CITY OF
WINTERS
california
Est. 1875

Winters City Council Meeting
City Council Chambers
318 First Street
Tuesday, March 20, 2012

6:00 p.m. - Executive Session

AGENDA

Personnel – Management Analyst – Advice from Legal Counsel – Pursuant to Government Code Section 54956.9 (b) – EEOC Charge No. 550-2011-01815

6:30 p.m. – Regular Meeting

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, March 6, 2012 (pp 1-7)
B. Proclamation Recognizing April 8th – April 14th, 2012, as National Public Safety Telecommunications Week (pp 8)
C. Proclamation Recognizing March, 2012 as American Red Cross Month (pp 9)
D. Project Acceptance – I-505/Gateway Utilities Phase 2, Project No. 021-09.02 (pp 10)

DISCUSSION ITEMS

1. Public Hearing and First Reading - Adoption of Ordinance 2012-02, An Ordinance of the City Council of the City of Winters Repealing Ordinance No. 2011-04 Which Determined the City would Comply with the Alternative Voluntary Redevelopment Program Pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in Order to Permit the Continued Existence and Operation of the Community Development Agency of the City of Winters (pp 11-19)

2. Public Hearing and First Reading of Ordinance 2012-03, an Ordinance of the City Council of the City of Winters Adding Sections 2.52.090 and Sections 2.52.100 to Title 2, Chapter 2.52 of the Winters Municipal Code to Establish Powers, Authority and Duties of Level 1 Police Reserves (pp 20-22)
3. Public Hearing and First Reading of Ordinance 2012-04, an Ordinance of the City Council of the City of Winters Amending Sections 3.24.020, 3.24.030, 3.24.060 and 3.24.110 of the Winters Municipal Code and Adding Section 3.24.135 to the Winters Municipal Code to Make Certain Clarifying and Conforming Changes Regarding the City of Winters Transient Occupancy Tax (pp 23-36)
4. Public Hearing and First Reading of Ordinance 2012-05, an Ordinance of the City Council of the City of Winters Adding 15.52.040 to Title 15, Chapter 52 of the Winters Municipal Code to Make Certain Clarifications Regarding the Issuance of Permits by the City of Winters (pp 37-40)
5. Award for Construction of Grant Avenue Sidewalk Connectivity, Project No. 10-11 (pp 41)
6. Approve an Exclusive Negotiating Rights Agreement between the City and Presidio Companies in Regards to the Downtown Hotel Project (pp 42-54)
7. Update, Discussion and Direction to Staff for Property Lease of City-Owned Property – 318 Railroad Avenue (APN# 003 204 005) (pp 55)
8. North Bank Trail Project- Putah Creek- Mitigation Area Update- Report (Under Separate Cover)
9. April City Council Meeting Calendar- Schedule of Meetings (pp 56)

CITY OF WINTERS AS SUCCESSOR AGENCY TO THE WINTERS COMMUNITY DEVELOPMENT AGENCY

1. Oversight Board Appointments- Update (Oral Report Only)

CITY MANAGER REPORT

INFORMATION ONLY

ADJOURNMENT

I declare under penalty of perjury that the foregoing agenda for the December 6, 2011 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 March 14, 2012, and made available to the public during normal business hours.

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.

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Wednesday at 10:00 a.m.

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CITY OF WINTERS California Est. 1875

Minutes of the Winters City Council Meeting
Held on March 6, 2012

6:00 p.m. - Executive Session

Personnel – Management Analyst – Advice from Legal Counsel – Pursuant to Government Code Section 54956.9 (b) – EEOC Charge No. 550-2011-01815

6:30 p.m. – Regular Meeting

Mayor Fridae called the regular meeting of the Winters City Council to order at 6:30 p.m.

Present:	Council Members Cecilia Aguiar-Curry, Harold Anderson, Michael Martin, Tom Stone, Mayor Fridae
Absent:	None
Staff:	City Manager John Donlevy, City Attorney John Wallace, City Clerk Nanci Mills, Environmental Services Manager Carol Scianna, Administrative Assistant Tracy Jensen.

Kelly Rathburn of the Arbor Day Foundation led the Pledge of Allegiance.

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

COUNCIL/STAFF COMMENTS: Council Member Aguiar-Curry attended the Yolo Leaders Meeting at the West Sacramento Community Center on 3/14, where Senators Steinberg & Wolk were present; there will be a Veterans Forum sponsored by Assembly Member Mariko Yamada and held in Davis on 3/31 from 9am-3pm; attended a Yolo Housing Commission meeting on 2/23; also attended the Berryessa Snow Mountain National Conservation Area meeting in Clear Lake

on 2/23, where there were 185 attendees including area Representatives Garamendi and Thompson. The folks from Clear Lake don't want private land affected, don't want to allow off-road vehicles, but did agree to additional public access. The combination of three federal agencies will help with fire protection and the eradication of marijuana. Ms. Aguiar-Curry also attended a Hispanic Advisory Committee meeting, where they discussed fund-raising on Youth Day; attended a job forum held at UCD today; reminded the other electeds of the Elderly Nutrition Program's Mayors For Meals Day to be held on Wednesday, March 21st. On this day, mayors and other elected officials deliver meals to seniors in our community. Ms. Aguiar-Curry sponsored a Healthcare and Yolo 211 meeting at her home on 3/8.

Council Member Anderson attended an energy meeting at the Woodland County Administration Building on 2/22, with a Community Choice Aggregation Energy Users Meeting to be scheduled as a follow-up. Mr. Anderson also attended an afternoon meeting of the SACOG Land Use Committee as well as a Local Government Commission meeting that evening on 3/1.

Council Member Stone said he appreciated the good wishes from everyone, apologized for his absence, and said both sons are returning home. Mr. Stone offered his heartfelt and sincere thanks to the Winters Fire Department for the wonderful send-off for Chief Vern Bruhn. They gave a wonderful send-off of Chief Bruhn. They did a wonderful job and showed we have a fire department with small roots and large talent.

Council Member Martin said he and Council Member Aguiar-Curry attended the 2X3 with the school district, where they are looking for better collaboration between the City and school through these tough economic times.

Mayor Fridae attended the Local Government Commission meeting last Thursday and enjoyed the guest speaker, who spoke about the effort to make cities green and efficient by making them walking and exercise-friendly and the possibly health benefits by using transportation less. Mayor Fridae would like to extend an invitation to the speaker to bring his power point presentation to a future City Council meeting.

PUBLIC COMMENTS: None

CONSENT CALENDAR

A. Minutes of the Regular Meeting of the Winters City Council Held on Tuesday, February 21, 2012
B. Resolution 2012-13, a Resolution of the City Council of the City of Winters Receiving from the Successor Housing Agency the Annual Housing Element Progress Report to Legislative Body, Governor's

Office of Planning and Research and State Department of Housing and Community Development for the Calendar Year Ending December 31, 2011 and Authorizing its Transmittal to the State Department of Housing and Community Development and the Governor's Office of Planning and Research

C. Approve Extension of Service Agreement No. 011-09 with Wallace-Kuhl & Associates to continue Landfill Monitoring Services for 2012 in the amount not to Exceed $7,000

D. Resolution 2012-14, A Resolution of the City Council of the City of Winters Approving the Public Utility Easement Across the Trestle Bridge, Authorizing the Mayor to Sign a Grant of Easement on the City's Behalf, and Authorizes the City Clerk to File the Grant of Easement with the County Recorder

City Manager Donlevy gave an overview. Regarding Item D, Council Member Martin asked if water would be run across the trestle bridge. Carol Scianna said yes, a 1" water line would be included. Motion by Council Member Aguiar-Curry, second by Council Member Stone to approve the Consent Calendar. Motion carried unanimously.

PRESENTATIONS

Mayor Fridae read aloud a Proclamation Honoring the 25th Anniversary of the Yolo County Women's History Month Committee and Recognizing March as Women's History Month. The Proclamation was then presented to YCWHMC representative Ms. BJ Ford, who thanked Council and invited them to the annual luncheon on March 8th.

Mayor Fridae read aloud a Proclamation Recognizing March 7, 2012 as California Arbor Day and presented the Proclamation to Kelly Rathburn, Regional Coordinator of the Sacramento Tree Foundation. Ms. Rathburn thanked the Council for their commitment to the 30,000 Tree Campaign, a nationwide initiative to plant 30,000 trees in 30 days, and said the Putah Creek Council has pledged 750 trees toward this goal.

Mayor Fridae gave the Proclamation Recognizing "National Agriculture Week" to Council Members Aguiar-Curry and Anderson, who will be presenting it to the Yolo County Farm Bureau at their breakfast tomorrow morning.

DISCUSSION ITEMS

1. Grant Avenue Sidewalk Connectivity Project-Legal Service Payment to Winters Joint Unified School District as per MOU

City Manager Donlevy gave an overview and said the legal services for this project, which was projected at $2,500 in August, 2011, actually came in at $7,839.50. The City moved forward and paid the bill to avoid losing the project. The project is currently out to bid, with bid opening scheduled on 3/15. We hope to complete the project over Spring break (the first week in April).

Council Member Martin, who participated in the 2X3 with the school district along with Council Member Aguiar-Curry, said the school district moved forward on their own and the City was not appraised of any changes. No adjustments were made to the bill as was indicated by the school district at the 2X3 meeting. The bill was sent to the City without justification of the charges.

Council Member Aguiar-Curry said there was one school board member that was surprised by the number of minor revisions that were made. The relationship between the school district and the City is priceless and going forward we must be very specific in anything we do.

Council Member Stone said the City needs to pay attention during these hard economic times. They got to us once, but allowing them to get to us twice is our fault. He then noted the bill was three times the estimated cost for legal services.

Council Member Martin said the school district is struggling and trying to keep as many programs as possible and we must look out for the best interest of the entire community. Ultimately, the City can't be at odds with the school district.

City Manager Donlevy pointed out that this payment does not go to the school district. It goes to a law firm in Sacramento, who used this project as a training ground @ $195/hour. The removal of two sentences from the MOU during August and September, 2011 cost $1,000.

Mayor Fridae said we must take the high road when choosing between paying the bill and moving forward with the project or not paying the bill and losing the project. The City needs to be more careful in the future.

Council Member Anderson said in some instances one attorney was not enough and two were sent, bringing the cost per meeting to $400. He then asked the City Attorney to contact the law firm to ask about the bill and their code of ethics and report back to Council. City Attorney Wallace said this would be difficult as the City is not the client of the law firm, the School District is. He did add that the School District had an obligation to notify the City of an increase to the estimated cost of legal fees.

City Manager Donlevy said the money to pay this bill is coming out of the City's Transportation Fund and not coming out of the grant for this project, and ultimately the sidewalk is for the children to be able to walk to school safely. In closing, he added this was the toughest grant deed ever.

2. Crossing Guard Services – Winters Joint Unified School District

City Manager Donlevy gave an overview and asked for direction regarding a bill received from the school district for crossing guard service for FY 2010-2011 in the amount of $22,589.88. He added the City has never before provided funding for crossing guards.

City Manager Donlevy said this was not presented to the school board but first came up at the 2X3. Council Member Martin confirmed that this subject was brought up for the first time at the last 2X3 meeting. Council Member Aguiar-Curry said this bill is for services 2 years ago, the amount has not been budgeted and the school district is asking for funding after the fact. As the City had no prior knowledge of the bill, the City should disregard the bill. Council Member Stone added that receiving the bill from two fiscal years ago is inappropriate.

Mayor Fridae said the school district is strapped for money and these are hard economic times for everyone, but we must economize and do the best we can with the money we have. A workshop with them might be a good idea. We have had a great relationship with them and it needs to continue.

Council Member Aguiar-Curry said things are bubbling up, ie: swimming pool costs and fields charge that we need to take care as she is fearful of where it could go. Any pool matters need to be resolved before the season starts. Council Member Stone said there was a different tone, an undercurrent, a different atmosphere that needs to be nipped in the bud. Council Member Anderson said we would need an agenda in order to accomplish anything and suggested that staff work out a possible meeting date and agenda and report back to Council. City Manager Donlevy agreed that the City and School District needs to meet to discuss financial concerns.

Motion by Council Member Stone, second by Council Member Martin, to reject the bill received from the Winters Joint Unified School District for Crossing Guard Services for FY 2010-2011 in the amount of $22,589.88. Council further directed staff to explore the possibility of a joint meeting. Motion carried unanimously.

Mayor Fridae closed the meeting of the Winters City Council at 7:22 p.m.

CITY OF WINTERS AS SUCCESSOR AGENCY TO THE WINTERS COMMUNITY DEVELOPMENT AGENCY

Mayor Pro Tem Aguiar-Curry opened the successor agency at 7:22 p.m.

1. Selection of Appointment to Oversight Board - Representative of Former Employees of Winters Community Development Agency

City Manager Donlevy gave an overview and then recommended Nanci Mills, Director of Administrative Services to serve on the oversight board for the Successor Agency to the Winters Community Development Agency. Nanci will represent the interests of the former employees of the Redevelopment Agency.

Motion by Agency Member Fridae, second by Agency Member Stone, to approve staff recommendation. Motion carried unanimously. Mayor Fridae asked that a letter go out tomorrow to Nanci Mills and Dirk Brazil regarding Nanci's appointment to the Oversight Board.

2. Selection of Mayors Appointment to Oversight Board

City Manager Donlevy gave an overview and said all of the cities in Yolo County are doing the same thing by asking that a selection be make for the Mayors appointment to the Oversight Board for the Successor Agency to the Winters Community Development Agency. The board will include five other board members from outside of the city. The meetings will occur during business hours. It was the opinion of City Attorney Wallace that the appointed representative not be an elected.

Mayor Fridae made a motion to select Harold Anderson to the Oversight Board and was seconded by Council Member Martin. Motion carried unanimously.

Mayor Pro Tem Aguiar-Curry closed the successor agency at 7:30 p.m.

CITY MANAGER REPORT: The North Bank Putah Creek project is starting to slip and become negative. We may need to call Mike Thompson for Congressional help regarding the mitigation area. The Fish and Wildlife Service and Cal Trans have been meeting on the side and issued a list containing 17 questions on many issues and casting doubt on the project. Alan Mitchell and Kurt Balasek have done an outstanding job conference calling and following up. The project is currently less than 50%. A vast majority of mitigations have been paid to large landowners working with the Fish and Wildlife Services, but the mitigation should remain here instead of someplace else. This is making it very difficult. If the project is out to bid, awarded, and under construction, and if we don't hit the window in the five month span, it will kick the project into another year. Council Member Martin asked if we couldn't also send a letter to Senator Garamendi, co-signed by the Council and the City Manager. City Manager Donlevy said yes and that he would bring a status back to Council on 3/20 as an action item.

Regarding Lake Berryessa, the contract for seven of the eight resorts was awarded to the Pence Group, an $80 million dollar project. Under contract, all $80 million is to be spent in the first fifteen years of the thirty year lease agreement, averaging $5.3 million to be spent per year. The lease has been held for 4 years and nothing has been done so far. No permits or environmental clearances have been applied for. The Fish and Game and Fish and Wildlife Services have seen nothing. Having no project team is a concern. The agreement said Markley Cove would never be shut down. The Frazier's are scheduled to be out in March, 2013. City Manager Donlevy has talked to people at the Bureau who have said the Pence Group has until the end of March to respond within the 30-day response window. A status report will be brought back to Council.

City Manager Donlevy and Police Chief Gutierrez will be attending a Leadership Forum and generate a work program.

ADJOURNMENT: Mayor Fridae adjourned the meeting in memory of Fire Chief Vern Bruhn at 7:51 p.m.

_____
Woody Fridae, Mayor

ATTEST:

_____
Nanci G. Mills, City Clerk

Proclamation
National Public Safety Telecommunications Week
April 8th – 14th, 2012

WHEREAS, emergencies can occur at anytime that require police, fire or emergency medical services; and

WHEREAS, when an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property; and

WHEREAS, the safety of our law enforcement officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the Yolo Emergency Communications Agency; and

WHEREAS, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and

WHEREAS, Public Safety Telecommunicators are the single vital link between the citizen and the public safety responder who may apprehend a criminal, save their possessions from fire, save their life or the life of a loved one; and

WHEREAS, Public Safety Telecommunicators of YECA have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients.

THEREFORE BE IT RESOLVED, that the City Council of Winters declares the week of April 8-14, 2012 to be National Telecommunications Week in Winters in honor of the men and women whose diligence and professionalism keep our community and citizens safe.

Signed this ___day of March, 2012. _____

American Red Cross

Yolo County Proclamation of American Red Cross Month

For more than 130 years, the American Red Cross has been at the forefront of helping Americans prevent, prepare for and respond to large and small disasters. Families and communities depend on the Red Cross in times of need; yet the Red Cross depends on the support of the American people to help sustain the foundation.

Each year during the month of March we formally recognize the American Red Cross and its essential humanitarian role in our community. We honor the role of the American Red Cross's contribution to making Yolo County a better place. This year, the Red Cross celebrates the incredible support received from donors as well as invites those who have not yet supported the Red Cross mission to do so, whether that be through a financial or blood donation, volunteering or taking a training or safety class.

For more than 100 years, the Red Cross in Yolo County has relied on the everyday heroes who donate time, blood or money. The Red Cross in Yolo County is one of more than 700 chapters across the country who tirelessly serves their community.

It has been the place where compassionate people freely give their time and talent to help prevent and ease human suffering among friends, neighbors and even strangers.

The citizens of Yolo County made contributions to fund the cost of providing immediate relief to 506 families who have undergone a local disaster. You learned CPR and Preventative Health & Safety to save the lives of friends, neighbors and strangers. You volunteered your time to help those in need.

In the past year alone, the Capital Region Chapter responded to 365 local emergencies, assisted 3,173 military family members and trained 55,540 people in lifesaving skills such as CPR and First Aid. Red Cross volunteers are the core of the Red Cross, donating their time and energy to selflessly serve those in need; demonstrating the compassion and generosity for which Americans are known.

The Capital Region Chapter and its nearly 2,709 volunteers and donors provide valuable tools and education to individuals, families, workplaces and schools, making us all stronger and more resilient.

Therefore, I, Woody Fridae, Mayor, by virtue of the authority vested in me by the City of Winters, County of Yolo, State of California, do hereby proclaim March 2012 as American Red Cross Month. I urge all Americans to continue to give your time, blood and money to make a difference in the humanitarian fabric of this community. We help each other when we help the Red Cross.

In witness whereof, I have hereunto set my hand this twentieth day of March, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

CITY OF WINTERS
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STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: March 20, 2010

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Nick Ponticello, City Engineer

SUBJECT: Project Acceptance
I-505/Gateway Utilities Phase 2, Project No. 021-09.02

RECOMMENDATION: Staff recommends that City Council accept the I-505/Gateway Utilities Phase 2 project as complete and direct the City Clerk to file a Notice of Completion.

BACKGROUND: On September 6, 2011 City Council awarded a contract to G.D. Nielson for construction of a new sewer pump station within the City's right-of-way, which is surrounded by the "Jordan" properties. The pump station was completed in January and commissioned on March 1, 2012. The construction is complete and determined to be acceptable by Staff.

Council authorized $1,287,000 for the entire I-505/Gateway Utilities project. The monies expended to date to complete phase 1 & 2 are less than $805,000. There remains over $480,000 to complete the remaining phase which includes looping the water main in Grant Avenue between E. Main Street and Matsumoto Lane, installing sewer main crossing in Grant Avenue to serve the BK/Arco and other properties along the north side of Grant, and providing permanent PG&E power to the Phase 2 pump station.

ALTERNATIVES: None recommended by staff.

FISCAL IMPACT: The cost of this project is being paid through 2007 Sewer and Water Bonds. A Zone of Benefit will be established to reimburse the City through the development of the properties benefiting form the Phase 2 project.

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CITY COUNCIL
STAFF REPORT

TO:	Honorable Mayor and Council members
DATE:	March 20, 2012
FROM:	John W. Donlevy, Jr., City Manager
SUBJECT:	Adoption of Ordinance 2012-02, An Ordinance Repealing Ordinance No. 2011-04 Which Determined the City would Comply with the Alternative Voluntary Redevelopment Program Pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in Order to Permit the Continued Existence and Operation of the Community Development Agency of the City of Winters

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RECOMMENDATION:

That the City Council hold a public hearing on the adoption of Ordinance 2012-02, An Ordinance Repealing Ordinance No. 2011-04 Which Determined the City would Comply with the Alternative Voluntary Redevelopment Program Pursuant to Part 1.9 of Division 24 of the California Health and Safety Code in Order to Permit the Continued Existence and Operation of the Community Development Agency of the City of Winters. That the City Council then introduce the Ordinance, and schedule the second reading and adoption for April 17, 2012.

BACKGROUND:

The City of Winters approved and adopted a Community Development Project Area Plan in 1992 and established the Winters Community Development Agency (CDA) to oversee the Plan. The CDA was authorized by State Community Redevelopment Law to eliminate or reduce blight and blighting influences existing within the Project Area as set forth in the Plan. Through the CDA many important programs and projects were successfully executed providing many benefits to the Winters community in the following categories: Public Infrastructure; Public Facilities; Economic Development; Project Area Planning; and Property Disposition and Development.

In an effort to resolve the State's budget crisis the California Legislature as part of the 2011-2012 State budget bill enacted, and the Governor signed, companion bills AB 1X

26 and AB 1X 27, requiring that each redevelopment agency in the State be dissolved unless the community that created it enacted an ordinance committing it to make certain payments. Under the threat of dissolution pursuant to AB 1X 26, the City adopted Ordinance No. 2011-04, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS. Ordinance No. 2011-04 was adopted on August 16, 2011 determining that the City would comply with the Alternative Voluntary Redevelopment Program and would make the annual community remittances in accordance with AB 1X 27.

On July 18, 2011 a Petition for Writ of Mandate was filed in the Supreme Court of the State of California (*California Redevelopment Association, et al.* v. *Ana Matosantos, et al.*, Case No. 5194861), challenging the constitutionality of AB 1X 26 and AB 1X 27 on behalf of cities, counties and redevelopment agencies. On December 29, 2011, the Supreme Court issued its final decision, upholding AB 1X 26, invalidating AB 1X 27, and extending all statutory deadlines under AB 1X 26, thus essentially dissolving all redevelopment agencies throughout the State effective February 1, 2012.

In light of the Supreme Court decision referenced above, the City Council desires to repeal its prior approval of Ordinance No. 2011-04, effectively rescinding its prior determination to comply with the Alternative Voluntary Redevelopment Program and make the annual community remittances in accordance with AB 1X 27.

FISCAL IMPACT:

None, the prior ordinance (Ordinance No. 2011-04) was self cancelling. The adoption of this ordinance (Ordinance No. 2012-02) is purely for housekeeping purposes.

ATTACHMENTS:

- Proposed Ordinance 2012-02
- Ordinance 2011-04

ORDINANCE NO. 2012-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, REPEALING ORDINANCE NO. 2011-04 WHICH DETERMINED THE CITY WOULD COMPLY WITH THE ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS

WHEREAS, the City Council of the City of Winters ("City") approved and adopted the Redevelopment Plan for the Winters Redevelopment Project ("Redevelopment Plan") covering certain properties within the City (the "Project Area"); and

WHEREAS, the Community Development Agency of the City of Winters ("Agency") was engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature enacted, and the Governor signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacted an ordinance committing it to make certain payments; and

WHEREAS, specifically, AB 1X 26 prohibited agencies from taking numerous actions, and additionally provided that agencies were deemed to be dissolved as of October 1, 2011; and

WHEREAS, AB 1X 27 provided that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the Alternative Voluntary Redevelopment Program provided for under AB 1X 27 required that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, the City adopted Ordinance No. 2011-04, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY DEVELOPMENT

AGENCY OF THE CITY OF WINTERS, on August 16, 2011 ("Ordinance No. 2011-04"), determining it would comply with the Alternative Voluntary Redevelopment Program and would make the annual community remittances in accordance with AB 1X 27; and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association, et al.* v. *Ana Matosantos, et al.*, Case No. 5194861), challenging the constitutionality of AB 1X 26 and AB 1X 27 on behalf of cities, counties and redevelopment agencies; and

WHEREAS, on December 29, 2011, the Supreme Court issued its final decision in the aforesaid litigation, upholding AB 1X 26, invalidating AB 1X 27, and extending all statutory deadlines under AB 1X 26, essentially dissolving all redevelopment agencies throughout the State effective February 1, 2012; and

WHEREAS, in light of the Supreme Court decision referenced above, the City Council desires to repeal its prior approval of Ordinance No. 2011-04, effectively rescinding its prior determination to comply with the Alternative Voluntary Redevelopment Program and make the annual community remittances in accordance with AB 1X 27; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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

Section 1. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. **Repeal of Ordinance No. 2011-04.** The City Council hereby repeals, vacates and sets aside its approval of Ordinance No. 2011-04.

Section 3. **Certification; Publication.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in accordance with law, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 4. **Effective Date.** This Ordinance shall become effective thirty (30) days from its adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Winters, on the 17th day of April 2012, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
Woody Fridae, Mayor

ATTEST:

_____
Nanci G. Mills, City Clerk

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ORDINANCE No. 2011-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS, CALIFORNIA, DETERMINING IT WILL COMPLY WITH THE VOLUNTARY ALTERNATIVE REDEVELOPMENT PROGRAM PURSUANT TO PART 1.9 OF DIVISION 24 OF THE CALIFORNIA HEALTH AND SAFETY CODE IN ORDER TO PERMIT THE CONTINUED EXISTENCE AND OPERATION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF WINTERS

WHEREAS, the City Council of the City of Winters ("City") approved and adopted the Redevelopment Plan for the Winters Redevelopment Project ("Redevelopment Plan") covering certain properties within the City (the "Project Area"); and

WHEREAS, the Community Development Agency of the City of Winters ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code § 33000, et seq.) ("CRL"); and

WHEREAS, since adoption of the Redevelopment Plan, the Agency has undertaken redevelopment projects in the Project Area to eliminate blight, to improve public facilities and infrastructure, to renovate and construct affordable housing, and to enter into partnerships with private industries to create jobs and expand the local economy; and

WHEREAS, over the next few years, the Agency hopes to implement a variety of redevelopment projects and programs to continue to eliminate and prevent blight, stimulate and expand the Project Area's economic growth, create and develop local job opportunities and alleviate deficiencies in public infrastructure, to name a few; and

WHEREAS, as part of the 2011-2012 State budget bill, the California Legislature has recently enacted, and the Governor has signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, specifically, AB 1X 26 prohibits agencies from taking numerous actions, effective immediately and purportedly retroactively, and additionally provides that agencies are deemed to be dissolved as of October 1, 2011; and

WHEREAS, once a redevelopment agency is dissolved, AB1X26 makes its existing assets and future property tax revenues available for use by third parties for their own benefit; and

WHEREAS, AB 1X 27 provides that a community may participate in an "Alternative Voluntary Redevelopment Program," in order to enable a redevelopment agency within that

community to remain in existence and carry out the provisions of the CRL, by enacting an ordinance agreeing to comply with Part 1.9 of Division 24 of the Health and Safety Code; and

WHEREAS, the Alternative Voluntary Redevelopment Program requires that the community agree by ordinance to remit specified annual amounts to the county auditor-controller; and

WHEREAS, under the threat of dissolution pursuant to AB 1X 26, and upon the contingencies and reservations set forth herein, the City shall make the Fiscal Year 2011-2012 community remittance, currently estimated to be Five Hundred Twenty-Four Thousand Nine Hundred Forty-Two Dollars ($524,942), as well as the subsequent annual community remittances as set forth in the CRL; and

WHEREAS, the City reserves the right to appeal the California Director of Finance's determination of the Fiscal Year 2011-2012 community remittance, as provided in Health and Safety Code Section 34194; and

WHEREAS, while the City currently intends to make these community remittances, they shall be made under protest and without prejudice to the City's right to recover such amounts and interest thereon, to the extent there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional; and

WHEREAS, the City reserves the right, regardless of any community remittance made pursuant to this Ordinance, to challenge the legality of AB 1X 26 and AB 1X 27 on behalf of the City and/or Agency; and

WHEREAS, to the extent a court of competent jurisdiction enjoins, restrains, or grants a stay on the effectiveness of the Alternative Voluntary Redevelopment Program's payment obligation of AB 1X 26 and AB 1X 27, the City shall not be obligated to make any community remittance for the duration of such injunction, restraint, or stay; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

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

Section 1. **Recitals.** The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. **Participation in the Alternative Voluntary Redevelopment Program.** In accordance with Health and Safety Code Section 34193, and based on the Recitals set forth above, the City Council hereby determines that the City shall comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as enacted by AB 1X 27.

Section 3. **Payment Under Protest.** Except as set forth in Section 4, below, the City Council hereby determines that the City shall make the community remittances set forth in Health

and Safety Code section 34194 *et seq.*

Section 4. **Effect of Stay or Determination of Invalidity**. City shall not make any community remittance in the event a court of competent jurisdiction either grants a stay on the enforcement of AB 1X 26 and AB 1X 27 or determines that AB 1X 26 and AB 1X 27 are unconstitutional and therefore invalid, and all appeals therefrom are exhausted or unsuccessful, or time for filing an appeal therefrom has lapsed. Any community remittance shall be made under protest and without prejudice to the City's right to recover such amount and interest thereon in the event that there is a final determination that AB 1X 26 and AB 1X 27 are unconstitutional. If there is a final determination that AB 1X 26 and AB 1X 27 are invalid, this Ordinance shall be deemed to be null and void and of no further force or effect.

Section 5. **Implementation**. The City Council hereby authorizes and directs the City Manager to take any action and execute any documents necessary to implement this Ordinance, including but not limited to notifying the Yolo County Auditor-Controller, the Controller of the State of California, and the California Department of Finance of the adoption of this Ordinance and the City's agreement to comply with the provisions of Part 1.9 of Division 24 of the Health and Safety Code, as set forth in AB 1X 27.

Section 6. **Additional Understandings and Intent.** It is the understanding and intent of the City Council that, once the Agency is again authorized to enter into agreements under the CRL, the City will enter into an agreement with the Agency as authorized pursuant to Section 34194.2, whereby the Agency will transfer annual portions of its tax increment to the City in amounts not to exceed the annual community remittance payments to enable the City, directly or indirectly, to make the annual remittance payments. The City Council does not intend, by enactment of this Ordinance, to pledge any of its general fund revenues or assets to make the remittance payments.

Section 7. **CEQA**. The City Council finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the creation and continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Yyolo in accordance with CEQA Guidelines.

Section 8. **Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings are based are located at the City Clerk's office located at 318 First Street, Winters, CA 95694. The custodian for these records is the City Clerk.

Section 9. **Severability**. 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 this 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 10. Certification; Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Winters and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933.

Section 11. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

This ordinance was introduced, and the title thereof read at the regular meeting of the City Council on August 2, 2011, and adopted, after the second reading and public hearing, at the regular meeting of the City Council on August 16, 2011.

On a motion by Council Member Martin, seconded by Council Member Aguiar-Curry, the foregoing ordinance was passed and adopted by the City Council of the City of Winters, State of California, this 16th day of August, 2011, by the following vote, to wit:

AYES: Council Members Aguiar-Curry, Anderson, Martin, Mayor Fridae

NAYS: None

ABSENT: Council Member Stone

ABSTAIN: None

Woody Fridae, Mayor

ATTEST:

Nanci G. Mills, City Clerk

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CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: John C. Wallace, City Attorney

SUBJECT: Ordinance 2012-03 - Level One Reserve Police Officer Authority

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RECOMMENDATION: Conduct Public Hearing - Introduce Ordinance 2012-03

BACKGROUND: The City Council of the City of Winters is given the power under California Penal Code Section 830.1 to give Police Reserve Officers with Level 1 classification full authority to act as Peace Officers. The City Council has previously granted such authorization by Resolution, and this Ordinance will Codify such authority in the Winters Municipal Code. Level 1 Authority requires a minimum of 400 working hours and other requirements set by the City of Winters. The Ordinance is exempt under the California Environmental Quality Act, as no physical effect on the environment is anticipated. The authority is already in place through prior resolution.

FISCAL IMPACT: None.

ORDINANCE No. 2012-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS ADDING SECTIONS 2.52.090 AND SECTIONS 2.52.100 TO TITLE 2, CHAPTER 2.52 OF THE WINTERS MUNICIPAL CODE TO ESTABLISH POWERS, AUTHORITY AND DUTIES OF LEVEL 1 POLICE RESERVES PURSUANT TO CALIFORNIA PENAL CODE SECTIONS 830.1 AND 830.6

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 authorize and empower police reserves rated as Level 1 Reserves to have full peace officer powers and duties as provided by California Penal Code Section 830.1. The City Council has previously so authorized by Resolution, and this Ordinance will codify that authorization.

SECTION 2: Section 2.52.090 and Section 2.52.100 are added to Title 1, Chapter 2.52 of the Winters Municipal Code to read as follows:

2.25. 090. Level 1 Reserves – Powers and Duties – Statutory Authority
By statute, the California legislature has provided that police reserves who are rated as Level 1 Reserves may be empowered by local governmental bodies to have those full peace officer powers and duties as provided by Penal Code Section 830.1.

2.25.100. **Level 1 Reserves – Eligibility Determination.**
Those City of Winters Police Reserves who have qualified as Level 1 Reserves pursuant to Penal Code Section 832.6(a)(1) and, in addition, have completed a minimum of two years' field experience comprising a minimum of four hundred working hours with the Winters Police Department or as a lateral Level 1 police reserve officer from another California P.O.S.T. agency, shall have those peace officer powers and duties as provided by Penal Code Section 830.1 in accordance with Penal Code Section 830.6(a)(2).

SECTION 3: ENVIRONMENTAL REVIEW

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

SECTION 4: Effective Date

This ordinance shall become effective May 3, 2012, 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 March 20, 2012, and adopted, after the second reading, at the regular meeting of the City Council on April 3, 2012.

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 3rd day of April, 2012, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
MAYOR KEITH FRIDAE

ATTEST:

_____
NANCI G. MILLS, CITY CLERK

CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: John C. Wallace, City Attorney

SUBJECT: Ordinance 2012-04 – Transient Occupancy Tax (TOT) - Amendments

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RECOMMENDATION: Conduct Public Hearing – Introduce Ordinance 2012-04

BACKGROUND: The City of Winters has an existing Transient Occupancy Tax (TOT), providing for a 10% tax on hotels, bed & breakfast operations, and similar short-term occupancy. Over the years since its adoption, state law has added regulations and definitions requiring the updating of the ordinance. The tax is unchanged, but the ordinance is brought into compliance with state law. The Ordinance is exempt under the California Environmental Quality Act, as no physical effect on the environment is anticipated.

FISCAL IMPACT: None.

Chapter 3.24
TRANSIENT OCCUPANCY TAX

Sections:

3.24.010 Short title.
3.24.020 Definitions.
3.24.030 Tax imposed.
3.24.040 Exemptions.
3.24.050 Operator's duties.
3.24.060 Registration.
3.24.070 Reporting and remitting.
3.24.080 Penalties and interest.
3.24.090 Failure to collect and report tax—Determination of tax by administrative services director.
3.24.100 Appeal.
3.24.110 Records.
3.24.120 Refunds.
3.24.130 Actions of collect.
3.24.140 Violations—Misdemeanor.

3.24.010 Short title.

This chapter shall be known as the "Uniform Transient Occupancy Tax Ordinance of the City of Winters." (Ord. 93-11 (part): prior code § 3-6.01)

3.24.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

"Hotel" means any structure, or any portion of any structure, which is occupied or intended or designated for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

"Occupancy" means the use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

"Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliances with the

provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Rent" means the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

"Transient" means any person who exercises occupancy or is entitled to occupancy by reasons of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered. (Ord. 93-11 (part): prior code § 3-6.02)

3.24.030 Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten (10) percent of the rent charged by the operator in accordance with Revenue and Taxation Code Sections 7203.5 and 7282.3 which prohibit levying of such tax on any amount subject to sales and use tax thus the city cannot collect a transient occupancy tax on meals served to lodgers subject to sales and use tax. The tax constitutes a debt owned by the transient to the city, which is extinguished only by payment to the operator or to the city. Transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the administrative services director shall require that such tax be paid directly to the administrative services department of the city. (Ord. 2003-07 § 2; Ord. 93-11 (part): prior code § 3-6.03)

3.24.040 Exemptions.

No tax shall be imposed upon:

A. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;

B. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the administrative services director. (Ord. 93-11 (part): prior code § 3-6.04)

3.24.050 Operator's duties.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided. (Ord. 93-11 (part): prior code § 3-6.05)

3.24.060 Registration.

Within thirty (30) days after the effective date of the ordinance codified in this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of any hotel renting occupancy to transients shall register the hotel with the administrative services department and obtain a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

A. The name of the operator;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Administrative Services Department for the purpose of collection from transients the Transient Occupancy Tax and remitting said tax to the Administrative Services Department. This certificate does not authorize any person to conduct any unlawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit." (Ord. 93-11 (part): prior code § 3-6.06)

3.24.070 Reporting and remitting.

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the administrative services director of the city, make a return to the administrative services department, on forms provided, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the administrative services department. The administrative services director may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the administrative services department. (Ord. 93-11 (part): prior code § 3-6.07)

3.24.080 Penalties and interest.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.

C. Fraud. The administrative services director determines that the non-payment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid. (Ord. 93-11 (part): prior code § 3-6.08)

3.24.090 Failure to collect and report tax—Determination of tax by administrative services director.

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of the tax or any portion thereof required by this chapter, the

administrative services director of the city shall proceed in such manner as may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the administrative services director shall procure such facts and information as is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the administrative services director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States Mail, postage prepaid, addressed to the operator so assessed at his or her last known place of address. Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the administrative services director for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the administrative services director shall become final and conclusive and immediately due and payable. If such application is made, the administrative services director shall give not less than five days written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the administrative services director shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 3.24.100. (Ord. 93-11 (part): prior code § 3-6.09)

3.24.100 Appeal.

Any operator aggrieved by any decision of the administrative services director with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his or her last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 93-11 (part): prior code § 3-6.10)

3.24.110 Records.

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the

collection of and payment to the city which records the administrative services director shall have the right to inspect at all reasonable times. (Ord. 93-11 (part): prior code § 3-6.11)

3.24.120 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in subsections B and C of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed by the administrative services director within three years of the date of payment. The claim shall be on forms furnished by the city clerk.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the administrative services director that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the administrative services department, or when the transient having paid the tax to the operator, establishes to the satisfaction of the administrative services director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto. (Ord. 93-11 (part): prior code § 3-6.12)

3.24.130 Actions of collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 93-11 (part): prior code § 3-6.13)

3.24.140 Violations—Misdemeanor.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars ($1000.00) or by

imprisonment in the county of Yolo jail for a period of not more than six months or by both fine and imprisonment.

Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the administrative services director, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim, who makes any false or fraudulent report or claim with intent to defeat or evade the determination of an amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. 2003-07 § 2; Ord. 93-11 (part): prior code § 3-6.14)

ORDINANCE No. 2012-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING SECTIONS 3.24.020, 3.24.030, 3.24.060, AND 3.24.110 OF THE MUNICIPAL CODE AND ADDING SECTION 3.24.135 TO THE MUNICIPAL CODE TO MAKE CERTAIN CLARIFYING AND CONFORMING CHANGES CONCERNING THE CITY'S TRANSIENT OCCUPANCY TAX

WHEREAS, the City has not amended its transient occupancy tax ordinance for several years and now desires to do so, particularly in light of the fact that state law has changed with respect to certain aspects of the collection of the transient occupancy tax; and

WHEREAS, the City also desires to clarify that the transient occupancy tax is a tax imposed on transients for their occupancy in City hotels and similar lodgings, regardless of who the tax is collected by; and

WHEREAS, the City Council, in adopting this Ordinance, is making changes to certain aspects concerning the collection of the transient occupancy tax but is not increasing the tax in any way.

Now, therefore, the City Council of the City of Winters does hereby ordain as follows:

SECTION 1. PURPOSE

The purpose of this Ordinance is to amend and update sections 3.24.020, 3.24.030, 3.24.060, and 3.24.110 of, and to add section 3.24.135 to, the Winters Municipal Code concerning the City's transient occupancy tax in order to clarify certain provisions of the Code in a manner that is consistent with state law. This Ordinance does not increase the amount or rate of the transient occupancy tax.

SECTION 2. Throughout the entire Chapter 24 of Title 3 of the Winters Municipal Code, the Director of Financial Management shall be substituted for the Director of Administrative Services and the references to Administrative Services Department shall be changed to Financial Management Department. Section 3.24.020 of the Winters Municipal Code is hereby amended to amend the definitions of the words "Hotel," "Operator," and "Rent" to read as follows:

> "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designated for occupancy by transients for dwelling, lodging or sleeping purposes, *located in the City of Winters,* and includes any hotel, inn, tourist home or house, dormitory, public or private club, mobilehome or house trailer at a fixed location *outside a mobilehome park*, or other similar structure or portion thereof.

"Operator" means *any* ~~the~~ person who *charges for occupancy within a hotel regardless of whether the person has physical control over, or makes management decisions about, the hotel. An operator may include, but is not limited to, the* ~~is~~ proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal. Compliances with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Rent" means the *total* consideration charged *to the transient*, whether or not received, for the occupancy of space in a hotel. *"Rent" includes charges for equipment (such as, but not limited to, rollaway beds and cribs and in-room services (such as, but not limited to, movies and other services),* valued in money, whether to be received in money, goods, labor or otherwise. ~~,~~ *"Rent"* includ*es*~~ing~~ all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

SECTION 3. Section 3.24.020 of the Winters Municipal Code is hereby amended to add a definition for the words "Proprietor" and "Successor to Proprietor" as follows:

"Proprietor" means a person who has the legal right to operate, or the owner of, a hotel.

"Successor to Proprietor" or "Successor Proprietor" means any person who acquires the right to operate a hotel from a predecessor proprietor, directly or indirectly, by any means. If, following transfer of an ownership or management interest in a hotel, the hotel continues to operate as such, either continuously or for business interruption not exceeding thirty (30) days, the hotel shall constitute a succession for purposes of this chapter.

SECTION 4. Section 3.24.030 of the Winters Municipal Code is hereby amended to read as follows:

3.24.020 Tax imposed.

A. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ten (10) percent of the rent charged by the operator in accordance with Revenue and Taxation Code Sections 7203.5 and 7282.3.

B. Revenue and Taxation Code section 7282.3 ~~which~~ prohibits levying of such tax on any amount subject to sales and use tax. ~~t~~*T*hus the city cannot collect a transient occupancy tax on meals *(including beverages)* served to lodgers subject to sales and use tax.

C. The tax constitutes a debt owned by the transient to the city, which is extinguished only by payment to the operator or to the city. Transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Financial Management director shall require that such tax be paid directly to the Financial Management department of the city.

SECTION 5. Section 3.24.060 of the Winters Municipal Code is hereby amended to read as follows:

3.24.060 Registration.

Within thirty (30) days after the effective date of the ordinance codified in this chapter, or within thirty (30) days after commencing business, whichever is later, each ~~operator~~ *proprietor* of any hotel renting occupancy to transients shall register the hotel with the Financial Management department and obtain a transient occupancy registration certificate to be at all times posted in a conspicuous place on the premises. The certificate shall, among other things, state the following:

A. The name of the *proprietor* ~~operator~~;

B. The address of the hotel;

C. The date upon which the certificate was issued;

D. *The following statement:* "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the ~~Uniform~~ Transient Occupancy Tax Ordinance by registering with the Financial Management Department for the purpose of collection from transients the Transient Occupancy Tax and remitting said tax to the Financial Management Department. This certificate does not authorize any person to conduct any unlawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

SECTION 6. Section 3.24.110 of the Winters Municipal Code is hereby amended to require hotel operators to maintain records for four years, rather than three, in order to be consistent with the applicable statute of limitations set forth in Revenue and Taxation Code section 7283.51, and to read as follows:

3.24.110 Records.

(a) It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this article to keep and preserve, for a period of four years, within the boundaries of this city, all business records as may be necessary to determine the amount of such tax for which the operator is liable for the collection and payment to the city. The Director and authorized deputies or agents, in the exercise of duties imposed by this article, shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the city. All records which may be necessary to inspect shall be kept within the city or shall be produced within ten working days of written notice at the business location within the city.

(b) In the event records are not produced upon request, or such records are not reasonably able to be audited, the tax, interest, and penalties will be levied based upon the prior collections and remittances of taxes by the operator to the city for that operator's hotel during the audit period. Further, and without limitation, any operator who does not produce records following written notice as set forth herein shall pay, as a civil penalty, in addition to any tax, penalty, or interest, the sum of $100.00 per day for each business day the records are not produced for audit.

Section 7. Section 3.24.120(A) is hereby amended, reflecting the City's Claim Ordinance, to read as follows:

(A) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this article, it may be refunded as provided in subsections (b) and (c) of this section, provided that a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment.

Section 8. Section 3.24.135 is hereby added to the Winters Municipal Code to read as follows:

3.24.135 Change of Ownership – Tax Clearance Certificate

A. Pursuant to California Revenue and Taxation Code section 7283.5, as it may be amended from time to time, a successor proprietor or prospective successor proprietor may request in writing from the City the issuance of a tax clearance certificate stating the amount of tax and any accrued penalties and interest, due and owing, if any.

B. The City shall, within 90 days of the receipt of the written request for a tax clearance certificate, issue the tax clearance certificate or may conduct an audit of the hotel. The audit must be completed within 90 days from the date the records of the hotel

were made available to the City, and a tax clearance certificate must be issued within 30 days of the completion of the audit.

C. If, following an audit, the City determines that the current proprietor's records are insufficient to assess the amount of tax due and owing, the City shall, within 30 days of making that determination, notify the prospective successor proprietor that a tax clearance certificate will not be issued.

D. If the City does not comply with the request for a tax clearance certificate, the successor proprietor shall not be liable for any transient occupancy tax obligation incurred prior to the date of the purchase or transfer of the property.

E. The tax clearance certificate shall state the following:

1. The amount of tax, interest, and penalties then due and owing

2. The period of time for which the tax clearance certificate is valid; and

3. That the purchaser, transferee, or other person may rely on the tax clearance certificate as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

F. Any successor proprietor who does not obtain a tax clearance certificate under this section, or who obtains a tax clearance certificate that indicates that tax is due and owing and fails to withhold sufficient funds in the escrow account for the purchase of the property to satisfy the transient tax liability shall be held liable for the amount of tax due and owing.

G. The fee for issuance of a tax clearance certificate shall be established by resolution of the City Council.

SECTION 9: ENVIRONMENTAL REVIEW

This ordinance is not subject to the California Environmental Quality Act ("CEQA" pursuant to 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060 (c)(3) the activity is not a project as defined in 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated studies. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

SECTION 9: Effective Date

This ordinance shall become effective May 3, 2012, 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 March 20, 2012, and adopted, after the second reading, at the regular meeting of the City Council on April 3, 2012, by the following vote:

AYES:	Council Member(s):
NOES:	Council Member(s):
ABSENT:	Council Member(s):
ABSTAIN:	Council Member(s):

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Councilmembers

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: John C. Wallace, City Attorney

SUBJECT: Ordinance 2012-05 - Permit Requirements

RECOMMENDATION: Conduct Public Hearing - Introduce Ordinance 2012-05

BACKGROUND: This Ordinance adds a section to the Winters Municipal Code listing requirements for the issuance of permits to any person to do any plumbing, drainage, mechanical, electrical, framing, structural, grading or demolition work regulated by Chapter 52 of Title 15, which governs the uniform codes used in construction. Essentially, the section details the current City procedures where the Building Department uses all reasonable information to determine the value of the work for permit fee purposes. Among other documents, the section specifically allows the Building Department to review contracts and contract prices for the work to be done. Such contracts may be proprietary in nature and thus are not Public Records under the codification. The Ordinance is exempt under the California Environmental Quality Act, as no physical effect on the environment is anticipated.

FISCAL IMPACT: None.

ORDINANCE No. 2012-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS ADDING 15.52.040 TO TITLE 15, CHAPTER 52 OF THE WINTERS MUNICIPAL CODE TO MAKE CERTAIN CLARIFICATION REGARDING THE ISSUANCE OF PERMITS BY THE CITY OF WINTERS

WHEREAS, the City of Winters has adopted a number of Uniform Construction Codes, by reference, as listed in Title 15, Chapter 4, Section 15.04.010 of the Winters Municipal Code; and

WHEREAS, the City adopted those Codes pursuant to Section 50022.2 of the California Government Code; and

WHEREAS, the Uniform Codes adopted, inter alia, require the City of Winters Building Department to determine the value of the construction work to be done at the time a construction permit is issued; and

WHEREAS, in establishing value the City of Winters has to review construction drawings, costs of construction (including those determined by a contractual relationship between the property owner and a licensed contractor or material supplier), and other resources; and

WHEREAS, the City of Winters has to determine as well the quality of the work, as an item establishing value, to insure that permit fees charged are neither excessive nor undervalued; and

WHEREAS, the Uniform Codes contain sectional authority for the requirement of documentation before the establishment of value and issuance of permit, Section 107.1 of the Uniform Building Code as one example, and Health and Safety Code Section 19825(a) as another;

Now, therefore, the City Council of the City of Winters does hereby ordain as follows:

SECTION 1. PURPOSE

The purpose of this Ordinance is to add Section 15.52.040 to Title 15, Chapter 52 of the Winters Municipal Code specifically encompassing the authority of the City of Winters Building Department to require documentation regarding the value of construction work to determine the correct permit fees to be charged. State law does not allow excess fee charges absent voter approval. The addition of this section will codify the procedures currently followed by the City of Winters Building Department in calculating permit fees based on the correct valuation of the construction work to be done.

SECTION 2. ADDITION OF SECTION 15.52.040
Section 15.52.040 is hereby added to the Winters Municipal Code as follows:

No permit shall be issued to any person to do any plumbing, drainage, mechanical, electrical, framing, structural, grading or demolition work regulated by this chapter, or any other work for which state law or this code requires a permit, until a permit application is deemed complete by the Building Department or applicable other department of the City of Winters. For construction, the application shall include, upon request, documentation required for estimating the value of the construction work to be done. Documentation includes, but is not limited to, design drawings and specs, plans, construction contracts between the owner and contractors and material suppliers, receipts, and other evidence of construction cost. Fee evaluations are based on (1) the schedules of fees in the applicable uniform codes and the City fee schedules; (2) the actual construction costs; and (3) the City's judgment as to the quality of the work performed. The City of Winters, in acknowledgment of copyright, trademark, and proprietary interests, shall establish a separation of any documents submitted which may have such interests from the City's files open to the public. Such documents shall not be considered Public Records pursuant to California Government Code Sections 6254(k) and 6255(a), and shall instead be disclosed to the public upon a Court Order or similar showing of good cause and only after notice to the parties named on the documents.

SECTION 3: ENVIRONMENTAL REVIEW

This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060 (c)(2) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and Section 15060 (c)(3) the activity is not a project as defined in 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations), because it has no potential for resulting in physical change to the environment, directly or indirectly. This ordinance also is exempt from CEQA pursuant to the "common sense" exemption under 15061(b)(3) of the CEQA Guidelines, because the City Council hereby determines and finds that there is no possibility that the ordinance may have a significant effect on the environment.

SECTION 4: Effective Date

This ordinance shall become effective May 3, 2012, 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 March 20, 2012, and adopted, after the second reading, at the regular meeting of the City Council on April 3, 2012, by the following vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):

ABSTAIN: Council Member(s):

Woody Fridae, MAYOR

ATTEST:

Nanci G. Mills, CITY CLERK

CITY OF WINTERS
california
Est. 1875

STAFF REPORT

TO: Honorable Mayor and Council Members

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Nick Ponticello, City Engineer

SUBJECT: Award for Construction of Grant Avenue Sidewalk Connectivity, Project No. 10-11

RECOMMENDATION: Staff recommends the City Council (1) Award the construction contract for the Grant Avenue Sidewalk Connectivity, Project No. 10-11, to the lowest responsible bidder following bid opening on March 15, 2012; (2) authorize construction funding limit of Eighty-Nine Thousand Dollars ($89,000) based upon the engineer's cost estimate plus contingency; and (3) authorize the City Manager to execute the Contract on the City's behalf.

BACKGROUND: On September 20, 2011 City Council approved a Memorandum of Understanding with the Winters Joint Unified School District. The school district is dedicating land to the City along Grant Avenue at the Waggoneer Elementary School and the City is constructing a public sidewalk on the newly dedicated land. The project will extend sidewalk from the east end of the elementary school to the west end at St. Anthony's Church.

The bid opening for the project is March 15, 2012. Since this Council meeting immediately follows the bid opening, staff can provide an update of the actual bid results during the Council meeting. Staff is submitting this staff report early in order to issue a notice to proceed prior to April 9, 2012. The elementary school will be closed for Spring Break that week and performing the construction during the break will be less disruptive to the school.

The engineer's cost estimate for construction is $81,000 and staff is requesting a construction budget of $89,000.

ALTERNATIVES: None recommended by staff.

FISCAL IMPACT: The cost of this project, including design and administration, is being paid partially with a SACOG grant of $100,000 and a minimum $11,470 match with TDA funds.

CITY OF
WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council members

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Dan Maguire, Housing Programs Manager

SUBJECT: Approve an Exclusive Negotiating Rights Agreement between the City and Presidio Companies in Regards to the Downtown Hotel Project

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RECOMMENDATION:
Receive the report from staff updating City Council on the recommendation for the responses received to the City's Invitation to Submit Proposals for Development of a Downtown Hotel. Staff requests the City Council approve an Exclusive Negotiating Rights Agreement between the City and Presidio Companies in regards to the Downtown Hotel Project.

BACKGROUND:
At the August 16, 2011 City Council meeting, the City Council authorized staff to issue a Request for Proposals ("RFP") for interested parties to submit proposals to develop a Downtown Winters Hotel, to be located on the approximately 1 acre bounded by Newt's Expressway, Railroad Avenue, Abbey Street and First Street. The City received two (2) proposals in response to the RFP.

The developers and proposals included:

- P3 International, a 150 room hotel project based on a public/private partnership business model, with the City acting as developer and hotel operator. The City would be required to act as a financial backstop under this approach.

- Presidio Companies, an 81 room hotel project based on traditional commercial lenders and equity investors. This proposal included a letter of interest to offer a Four Points by Sheraton Brand to the proposed development.

The proposals included submittals of project concepts, site plans and financial pro-

forma's associated with the projects.
The response review included a review of the attached proposals (*Please note, certain sections of the proposals, the pro-forma's and term sheets, which contain proprietary business information, are not included but are available to City Council under separate cover*), a review of the financial pro-forma's on the fiscal viability of the proposals, and presentations from the development teams to an ad-hoc committee consisting of City Staff, a member of the City Council (Mayor Fridae), a Planning Commissioner (Chairman Cowan) and community members (see attached committee roster of the Downtown Hotel Advisory Committee {"DHAC"}). The DHAC received presentations from the principals of the two firms that submitted proposals and were able to ask follow-up questions to clarify information received in the proposals and presentations. The DHAC was unanimous in recommending the proposal received from Presidio Companies.

DISCUSSION:
After the review process, the Presidio Companies proposal is being recommended for the second phase which will include an Exclusive Negotiating Rights Agreement from which the City and Presidio will work towards a Development Disposition Agreement.

The Exclusive Negotiating Rights Agreement provides for a number of key provisions, including:

- A 90 day exclusive negotiating period where the City and the developer can confidentially develop the terms for the development of the project.
- Access by the developer to the site to perform the necessary studies and engineering to consider the project.
- The preparation of the terms and financing for a Development Disposition Agreement.

During this period, negotiation will take place either resulting in a project or not. If an agreement is reached, the DDA will be submitted to the City Council for consideration.

The effective date of this agreement will be April 1, 2012.

FISCAL IMPACT:
Staff time and administrative preparation

ATTACHMENTS:
Downtown Hotel Review Committee Roster
Presidio Companies proposal
P3 International, LLC proposal
Exclusive Negotiating Rights Agreement (ENA)

Downtown Hotel Advisory Committee

Wednesday, February 29, 2012

Woody Fridae - Mayor

Wade Cowan – Planning Commission Chair

Chris Turkovich – Downtown Business Owner

Richard Kleeburg – Chamber of Commerce Board Member, Attorney, Solano Community College Professor

Karen Ogando – Downtown Business Owner, Downtown Property Owner

Eric Doud – Architect, Planner, Downtown Property Owner

Bill Haley – Architect, Planner

Leslie Carbahal – Facilities Planner, UCD

EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

by and between

PRESIDIO COMPANIES, INC.

and the

CITY OF WINTERS

THIS EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT ("**Agreement**") is entered into effective as of the date this Agreement is executed by all parties as noted below ("**Effective Date**") by and between the City of Winters, a public body corporate and politic, ("**City**") and Presidio Companies, Inc., ("**Developer**"). City and Developer are hereinafter collectively referred to as the "**Parties**" or singularly referred to as "**Party**."

RECITALS

A. WHEREAS, the City is the owner of certain real properties located in the City of Winters known as the Downtown Hotel Site, County Assessor's Parcel Numbers, which are more particularly described in Exhibit A attached hereto (**"Property"**); and

B. WHEREAS, the City seeks development of a hotel project **("Project")** on the Property in accordance with the City's Redevelopment Plan; and

C. WHEREAS, the City released a request for proposals and Developer has submitted a preliminary plan for development of the Project, as shown in Exhibit B, attached hereto; and

D. WHEREAS, City Council now directs staff to pursue negotiations with Developer regarding Developer's proposed development of the Project and authorizes City staff to prepare an agreement granting Developer exclusive rights to negotiate for the purpose of creating a disposition and development agreement ("**DDA**") whose terms and conditions shall govern development of the Project; and

E. WHEREAS, Developer has expended and anticipates expending substantial funds to conduct certain studies that will be needed to assess the feasibility of the development of the Project and to apply for the entitlements to build the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Good Faith Efforts to Negotiate. The Parties will, in good faith, diligently negotiate a DDA that will describe the terms and conditions governing development of the Project on the Property and the disposition by City to Developer of the parcels comprising the Property. Furthermore, the Parties shall use their best efforts to obtain any third-party consent, authorization, approval, or exemption required in connection with the transactions contemplated hereby.

2. Developer's Exclusive Right to Negotiate With City.

A. City agrees that it will not, during the term of this Agreement, directly or indirectly, through any officer, City Council Member, employee, agent, or otherwise, solicit, initiate, or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the

development of the Property, and City will not engage any broker, financial advisor or consultant to initiate or encourage any proposals or offers from other parties with respect to the disposition or development of the Property or the Project or any portion thereof.

B. Furthermore, City will not, directly or indirectly, through any officer, City Council Member, employee, agent or otherwise, engage in negotiations concerning any such transaction with, or provide information to, any person other than Developer and its representatives with a view to engaging, or preparing to engage, that person with respect to the disposition or development of the Property or the Project or any portion thereof.

3. Term. The term of this Agreement (the **"Term"**) shall commence on the Effective Date, and shall terminate ninety (90) days thereafter, unless extended or earlier terminated as provided herein. The Term may be extended for an additional ninety (90) days by written agreement of Developer and City acting through and in the discretion of its City Manager.

4. Relationship of the Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

5. Scope of Development. The negotiations hereunder shall be based on a development concept consistent with the following points:

A. Developer and City shall work together to negotiate a DDA that provides, in part, for the acquisition of the Property by Developer, and construction of a hotel project.

B. The City and Developer will work together to create a funding mechanism for certain site infrastructure improvements for the Project.

C. The City and Developer shall mutually agree upon the construction schedule and project phasing.

D. .

6. Developer's Studies; Right of Entry. During the Term, Developer shall use its best efforts to prepare, at Developer's expense, any studies, surveys, plans, specifications and reports ("**Developer's Studies**") Developer deems necessary or desirable in Developer's sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. In connection with any entry onto the Property, Developer shall and hereby agrees to indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees (defined in Section 15) from and against all claims resulting from or

arising in connection with entry upon the Property by Developer or Developer's agents, employees, consultants, contractors or subcontractors.

A. Developer shall provide City with copies of all reports and test results within ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this Agreement.

B. Except as otherwise agreed to by the City Manager of the City, Developer shall repair, restore and return the Property to its condition immediately preceding Developer's entry thereon at Developer's sole cost and expense. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Developer's indemnification obligations, obligations to provide reports and studies, and obligations to discharge liens that attach to the Property as set forth in this Section 6 shall survive the expiration or earlier termination of this Agreement.

8. City's Reports and Studies. Within fifteen (15) days following the Effective Date and throughout the Term of this Agreement, City will provide copies of all studies, surveys, plans, specifications, reports, and other documents with respect to the Property that City has in its possession or control, which have not already been provided to Developer. City's obligation to provide studies or documents prepared by City is a continuing obligation and City agrees to provide copies of all such documents or studies within ten (10) days of receipt by City.

9. Expenses. Developer shall pay all costs and expenses (including, without limitation, City expenses incurred for economic, environmental, and engineering consultants, and legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby (including, without limitation, the negotiation and preparation of a DDA, the preparation of surveys, reports, and compliance with all other required statutory procedures), regardless of whether the Parties are successful in negotiating a DDA. The City shall not be required to pay any costs unless otherwise agreed to in writing between the Parties and approved by the City Council.

10. Confidentiality; Dissemination of Information. During the Term of this Agreement, each Party will obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party will be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the confidentiality provisions in this Agreement. Nothing contained in this Agreement will prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.

11. Execution of Disposition and Development Agreement. If the Parties successfully negotiate a DDA, City will promptly notice and conduct the public hearing required by Community Redevelopment Law (California Health & Safety Code Section 33000 et seq.), will comply with all applicable requirements of the Community Redevelopment Law; the California Environmental Quality Act (CEQA), and will recommend approval of the DDA to the City's City Council. The City shall have no legal obligation to grant any approvals or authorizations for the Project until the DDA has been approved by the City Council.

12. Termination. Either party shall have the right to terminate this Agreement by providing at least twenty (20) days advance written notice to the other Party. Neither Party shall have the right to seek any award of damages as a result of the termination of this Agreement.

13. Effect of Termination. Upon termination or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a DDA, this Agreement will forthwith be void, and there will be no further liability or obligation on the part of either of the Parties or their respective officers, directors, members, City Council Members, employees, agents or other representatives; provided however, the provisions of section 9 (Expenses), section 10 (Confidentiality), section 15 (Indemnity), and section 19 (No Brokers) shall survive such termination.

14. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement must be made in writing, and sent to the Parties at their respective addresses, electronic-mail addresses or telephone numbers specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this section. All such notices may be sent by:

A. personal delivery, in which case notice is effective upon delivery;

B. certified or registered mail, return receipt requested, in which case notice will be deemed delivered on receipt if delivery is confirmed by a return receipt;

C. nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

D. facsimile or electronic transmission, in which case notice will be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile or electronic mail will be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City of Winters

318 First Street
Winters, CA 95694
Attn.: City Manager
Tel: (530) 795-4910
Fax: (530) 795-4935

Developer: Presidio Companies, Inc.
4705 Mangels Blvd
Fairfield, CA 94534
Attn.: Guneet Bajwa
Tel: (707) 429-6000
Fax: (707) 423-4130

15. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the City and its elected and appointed officials, officers, agents, representatives and employees ("**Indemnitees**") from and against all claims, costs and liabilities arising out of or in connection with the Developer's access to and entry on the Property pursuant to section 7 of this Agreement; provided however, Developer will have no indemnification obligation with respect to the negligence or willful misconduct of any Indemnitees and the foregoing indemnity shall not apply to any claims or liability arising in connection with any hazardous substances or other adverse conditions discovered by Developer on, in or under the Property while conducting Developer's Studies.

A. Insurance. Developer agrees to take out and keep in full force during the term hereof, at DEVELOPER's expense, commercial general liability insurance to protect against any liability to the public, incident to the use of or resulting from any accident occurring in or about the Property, the liability under each such insurance to be no less than Five Hundred Thousand Dollars ($500,000) for any one person injured, One Million Dollars ($1,000,000) for any one accident, and Three Hundred Thousand Dollars ($300,000) for property damage. City shall be named as an additional insured on all of DEVELOPER's policies of insurance. DEVELOPER will obtain a written obligation on the part of the insurance carriers to notify City in writing prior to any cancellation thereof, and DEVELOPER agrees, if DEVELOPER does not keep such insurance in full force and effect, the City may take out the necessary insurance and pay the premium, and the repayments thereof shall be deemed to be part of the expenses payable as provided in this agreement.

16. Severability. If any term or provision of this Agreement or the application thereof is, to any extent, held to be invalid or unenforceable, such term or provision will be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

17. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which will be an original and all of which together shall constitute one agreement.

18. Successors and Assigns; No Third-Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party may transfer or assign any of that Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without the requisite consent will be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

19. Brokers. Each Party represents and warrants to the other that no brokers have been retained or consulted in connection with this transaction. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation.

20. Approvals. Unless otherwise provided in this Agreement, the City Manager of the City is authorized to enter into all written approvals, consents or waivers by the City.

21. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

22. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California and any law suits brought to interpret or enforce the terms of this Agreement must be brought in Yolo County or the nearest Federal District Court, if applicable.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF WINTERS

By: _____

ATTEST:

By: _____
Nanci G. Mills, City Clerk

APPROVED AS TO FORM:

By:

_____
John C. Wallace, City Attorney

Presidio Companies, Inc.

By: _____
[NAME] Its Managing Member

EXHIBIT "A"

003 204 002 (311 First St., formerly the Portello property)

003 204 018 (parking lot across from City Hall)

003 204 003 (western piece of Fire Station property)

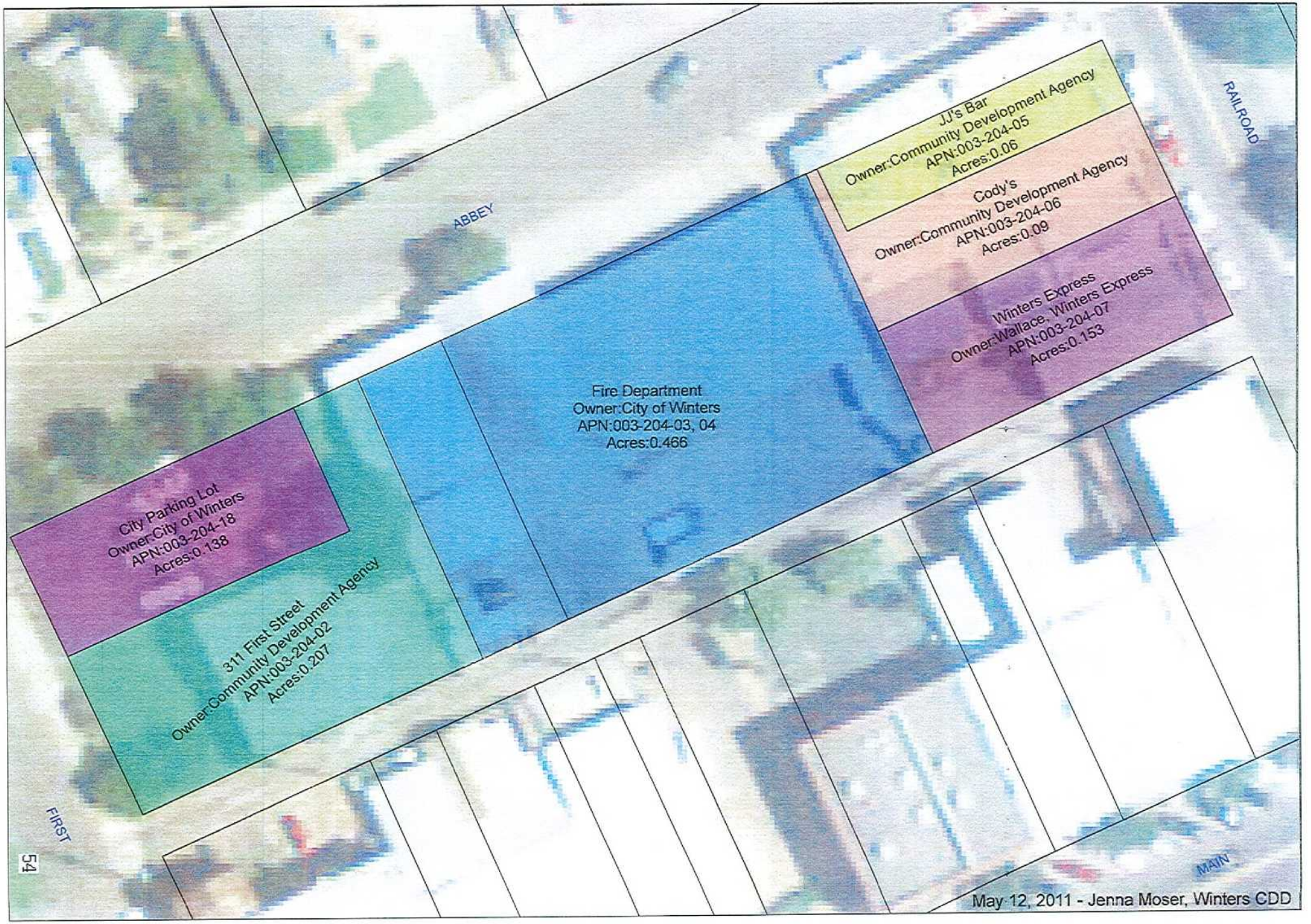
003 204 004 (eastern piece of Fire Station property)

003 204 005 (318 Railroad - formerly JJ's)

003 204 006 (314 Railroad – formerly Cody's)

003 204 007 (Winters Express–owned by Wallace, Winters Express)

Exhibit "B" Downtown Hotel Site Plan



CITY OF WINTERS
california
Est. 1875

CITY COUNCIL
STAFF REPORT

TO: Honorable Mayor and Council members

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Dan Maguire, Housing Programs Manager

SUBJECT: Update, Discussion and Direction to Staff for Property Lease of City-Owned Property - 318 Railroad Avenue (APN # 003 204 005)

RECOMMENDATION:
Receive the report from staff updating City Council on the responses received to the City's Invitation to Submit Lease Proposals for the City-owned property located at 318 Railroad Avenue. Provide direction to staff regarding the potential lease of this City-owned property

BACKGROUND:
The City re-issued a Request for Proposals ("RFP") for interested businesses to lease and operate a commercial business in the City-owned building at 318 Railroad Avenue. The City received two (2) proposals in response to the "Invitation to Submit a Lease Proposal". At the November 1, 2011 Council meeting, Staff updated City Council on the review of the proposals using the criteria outlined in the Invitation to Submit a Lease Proposal and recommended the proposal submitted by Dave and Carol Lorenzo as the preferred response. Staff provided an update on the proposal to City Council at the Council meeting on December 20, 2011. Staff received direction from City Council to hold off on proceeding with any lease discussions for the property pending completion of the Downtown Hotel RFP response deadline (January 31, 2012). The applicants remain interested in pursuing the leasing of the property.

FISCAL IMPACT:
$16,000 (bathroom remodel to create an ADA compliant bathroom).

CITY OF
WINTERS
california
Est. 1875

TO: Honorable Mayor and Council Members

DATE: March 20, 2012

THROUGH: John W. Donlevy, Jr., City Manager

FROM: Nanci G. Mills, Director of Administrative Services/City Clerk

SUBJECT: April Meeting Schedule

RECOMMENDATION:
That the City Council authorize the cancellation of the April 3, 2012, regular meeting and setting a budget workshop on April 23rd or 24th.

BACKGROUND:
The City Council has the authority to establish meeting dates and times and to reschedule or cancel such meetings with proper and timely public notice. The City Council has, on occasion, cancelled the meeting due to a light agenda and/or vacation schedules. This particular meeting falls during spring break week.

Cancelling the meeting will require posting and noticing. Such a change is not significant as long as the decision to cancel is done well in advance. This will allow for proper noticing. Staff has considered the upcoming schedule of items for the agenda and at this time there are no issues that would be negatively impacted by the cancellation of the meeting. As always, should an immediate need arise for the Council to consider taking action on a matter, a special meeting could be scheduled or we could address it at the budget workshop.

FISCAL IMPACT:
None by this action.