA LP
Louisiana RSA No 7 Cellular GP
Louisiana RSA No 8 LP
Lubbock SMSA LP
Madison SMSA LP
McAllen-Edinburg Mission SMSA LP
Medford Cellular Telephone Company Inc
Melbourne Cellular Telephone Company
Milwaukee SMSA LP
Missouri RSA 11/12 LP
Missouri RSA 8 LP
Missouri RSA 9B1 LP
NE Georgia Limited Partnership
New Cingular Wireless PCS LLC
Ocala Cellular Telephone Company Inc
Oklahoma City SMSA LP
Oklahoma Independent RSA 7 Partnership
Oklahoma RSA 3 LP
Oklahoma RSA 9 LP
Olympia Cellular Telephone Company Inc
Orlando SMSA LP
Pine Bluff Cellular Inc

Provo Cellular Telephone Company
Reno Cellular Telephone Company
Salem Cellular Telephone Company
Santa Barbara Cellular Systems Ltd
Sarasota Cellular Telephone Company
St Cloud Cellular Telephone Company Inc
Telecorp Communications LLC
Texas RSA 18 LP
Texas RSA 19 LP
Texas RSA 2 Limited Partnership
Texas RSA 20B1 LP
Texas RSA 6 LP
Texas RSA 7B1 LP
Texas RSA 9B1 LP
Topeka SMSA LP
Visalia Cellular Telephone Company
Wireless Maritime Services LLC



CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers
DATE: December 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Shelly Gunby, Director of Financial Management 
SUBJECT: Resolution 2010-59, the 2010-2011 SERAF Shift

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution 2010-59, allocating the required funds for the required SERAF shift to schools and community colleges and submit a copy of said resolution to the county auditor to satisfy the reporting requirements contained in ABX4-26.

BACKGROUND:

Included in the California State Budget for fiscal year 2009-2010 is the requirement that redevelopment agencies "shift" property tax revenues to K-12 schools and community colleges.

Each agency share of the shift was determined by the California Department of Finance. The Winters Community Development Agency was notified on November 12, 2010 that our share is \$160,886.

The agency must notify the county auditor prior to March 1, 2011 how we intend to remit the funds; Resolution 2010-59 will satisfy that requirement. The payment to the county auditor is due on May 10, 2011. The agency will have the funds available, after we receive our first remittance from the county, to submit the payment on the required date. Failure to make the required SERAF payment in full will subject the agency to sanctions including:

1. Agency will be prohibited from adding new project areas, or expanding existing project areas.
2. Agency will be prohibited from issuing new bonds or other obligations.
3. Agency will be prohibited from encumbering any funds or expending any money derived from any source except:
 - Bonds issued before the imposition of sanctions

- Loans or money advanced to the agency
- Contractual obligations that if breached could subject the agency to damages or other liabilities or remedies.
- Obligations incurred for the payment of public improvements and the land for public improvements pursuant to Section 33445 of the Health and Safety Code.
- Indebtedness incurred for assisting affordable housing pursuant to Section 33334.2 of the Health and Safety Code, and
- An amount to be expended on monthly operation and administration of the agency not to exceed 75% of the average month amount spend for these purposes in the fiscal year preceding the fiscal year in which the agency failed to make the ERAF payment.

The California Redevelopment Association (CRA) has filed an appeal of the lawsuit (which was decided in favor of the State of California in May 2010) to prevent the State from taking the Redevelopment funds. It is hoped that the appeal will be decided prior to the May 10, 2011 payment date. Should the CRA prevail, the agency would not be required to make the payment. The status of recovering the funds paid in May 2010 will be decided at the same time as the appeal is decided.

FISCAL IMPACT:

Payment of this amount will severely impact the ability of the Agency to undertake additional projects. The agency would only have funding to pay the debt service on our bonds, and pay the required SERAF.

RESOLUTION 2010-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WINTERS ALLOCATING THE ERAF (EDUCATION REVNUUE AUGMENTION FUND) AMOUNT REQUIRED BY CHAPTER 21, STATUTES OF 2009

WHEREAS, Chapter 21, Statures of 2009 requires redevelopment agencies to shift \$.3 billion in property tax revenues to K-12 schools and community colleges during the 2009-20010 fiscal year: and

WHEREAS, the State Director of Finance determined the ERAF amount for the City of Winters in the amount of \$160,886: and

WHEREAS, the City of Winters is required to report to the County Auditor how the agency intends to remit the required amount;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Winters that \$160,886 shall be remitted by the Winters Community Development Agency on May 10, 2011 from the non- housing tax increment collected in the 2010-20110 fiscal year. Such payment shall be submitted in check form and delivered to the County Auditor.

PASSED AND ADOPTED by the City Council, City of Winters, the 7th day of December, 2010 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, CITY CLERK



EST. 1874

TO: Honorable Mayor and Council Members
DATE: December 7, 2010
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Nanci G. Mills, Director of Administrative Services/City Clerk 
SUBJECT: Resolution of Intention to Approve an Amendment to the Contract Between the Board of Administration of the Public Employees' Retirement System (CalPERS) and the City Council of the City of Winters to Provide 2% @ 50 Retirement Formula for Local Police Members and Introduction of Ordinance Authorizing Amendment of the CalPERS Contract

RECOMMENDATION:

That the Council take the following action:

1. Adopt Resolution 2010-57, a Resolution approving an amendment to the contract between the Board of Administration of the California Public Employees' Retirement System and the City Council of the City of Winters.
2. Introduce and waive the first reading of an Ordinance authorizing an amendment to the contract between the City Council of the City of Winters and the Board of Administration of the California Public Employees Retirement System and authorize staff to bring back the Ordinance for adoption on January 4, 2011.

BACKGROUND:

The City worked collaboratively with the Winters Police Officers Association (WPOA) recognizing the City's current budget reflecting the difficult economic conditions and the City's need for sustainable reform, while recognizing the crucial public safety service the WPOA members provide to the citizens.

Current employees receive 3% @ 55. The new formula of 2% @ 50 modified formula is applicable to local police members entering membership for the first time in the police classification after the effective date.

Approval of the attached Resolution of Intention and associated documents will initiate the process to amend the City's contract with the California Public Employees' Retirement System to provide the 2% at 50 modified formula for local police members,

FISCAL IMPACT:

The employer contribution will be 13.436% of reportable earnings with the 2% @ 50 plan. The 3% @ 55 plan employer rate is 24.138%.

RESOLUTION No. 2010-57

**A RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO
CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF WINTERS
AND THE BOARD OF ADMINISTRATION OF CALIFORNIA
PUBLIC EMPLOYEES RETIREMENT SYSTEM**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20475 (Different Level of Benefits). Section 21362 (2% @ 50 Modified formula) is applicable to local police members entering membership for the first time in the police classification after the effective date of this amendment to contract.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

**PASSED AND ADOPTED ON December 7, 2010, by the following
vote:**

AYES:
NOES:
ABSTAIN:
ABSENT:

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

ORDINANCE 2010-12

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE
CITY OF WINTERS AND THE BOARD OF ADMINISTRATION OF THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

WHEREAS, THE City Council of the City of Winters does ordain as follows:

That an amendment to the contract between the City of Winters and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part thereof as though herein set out in full.

WHEREAS, the City Manager of the City of Winters is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

WHEREAS, this Ordinance shall take effect thirty (30) days after the date of its adoption and shall be published at least one (1) time in the Winters Express, a newspaper of general circulation, published and circulated in Winters and thenceforth and thereafter the same shall be in full force and effect.

This Ordinance was introduced at a regular meeting of the City Council of the City of Winters on Tuesday, December 7, 2010 and adopted at a regular meeting of the City Council of the City of Winters on _____, 2011 by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk