

CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, November 24, 2009 @ 6:30 PM

City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 795-4910 #112
Email: jen.moser@cityofwinters.org

Chairman: Pierre Neu
Vice Chairman: Glenn DeVries
Commissioners: Wade Cowan, Bruce Guelden, Corinne
Martinez, Phillip Meisch, Joe Tramontana
Administrative Assistant: Jen Moser
Community Development Director: Nelia Dyer

I CALL TO ORDER 6:30 PM

II ROLL CALL & PLEDGE OF ALLEGIANCE

III CITIZEN INPUT: Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. **NOTICE TO SPEAKERS:** Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

IV CONSENT ITEM
Approval of Minutes from the October 27, 2009 regular meeting of the Planning Commission.

V. STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

A. PUBLIC HEARING AND CONSIDERATION OF A CONDITIONAL USE PERMIT APPLICATION
SUBMITTED BY MICHAEL PETERSEN FOR A RETAIL WINE STORE AND LOUNGE AT 9 EAST MAIN
STREET, SUITE J (APN 003-224-04)

A Public Hearing to consider a Conditional Use Permit application for a retail wine store and lounge at 9 East Main Street, Suite J. This project is exempt from environmental review under State CEQA Guidelines Section 15301 that applies to minor alterations to existing structures.

B. PUBLIC HEARING AND CONSIDERATION OF A DESIGN REVIEW APPLICATION SUBMITTED BY
THE WINTERS CHAMBER OF COMMERCE FOR THE PROPOSED TILE MOSAIC ON THE PUBLIC
RESTROOM FACILITY AT ROTARY PARK

A Public Hearing to consider a Design Review application for the proposed tile mosaic on the public restroom facility at Rotary Park. This project is exempt from environmental review under State CEQA Guidelines Section 15301 that applies to minor alterations to existing structures.

C. PUBLIC HEARING AND CONSIDERATION OF A RECOMMENDATION TO THE WINTERS CITY
COUNCIL TO ADOPT AN ORDINANCE ADDING CHAPTER 17.200 TO THE WINTERS MUNICIPAL
CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS

A Public Hearing to consider a recommendation to the Winters City Council to adopt an ordinance adding Chapter 17.200 to the Winters Municipal Code pertaining to Affordable Housing Requirements. This project is exempt from environmental review under State CEQA Guidelines Section 15061 (b) (3).

D. INFORMATIONAL ITEM – DRAFT CODE ENFORCEMENT ORDINANCE

An Informational Item to receive feedback from the Planning Commission on draft code enforcement ordinance.

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT ADMINISTRATIVE ASSISTANT OF THE COMMUNITY DEVELOPMENT DEPARTMENT POSTED THE AGENDA FOR THIS MEETING ON JULY 22, 2009.


JEN MOSER - ADMINISTRATIVE ASSISTANT

APPEALS: ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING.

OPPORTUNITY TO SPEAK, AGENDA ITEMS: THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA, HOWEVER, TIME LIMITS MAY BE IMPOSED BY THE CHAIR AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

REVIEW OF TAPE RECORDING OF MEETING: PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

COPIES OF AGENDA, AGENDA REPORTS AND OTHER MATERIALS: PRIOR TO EACH MEETING, COPIES OF THE AGENDA ARE AVAILABLE, AT NO CHARGE, AT CITY HALL DURING NORMAL WORKING HOURS. IN ADDITION, A LIMITED SUPPLY WILL BE AVAILABLE ON A FIRST COME, FIRST SERVED BASIS, AT THE PLANNING COMMISSION MEETINGS. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF \$25.00 FOR A SINGLE PACKET AND \$250.00 FOR A YEARLY SUBSCRIPTION.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

CITY OF WINTERS COMMUNITY DEVELOPMENT DEPARTMENT
Current Projects List as of November 10, 2009
(530) 795-4910, extension 112, www.cityofwinters.org

* *New information in italics*

PROJECT	DESCRIPTION & PROCESS	LAST ACTION	NEXT ACTION
(1) Winters Highlands, Granite Bay Holdings, LLC, Larry John (916) 960-1656	Application filed to develop 413 single-family and 30 multi-family residential units in northwestern part of city.	City Council approved the Second Amendment to the Development Agreement on January 6, 2009.	Applicant submittal of Final Map and Improvement Plans.
(2) Winters Village, Bob Thompson (West project) (707) 372-9355	Proposal to develop 10 attached single-family residences on the southwest corner of East Main and East Baker Streets.	Applicant in October 2007 decided to defer construction of the project.	Project not active.
(3) Callahan Estates, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 120 single-family residential lots in northwest part of city.	City Council approved the First Amendment to the Development Agreement on January 20, 2009	Applicant submittal of Final Map and Improvement Plans.
(4) Creekside Estates, Lynda Fletcher (530) 902-4288	Proposal to develop 40 single-family residential lots at southwest part of city.	City Council approved Tentative Subdivision Map on April 19, 2005.	Amend Development Agreement, applicant submittal of Final Map and Improvement Plans
(5) Hudson-Ogando, Winters Investors LLC, John Peterson (925) 682-4830	Proposal to develop 72 single-family residential lots in northwest part of city.	City Council approved the First Amendment to the Development Agreement on January 20, 2009	Applicant submittal of Final Map and Improvement Plans.
(6) Cottages at Carter Ranch Phase 2, Sacramento Pacific Development, Mark Wiese (916) 853-9800	Proposal to develop 6 single-family residential affordable lots (moderate-income households) north of Rancho Arroyo Detention Facility.	Planning Commission approved Tentative Subdivision Map on November 23, 2004. <i>City Council approved the applicant's request for infrastructure funding on November 3, 2009.</i>	Applicant submittal of Final Map and Improvement Plans.
(7) Casitas at Winters, Napa Canyon LLC, Mark Power (707) 253-1339	Proposal for 5-unit tentative subdivision map at a site on West Grant Avenue east of Tomat's restaurant. Tentative Subdivision Map, Planned Development Overlay, and PD Permit.	City Council at its January 15, 2008 meeting took final action by approving the Rezone Ordinance.	Applicant submittal of Final Map and Improvement Plans.

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<p>(8) Mary Rose Gardens, DAS Homes, Inc., Dave Snow (530) 666-0506</p>	<p>Proposal to develop 26 single-family homes and one duplex unit on the north side of West Grant Avenue west of Cemetery Lane. Tentative Subdivision Map, Planned Development Overlay, PD Permit, Rezone, Inclusionary Housing Agreement, and Development Agreement.</p>	<p>Applicant declined option to purchase project property.</p>	<p>Project not active.</p>
<p>(9) Anderson Place, Eva Brzeski (415) 887-9300</p>	<p>Proposal to develop up to 28 mostly attached single-family residences and 9 commercial spaces at 723 Railroad Avenue. Interim use of C2 portion of the site for boat and RV storage, sales and repair.</p>	<p>First Amendment to Development Agreement adopted by City Council on June 3, 2008 CUP for boat & RV storage, sale & repair approved by Planning Commission on May 27, 2008.</p>	<p>Applicant to demo building and establish interim boat & RV storage, sales and repair. Applicant submittal of Final Map and Improvement Plans.</p>
<p>(10) Pearse Parcel Map, Thomas Pearse (530) 795-5901</p>	<p>Proposal for 4-unit parcel map at the south end of Third Street.</p>	<p>Planning Commission on October 9, 2007 approved project.</p>	<p>Applicant submittal of Final Map and Improvement Plans.</p>
<p>(11) Winters Commercial, Granite Bay Holdings, LLC, Tyler Wade (916) 580-1855</p>	<p>Proposal to develop 4.52 acres on south side of Grant Avenue directly west of Round Table Pizza complex for 49,500 square feet of commercial and office uses. Site Plan. Application submitted on August 17, 2007 and deemed complete on October 22, 2007.</p>	<p>Per COW Municipal Code, Chapters 17.20 (Use Permits) and 17.36 (Design Review), Community Development Director approved an extension for both permits on December 5, 2008. Community Developed the Agency purchased the subject site in Summer 2009. CDA issued RFP for development of site in October 2009.</p>	<p>Applicant submittal of Final Map and Improvement Plans. Development proposals are due in December 10, 2009.</p>
<p>(12) Winters Estates Annexation, Winters Estates LLC, Helmut Sommer 707-678-9000</p>	<p>Proposal to annex 80 acres (APNs 030-210-05 & 08) adjacent to County Road 88 and within the City's General Plan Area.</p>	<p>City issuance of incomplete application letter on February 1, 2008.</p>	<p>Project Inactive/Closed out</p>
<p>(13) Orchard Village, CVC/AH/Pacific West Communities, Shellan Miller (208) 461-0022 Ext.</p>	<p>Proposal to construct 74 multifamily (workforce housing) units on 10.6 acres between Railroad Ave, and Dutton Street extension, north of East Grant Ave. To include 1-, 2-, 3-, and 4-bedroom units + a community center.</p>	<p>Planning Commission approved Site Plan (Design Review) and adopted MND and MMP on January 27,</p>	<p>Execution of Public Improvement Agreement and Issuance of building permits.</p>

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3033		2009, Appeal of PC's decision was filed on February 4, 2009 by Catherine Jimenez. City Council denied the appeal at the March 3, 2009 City Council Meeting. <i>Applicant submitted improvement and building plans in October 2009.</i> On April 21, 2009, the City Council approved the ordinance to rezone the property, adding a PD overlay.	Applicant submittal of improvement and building plans.
(14) St. Anthony's Catholic Church Parish & Rectory, Roman Catholic Church of Sacramento/McCandless & Associates (530) 662-9146	Proposal to construct a new Catholic Church and associated site work at the corner of Main & Grant Streets.	Planning Commission approved the Design Review (Site Plan) on February 24, 2009.	Complete
(15) 115 E. Grant Avenue Fueling Canopy, David Lorenzo (530) 795-3214	Proposal to construct a fueling canopy and install 4 new fueling dispensers at 115 E. Grant Avenue.	Application was filed on January 29, 2009. Planning Commission approved the Conditional Use Permit for the project on March 24, 2009.	Under Construction
(16) Turkovich Family Wines, 304 Railroad Avenue, (530) 795-2767	Application for a Conditional Use Permit to operate a wine tasting room at 304 Railroad Avenue	Application was filed on March 19, 2009. Planning Commission approved the Conditional Use Permit for the project on April 28, 2009.	Complete
(17) The Tree House Children's Center, 418 Haven Street, (530) 304-8248	Application for a Conditional Use Permit to operate a children's center at 418 Haven Street	Application was filed on April 6, 2009. Planning Commission approved the Conditional Use Permit on May 26, 2009.	Complete
(18) Winters Community Church, 113 Main Street, (530) 795-5530	Application for a Conditional Use Permit to operate a religious institution at 113 Main Street	Application was filed on June 6, 2009. Planning Commission approved the	Complete
(19) Turkovich Family Winery, 22-A Main Street, (530) 795-2767	Application for a Conditional Use Permit to operate a winery at 22-A Main Street	Commission approved the	Complete

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<p>(20) Winters Healthcare Foundation Administrative Offices, 310 Main Street, (530) 795-5200</p>	<p>Application for a Conditional Use Permit to conduct an office use in a residential zone</p>	<p>Conditional Use Permit on July 14, 2009. Application was filed on July 8, 2009. Planning Commission approved the Conditional Use Permit on August 25, 2009</p>	<p>Complete</p>
<p>(21) AT&T Cell Tower Co-location at Rd 88 & Rd 32A, (916)601-1123</p>	<p>Application for a Conditional Use Permit to co-locate additional antennas on an existing tower at Rd 88 & 32A. The existing cell tower is located on City property</p>	<p>Application was filed on July 17, 2009. Planning Commission approved the Conditional Use Permit on August 25, 2009.</p>	<p>Complete</p>
<p>(22) City Parking Lot at Abbey and First Streets, (530) 795-4910</p>	<p>Design Review Application for the temporary renovation of the City's parking lot at First and Abbey Streets</p>	<p>Planning Commission approved the Site Plan on October 27, 2009</p>	<p>Submittal of improvement plans.</p>
<p>(23) 111-115 Main Street Façade Improvement Project (530) 795-3506</p>	<p>Design Review application for the façade improvement of 111-115 Main Street.</p>	<p>Application was filed on October 10, 2009. Planning Commission approved the Design review Application on October 27, 2009.</p>	<p>Applicant submittal of improvement and building plans.</p>
<p>(24) Main Street Cellars Wine Café, 9 East Main Street, Suite J (209) 304-7953</p>	<p>Application for a Conditional Use Permit to operate a wine bar at 9 East Main Street, Suite J</p>	<p>Application was filed on October 30, 2009. Public hearing scheduled for November 24, 2009</p>	<p>Action on Item</p>
<p>Code Enforcement Ordinance</p>	<p>Preparation of Ordinance to adopt Title 19 (Code Enforcement) to the Winters Municipal Code.</p>	<p>Presentation to Planning Commission is scheduled for November 24, 2009. Presentation to City Council is scheduled for December 1, 2009.</p>	<p>Schedule Public Hearings for proposed Ordinance</p>
<p>General Plan Horizon Year Extension</p>	<p>Extend the General Plan Horizon Year Extension from 2010 to 2018.</p>	<p>City Council approved the extension on September 1, 2009. Staff prepared and presented the Work Plan resulting from the extension to the Planning Commission</p>	<p>Presentation of work plan to City Council on December 1, 2009</p>

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<p>Affordable Housing Ordinance</p>	<p>Preparation of an Ordinance to add Chapter 17.200 to the Winters Municipal Code (Zoning) pertaining to Affordable Housing Requirements</p>	<p>on October 27, 2009 Reviewed favorably by Affordable Housing Steering Committee on November 3, 2009. Public Hearing is scheduled for the November 24, 2009 Planning Commission meeting.</p>	
<p>Housing Element</p>	<p>Preparation and Adoption of Housing Element Update for the 2008-2013 Planning Period</p>	<p>City Council adopted the Housing Element Update on September 1, 2009.</p>	<p>Development of a work/implementation plan for the Housing Element</p>
<p>Abbey Street Partial Abandonment</p>	<p>Partial abandonment of East Abbey St to allow for Monticello development</p>	<p>PC accepted GP consistency report and recommended to Council 4/22/08. CDA at its September 2, 2008 meeting approved the DDA for the project.</p>	<p>Applicant submittal of improvement and building plans for the Monticello Project</p>
<p>Monticello Mixed-Use Project</p>	<p>Application for Site Plan Review and Design Review, and CUP for the construction of a mixed-use project (commercial/retail, office and residential) on 0.42 acre on the east side of Railroad Ave. between Abbey St. and Main St. in downtown Winters CBD.</p>	<p>CDA at its September 2, 2008 meeting approved the DDA for the project</p>	<p>Applicant submittal of improvement and building plans.</p>
<p>Public Safety Facility</p>	<p>Application for Site Plan Review and Design Review, CUP and Variance for the construction of the City's public safety facility on 2.78 acres of the Ogando-Hudson Subdivision (Grant Ave @West Main Street)</p>	<p>Planning Commission hearing on 7/22/08 – PC approved project subject to COAs presented in staff report.</p>	<p><i>Under Construction</i></p>

Affordable Housing Units

- Project #1:** 26 units for very low-income, 25 units for low-income, and 15 units for moderate-income households
- Project #2:** 2 units for low-income households
- Project #3:** 7 units for very low-income, 7 units for low-income, and 4 units for moderate-income households
- Project #4:** 1 unit for very low-income, 2 units for low-income, and 1 unit for moderate-income households
- Project #5:** 11 units for very low-income households
- Project #6:** 6 units for moderate-income households
- Project #7:** Not known whether residential units will be constructed

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- Project #8:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households
- Project #9:** 2 units for very low-income, 1 unit for low-income, and 1 unit for moderate-income households
- Project #10:** Not applicable
- Project #11:** Not applicable
- Project #12:** Not known at this time
- Project #13:** 74 units for very low-income and low income households
- Project #14:** Not applicable
- Project #15:** Not applicable
- Project #16:** Not applicable
- Project #17:** Not applicable
- Project #18:** Not applicable

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON
TUESDAY, OCTOBER 27, 2009**

Chairman Neu called the meeting to order at 7:30 p.m.

PRESENT: Commissioners Cowan, DeVries, Guelden, Meisch, Tramontana,
and Chairman Neu

ABSENT: Commissioner Martinez

STAFF: Community Development Director Nellie Dyer, City Attorney John
Wallace, Contract City Attorney Laura Hollender, Administrative
Assistant Jen Michaelis

Jen Michaelis led the Pledge of Allegiance.

COMMUNICATIONS:

Staff Reports:

Community Development Director Dyer reported that she and Gene Ashdown, Building Official, are working with Contract City Attorneys Steve Rudolph and Laura Hollender of Meyers Nave on a code enforcement ordinance, which will be introduced as an informational item at the next Planning Commission meeting. Ms. Dyer also added that she is working with City Engineer Nick Ponticello and Grants Manager Dawn Van Dyke on public outreach on pedestrian, bike and roadway improvements between Yolo Housing (El Rio Villa) and Railroad Avenue. Ms. Dyer noted that Pacific West Communities has submitted plans for the Orchard Village project. The next Planning Commission meeting will be held on November 24, 2009 at the new time of 6:30PM.

Commission Reports: None

CONSENT ITEM

Approve minutes of the August 25, 2009 regular meeting of the Planning Commission. Commissioner Neu amended the minutes to reflect his statement that City staff should keep track of the 3-year review for the Conditional Use Permit for the Administrative Offices at 310 Main Street.

Motion by Commissioner Guelden, Second by Commissioner DeVries to approve the minutes for the August 25, 2009 meeting of the Planning Commission. Motion carried with the following roll call vote:

AYES: Commissioners Cowan, DeVries, Guelden, Meisch, Tramontana,
and Chairman Neu

NOES: None

ABSTAIN: None

ABSENT: Commissioner Martinez

At this time, Commissioners Neu and DeVries recused themselves due to a possible conflict of interest.

**MINUTES OF THE WINTERS PLANNING COMMISSION MEETING HELD ON
TUESDAY, OCTOBER 27, 2009**

DISCUSSION ITEM

A. PUBLIC HEARING AND CONSIDERATION OF A DESIGN REVIEW APPLICATION SUBMITTED BY DAVID LORENZO FOR THE FAÇADE IMPROVEMENT OF THE BUILDING LOCATED AT 111-115 MAIN STREET (APN 003-201-15)

Community Development Director Dyer provided an overview of the staff report, background, and conditions of approval. Eric Doud, the applicant's architect, stated that he is amenable to the conditions of approval except number 3, and he requested that the applicant be able to complete weatherization of the property before any additional flood damage occurs.

Commissioner Tramontana asked Mr. Doud why he changed the plan of the improvements after the Commission approved a plan. Mr. Doud stated that the Commission approved a "conceptual" sketch. In the design stage, many issues came up with the cantilevered roof, and, in the evolution of the design, cost became an issue. Commissioner Tramontana asked if the City approved these subtractions. Mr. Doud responded that yes, the changes were essentially approved by the City.

Commissioner Cowan asked if Consultant Mark Brodeur (who reviewed the originally approved plan) reviewed this new plan. Ms. Dyer responded that he did not. Commissioner Guelden asked Mr. Doud what the timeline was for future plans. Mr. Doud stated that there was nothing concrete in place, but that Buckhorn Catering would have to vacate in order to do improvements on that section of the building.

Commissioner Cowan stated that he understands the Design Review process very well as well as the submittal of plans for City review. He asked Ms. Dyer if the applicant provided multiple elevation drawings. Ms. Dyer stated that elevations were submitted, and the one of the front page conflicted with others in the other pages of the submittal. Commissioner Cowan stated that this project does not reflect what the Commission approved, and is concerned that in allowing this Design Review application to go forward would set a precedent that applicants can just get away with anything they want.

Ms. Dyer stated that any project that is presented to and approved by the Commission is what needs to be constructed. Ms. Dyer explained staff's procedures regarding design review. Ms. Dyer explained that what was submitted in the 2nd submittal was not properly noted, and that essentially, the approvals are invalid. Mr. Doud said he counts on staff to let him know what he needs to do with submittals and feels he did everything that was required. Commissioner Tramontana added that the building does not look like what they approved. Mr. Doud said that the City allowed them to start construction, if the

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City had any problems, they should have let him know. Commissioner Tramontana stated that they needed to build what was approved.

Commissioner Cowan stated that direction from the Planning Commission was clear - they approved a specific design. He further stated that the what is under construction is not what the Planning Commission approved and that Mark Brodeur of PMC would not have been amenable to this current design. Ms. Dyer responded that this is why staff has provided Conditions of Approval, which reflect the recently adopted Form Based Code for Downtown Winters.

Commissioner Gulden asked if this is a new design review. Ms. Dyer responded yes. Commissioner Guelden asked if condition 3 was their only sticking point. Mr. Doud stated that they are amenable to the conditions except 3. Commissioner Guelden stated that there are staff costs to take in essentially a new plan and go over it again and for the applicant to be careful what they pick as a sticking point. Mr. Doud said that the Commission should keep in mind the cost to the property owners, that the owners have put a significant amount of money into the project already. Commissioner Cowan added that overruns on budgets happen all of the time, if there were changes due to budgeting, it should have been brought right back to the Commission for new approvals, with no new application fees. Commissioner Cowan stated that he supported the applicant being able to weatherproof the building, with no aesthetic changes. Commissioner Tramontana stated he wants to see all of the improvements done now, not at some later date because he is concerned about them never getting done.

Commissioner Cowan opened the Public Hearing at 8:21PM, hearing no comments he closed the Hearing at 8:22PM. Commissioner Meisch stated he is satisfied with the Conditions of Approval. Commissioner Tramontana stated that he wants to see the chimney removed or screened. Commissioner Cowan admits that the building does look better than it did before, but not close to as nice as what the Commission approved. He does not want to see this set a precedent for future developers, does not feel comfortable with the applicant making decisions about other elevations, that all elevations need to come back to the Commission. Commissioners discussed weather it should come back to the Commission or just staff level and concurred that it should come back to the Commission. Commissioners concurred to allow the applicant to weatherize the building, but absolutely no aesthetic changes are allowed.

Commissioner Cowan stated that without the raised panels, divided lights, and the wood case windows shown on the originally approved plan, this project looks like a suburban strip mall, not Winters. Commissioner Cowan is amenable with the stucco and colors.

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Commissioner Guelden asked how close we are to getting what the Commission originally approved. Ms. Dyer responded that we are not close, and we are to look at this as a new Design Review.

Motion by Commissioner Guelden, Second by Commissioner Meisch to approve with an amendment to Condition of Approval #4 to now read as follows:

The design of the project shall be expressed on all exterior elevations of the building. Prior to continuation of the façade improvement project, the project architect shall provide revised building elevations that express the design of the project on all exterior elevations of the building including the roofline to the satisfaction of the Community Development Director Planning Commission.

Motion carried with the following roll call vote:

AYES: Commissioners Cowan, Guelden, Meisch, Tramontana
NOES: None
ABSTAIN: Commissioners Neu and DeVries
ABSENT: Commissioner Martinez

At this time, Commissioners DeVries and Neu returned to their seats at the dais. The Commission took at 5-minute recess.

B. PUBLIC HEARING AND CONSIDERATION OF A SITE PLAN REVIEW APPLICATION FOR THE RENOVATION OF THE CITY'S PARKING LOT AT FIRST AND ABBEY STREETS (APN 003-204-18)

Community Development Director Dyer provided an overview of the staff report. Commissioner Meisch suggested that an additional condition be added to require analysis of the building should the use change from storage to some other use. Commissioner DeVries added that putting the dumpster on the alley side is better, noted a few improvements to parking alignment. Commissioner Guelden suggested that the electric vehicle parking be re-addressed. Commissioner Neu opened the Public Hearing at 9:03PM. Kathy Cowan, 106 Third Street, suggested that if this work is temporary, the Commissioner not to worry about these design issues and spending money on improvements to a temporary situation. Hearing no other comments, Commissioner Neu closed the Public Hearing at 9:04PM. Commissioner DeVries added that "temporary" is a figure of speech in Winters.

Motion by Commissioner DeVries, Second by Commissioner Cowan to approve the site plan review for the renovation of the City's Parking Lot at First and Abbey Streets. Motion carried with the following roll call vote:

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AYES: Commissioners DeVries, Cowan, Guelden, Meisch, Tramontana,
and Chairman Neu
NOES: None
ABSTAIN: None
ABSENT: Commissioner Martinez

**C. INFORMATIONAL ITEM – DRAFT WORK PLAN FOR THE GENERAL
PLAN AMENDMENTS RESULTING FROM THE CHANGE IN THE
HORIZON YEAR FROM 2010 TO 2018**

Community Development Director Dyer provided an overview of the staff report.

D. INFORMATIONAL ITEM – PUBLIC ART POLICY

Community Development Director Dyer provided an overview of the staff report. Chairman Neu complimented staff on the draft policy. Ms. Dyer reported that staff and Howard Hupe pulled programs from all over California and the United States in an attempt to put together a plan specifically for Winters, including an advisory body on public art. Ms. Dyer said that this item would be brought back to City Council to be approved by Resolution.

Commissioner DeVries suggested a curator for all public and private art projects. Commissioner Cowan asked about bringing the mosaic project forward based on these criteria. Ms. Dyer suggested that the mosaic project be submitted as a design review application; however, it would be reviewed using the criteria in the draft public art policy. The Planning Commissioners indicated that they favored this suggestion.

Commissioner Cowan mentioned that he likes the idea of an advisory body for public art. Commissioner Meisch asked staff to explore options regarding upkeep and maintenance of public art projects. At this time, commissioners discussed the costs of art projects. Howard Hupe of the Chamber of Commerce stated that the \$5,000.00 donation is from a private citizen specifically for the mosaic project at the Rotary Park restrooms, and offered a few possible ways to fund an “art fund” at the City level.

COMMISSION/STAFF COMMENTS:

Commissioner Tramontana reported that he has seen a lot of bike safety issues around town, namely people biking on the wrong side of the road, which is highly dangerous. He encouraged everyone to let friends and families know of bike safety rules and to wear helmets. Commissioner Guelden asked about the timing of the next Commission meeting. Ms. Dyer responded that the meetings from now on will be at 6:30PM, and the next meeting is November 24th, 2009.

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The meeting was adjourned at 9:50 p.m.

ATTEST:

Jenna Michaelis, CDD Admin

Pierre Neu, Chairman



PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners
DATE: November 24, 2009
FROM: Nelia C. Dyer, Community Development Director
SUBJECT: Public Hearing and Consideration of a Conditional Use Permit for a Retail Wine Store and Lounge at 9 East Main Street, Suite J (APN 003-224-04)

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; 2) Conduct the Public Hearing to solicit public comment; and approve the Conditional Use Permit submitted by Michael Petersen for the operation of a retail wine store and lounge at 9 East Main Street, Suite J (APN 003-224-04) with the attached conditions of approval.

GENERAL PLAN DESIGNATION AND EXISTING ZONING: The subject location of the proposed use is designated CBD (Central Business District) by the General Plan and is zoned C-2 (Central Business District). The existing tenant space is approximately 770 square feet. This space used to house Jeff's Frame Shop.

STATEMENT OF ISSUES: The project applicant, Michael Petersen, is seeking approval of a use permit to allow for Alcoholic Beverage Service (wine) at 9 East Main Street, Suite J. According to the Winters Municipal Code Section 17.52.020, the C-2 zone requires issuance of a use permit for Bar, Cocktail Lounge. In addition, a use permit must be obtained from the city for all on-sale liquor establishments according to WMC Chapter 17.96 (Alcoholic Beverage Establishments). On-sale liquor establishments include, but are not limited to, the following establishments: ballrooms, dance halls/bars, nightclubs, or other private clubs. Staff considers the retail wine store and lounge to be an on-sale liquor establishment.

PROJECT DESCRIPTION: The applicant intends to establish a new wine retail store and lounge at 9 East Main Street, Suite J. The proposed business would offer a wine bar, retail area, and lounge. In addition, at 20 x 20 foot outdoor patio area is proposed to be located on the west side of the building. The proposed hours of operation are 11:00 a.m. to 8:00 p.m. Tuesday through Thursday, 11:00 a.m. to 10 :00 p.m. Friday through Saturday, and 10:00 a.m. to 4:00 p.m. on Sunday. The business would be closed on Monday. In addition to wine, microbrew beers, artisan cheeses, cured meats, and other

gourmet food items will be available for purchase. The wine bar will also be hosting special events including, but limited to, classes, private parties, and special events.

ANALYSIS: The proposed use is consistent with both the Central Business District General Plan land use category and the zoning. In addition to General Plan Consistency and code compliance, factors regarding the public health, safety, or general welfare must be considered when reviewing a conditional use permit application. There is no on-site parking available; however, it is anticipated that the patrons of the wine lounge would park on the street or in the surface parking lot at the northeast corner of Railroad and Main Street. Given the limited floor area and hours/days of operation, staff does not anticipate adverse parking impacts in the downtown as a result of this business.

In review of a conditional use permit application, the Planning Commission must also consider potential impacts on police resources that might result from the establishment of the business. The Police Department has reviewed the applicant's business plan and supports the venture and a use permit from the Planning Commission, subject to the proposed conditions of approval for the use permit.

According to WMC Section 17.96.030, the use is outright prohibited when located within 200 feet of sensitive uses, including schools, churches, health care facilities, or recreational uses located in the Central Business District. The separation requirement is not applicable to Rotary Park and Rotary Park is expressly excluded from the definition of a sensitive use. The proposed wine bar is not within 200 feet of a sensitive use.

In addition to the distance requirements, the proposed use must comply with a list of standard conditions from the Alcoholic Beverages Ordinance. These conditions are included in the Recommended Conditions of Approval for the proposed use.

METHODOLOGY: Two actions are required to process the proposed project:

- 1) Confirmation of CEQA exemption finding - Section 15301 (Existing Facilities)
- 2) Approval of the Conditional Use Permit and the attached conditions

APPLICABLE REGULATIONS: This project is subject to several regulations:

- o The California Environmental Quality Act (CEQA)
- o State Planning and Zoning Law
- o City of Winters General Plan
- o City of Winters Zoning Ordinance

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Director in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, November 12, 2009 and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to tonight's hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, November 19, 2009.

ENVIRONMENTAL ASSESSMENT: The proposed project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities).

RECOMMENDED FINDINGS FOR THE WINE STORE AND LOUNGE AT 9 EAST MAIN STREET, SUITE J (CONDITIONAL USE PERMIT)

CEQA Findings:

1. The proposed project is exempt from CEQA review under §15301 (Existing Facilities)
2. The Planning Commission has considered the comments received on the project during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.
4. The Planning Commission hereby confirms a Class 1 Existing Facilities exemption for the wine store and lounge at 9 East Main Street, Suite J.

General Plan and Zoning Consistency Findings:

1. The use is consistent with the goals and policies of the General Plan. The General Plan designates the project site as Central Business District and principal uses for this designation include restaurant and retail uses. The use will provide for the on-site sale and consumption of wine at a retail business.
2. The use is consistent with the provisions of the Zoning Ordinance. Permitted uses of the C-2 Zone include retail and restaurant uses. The use will provide for the on-site sale and consumption of wine at a retail business.
3. The use will not be detrimental to the public health, safety, or general welfare.
4. Adequate utilities, access roads, drainage, sanitation, and/or other necessary facilities or services will be provided;
5. The use will not create a nuisance or enforcement problem within the neighborhood.
6. The requested use will not result in a negative fiscal impact upon the city.

RECOMMENDATION

Staff recommends approval of the project by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION APPROVE THE CONDITIONAL USE PERMIT FOR THE ON-SITE SALE AND CONSUMPTION OF WINE AT A RETAIL BUSINESS LOCATED AT 9 EAST MAIN STREET, SUITE J BASED ON THE IDENTIFIED FINDINGS OF FACT AND BY TAKING THE FOLLOWING ACTIONS:

- Confirmation of exemption from the provisions of CEQA.
- Confirmation of consistency findings with the General Plan and Zoning Ordinance
- Approval of the Conditional Use Permit subject to the conditions of approval attached hereto.

ALTERNATIVES: The Commission can elect to modify any aspect of the approval or to deny the application. If the Commission chooses to deny the application, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to deny the project.

CONDITIONS OF APPROVAL FOR THE CONDITIONAL USE PERMIT FOR THE ON-SITE SALE AND CONSUMPTION OF WINE AT A RETAIL BUSINESS LOCATED AT 9 EAST MAIN STREET, SUITE J LOCATED ON ASSESSOR PARCEL NUMBER 003-224-04, WINTERS, CA 95694.

1. This Conditional Use Permit is based upon and limited to compliance with the project description, Attachments 1 & 2, and conditions of approval set forth below. Any deviations from the project description, attachments or conditions must be brought to the attention of, reviewed and approved by the Planning Commission for conformity with this approval. Deviations may require modification to the permit and/or environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
2. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project applicant shall defend, indemnify, and hold harmless the City or its agents, officers, and employees, from liability, damages, penalties, costs, or expenses in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of Winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense, which include court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the applicant in good faith approves the settlement, and the settlement imposes no direct or indirect cost on the City of Winters, or its agents, officers, and employees, the Winters Planning Commission, any advisory agency to the City, local district, and the City Council.
3. The applicant must obtain approval from the State of California, Department of Alcoholic Beverage Control (ABC) prior to the on-site sale and consumption of beer and wine.
4. All establishments shall be required to have a public telephone listing.
5. Special security measures such as security guards, robbery and burglar alarm systems may be required.

6. The noise generated by the operation of such establishment shall not exceed 50 d.b.a. during daytime and 45 d.b.a. during nighttime, on adjoining properties zoned for residential purposes.
7. It shall be the responsibility of the applicant licensee to provide all staff with the training necessary to gain the knowledge and skills that will enable them to comply with their responsibilities under the law. The knowledge and skills deemed necessary for responsible alcoholic beverage service shall include, but not be limited to the following topics and skills development:
 - a) State laws relating to alcoholic beverages, particularly ABC and penal provisions concerning sales to minors and intoxicated persons, driving under the influence, hours of legal operation, and penalties for violations of these laws.
 - b) The potential legal liabilities of owners and employees of businesses dispensing alcoholic beverages to patrons who may subsequently injure, kill or harm themselves or innocent victims as a result of the excessive consumption of alcoholic beverages.
 - c) The effects of alcohol on the body, and behavior, including how the effects of alcohol affect the ability to operate a motor vehicle.
 - d) Methods for dealing with intoxicated customers and recognizing under-aged customers. Methods for preventing customers from becoming intoxicated.
8. Upon six (6) months after ceasing the use granted by the permit, the permit shall be void and a new conditional use permit shall be required.
9. Failure to comply with the above conditions may result in the immediate revocation of the conditional use permit.

ATTACHMENTS:

1. Project Description
2. Proposed Site Plan

Project Description

Main Street Cellars Wine Cafe, unlike a typical café, will provide a unique forum for education and entertainment through the medium of a retail wine store and lounge. Main Street Cellar's goal is to provide the community with a social, educational, and entertaining atmosphere for worldwide wine appreciation.

In its proposed location, 9-J East Main Street (formerly Jeff's Studio 9,) Main Street Cellars fits perfectly with the concepts of Winters' Downtown Master Plan and will add to the creation of Winters as a destination location.

Main Street Cellars' objectives are:

- To create a unique, innovative, casual atmosphere that will differentiate itself from other local wine shops while becoming another asset to the growing wine culture in Winters.
- To create a welcoming environment for both novice and experienced wine consumers. Main Street Cellars will position itself as an educational resource for individuals wishing to learn more about the benefits that the food and wine culture have to offer.
- To provide great wines, microbrew beers, artisan cheeses, cured meats, and an array of gourmet food items.
- To access small lot, niche wines unavailable to other retailers.

Main Street Cellars will appeal to individuals of all ages and backgrounds. The instructional wine classes, wine dinners, special events, and helpful, knowledgeable staff will appeal to the audience that do not associate themselves with the "wine snob" stereotype. This educational aspect will attract a diverse selection of the community who are rapidly gaining interest in the unique resources that niche wine offerings have to offer. The location will provide local residents and visitors alike with convenient access to their post-work, rest-stop needs.

The 780 sq. ft. ground level will be used as the retail area, lounge and café. The interior will have an open loft design that does not change the current floor plan with the exception of a new door on the west side of the building to gain access to the outdoor patio area. The concrete floors will be stained amber with grape leaf inlays. The walls will have a Venetian plaster texture with a light ivory coloring.

The new 20 x 20 sq. ft. outdoor patio area, located on the west side of the building, will have the feel of an European outdoor café. The grass will be replaced with pavers that match the existing surface surrounding the Bocce court. The existing olive tree will remain and the Japanese Maples will be relocated to nearby planter boxes. A wrought iron gate will border the outside of the patio to comply with ABC regulations. This area will be a huge asset to the

success of the business and a great addition to the complex. It also fits well with the city's Master Plans concepts.

The beautiful recycled wood façade of the building will not be changed. Windows will be updated to match adjacent buildings in the complex and a fresh coat of sage green paint will be applied to the window frames and exterior wood trim.

My career in the wine industry began in 1994 at Winters Winery, now Berryessa Gap. Since then I have made wine professionally in Amador County and Napa Valley and have been the Wine Steward for Nugget Market in Vacaville for the past 4 years. Now, with the creation of Main Street Cellars, my career in the wine world seems to have come full circle. I would like to become a part of the city's growing wine movement and share the wealth of knowledge and experience I have gained over the past 15 years and bring it home to Winters.



PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners
DATE: November 24, 2009
FROM: Nelia C. Dyer, Community Development Director
SUBJECT: Public Hearing and Consideration of a Design Review Application Submitted by the Winters Chamber of Commerce for the Proposed Tile Mosaic on the Public Restroom Facility in Rotary Park

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions: 1) Receive the staff report; 2) Conduct the Public Hearing to solicit public comment; and approve the Design Review Application Submitted by the Winters Chamber of Commerce for the proposed tile mosaic on the public restroom facility in Rotary Park with the attached conditions of approval.

PROJECT DESCRIPTION: The project applicant, Winters Chamber of Commerce, is seeking approval of a design review application to allow the installation of a tile mosaic on the north and west walls of the public restroom facility located in Rotary Park. An anonymous donor wishes to make a donation for local artists to create and install the tile work on the facility. Artists of The Clayground of Winters would create the mosaic tile work. They will lay out the design and then affix the tiles to mortarboards using Thinset mortar. Dna Hoover of Winters will prepare the facility walls by grinding them down to 3/16" of flat. Thinset mortar will be troweled onto the walls and the mosaic tile panels will then be permanently installed using hex cap concrete screws; grout will cover the screw heads.

BACKGROUND: The proposed project was introduced to the Planning Commission on August 11, 2009 as an informational item for review and feedback. After some discussion, the Planning Commission requested that staff develop a formal process for reviewing public art prior to any decision on the proposed tile mosaic.

In response to the feedback received on August 11, 2009, staff prepared and introduced a draft public art program as an informational item for review and feedback at the October 27, 2009 Planning Commission meeting. Staff and the Planning Commissioners discussed the timeline of processing/establishing the public art policy as it relates to the review process for the proposed tile mosaic. Staff recommended that the proposed project be reviewed as a Design Review Application at

the regular meeting of the Planning Commission in November. The Planning Commission supported staff's recommendation.

STATEMENT OF ISSUES: The recently adopted Form Based Code for Downtown Winters (Winters Municipal Code Chapter 17.58) addresses public art in the Form Based Code area. In Section 17.58.080 (C) (Public Art), public art is defined as permanent or temporary works of art in the public realm, whether part of a building or free-standing. The section further states that public art shall be incorporated into public parks, plazas, and municipal buildings. One of the possible types of public art listed in the Section includes murals or mosaics covering walls, floors, and walkways.

While the Form Based Code for Downtown Winters encourages public art, the Form Based Code and the remainder of the Winters Municipal Code (WMC) are silent on the review process for public art projects. Presently, Chapter 17.36 of the WMC (Design Review) states that design review shall be required before the Planning Commission for "modifications to existing buildings involving collectively significant exterior changes, which may include changes of building materials...as determined by the Community Development Director." However, the criteria for review appear to be more appropriate for a building or parking lot, not public art. At the October 27, 2009 Planning Commission Meeting, staff recommended that the proposed project be reviewed using the acquisition criteria noted in the draft Public Art Policies and Procedures. These criteria include, but are not limited to, the following:

- Artwork that reflects historic significance, particularly relating to the history of Winters and the surrounding region.
- Artwork that reflects particular City themes
- Artwork that incorporates indigenous people of the area - both Native and long time residents of the region.
- Artwork that is created by local area artists is a primary consideration.
- Artwork that reflects the diversity of community interests.
- Artwork that reflects and is appropriate for a particular exhibit site.

ANALYSIS: The artists' renditions of the completed project are provided in Attachment A. On the west wall of the public restroom facility, the proposed mosaic depicts the Vaca Hills, the Putah Creek, and Winters' agricultural heritage. The mosaic proposed for the north wall of the facility continues the agricultural theme and the landscape of the greater Winters area. Staff has determined that the artwork reflects the historic significance of Winters, particularly with the agricultural theme. In addition, the applicant has stated that local artists will create the mosaic, which meets another criterion noted above.

While staff is amenable to the proposed artwork, staff is concerned about the maintenance of the mosaic tile work. In larger cities, there are one to two City staff members whose primary responsibility is the day-to-day care and control of public art. Unfortunately, the City does not have the staff (or funds) to monitor and/or maintain the artwork at this time. Therefore, staff recommends that the applicant be responsible for the maintenance of the proposed artwork.

In addition, staff recommends a time limit on the display of the proposed artwork. While Winters does not have a public art collection at this time, deaccession of the artwork may occur to refine and

strengthen the future public art collection in Winters. Therefore, staff recommends that the proposed artwork be reviewed either by the Planning Commission within five (5) years from the date of approval of the Design Review Application.

METHODOLOGY: Two actions are required to process the proposed project:

- 1) Confirmation of CEQA exemption finding - Section 15301 (Existing Facilities)
- 2) Approval of the Design Review Application and the attached conditions

APPLICABLE REGULATIONS: This project is subject to several regulations:

- o The California Environmental Quality Act (CEQA)
- o State Planning and Zoning Law
- o City of Winters General Plan
- o City of Winters Zoning Ordinance

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Director in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. Two methods of public notice were used: a legal notice was published in the Winters Express on Thursday, November 12, 2009 and notices were mailed to all property owners who own real property within three hundred feet of the project boundaries at least ten days prior to tonight's hearing. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, November 19, 2009.

ENVIRONMENTAL ASSESSMENT: The proposed project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities).

RECOMMENDED FINDINGS FOR THE TILE MOSAIC ON THE PUBLIC RESTROOM FACILITY AT ROTARY PARK (DESIGN REVIEW APPLICATION)

CEQA Findings:

1. The proposed project is exempt from CEQA review under §15301 (Existing Facilities)
2. The Planning Commission has considered the comments received on the project during the public review process.
3. The exemption finding reflects the independent judgment and analysis of the City of Winters.
4. The Planning Commission hereby confirms a Class 1 Existing Facilities exemption for the tile mosaic on the public restroom facility at Rotary Park.

General Plan and Zoning Consistency Findings:

1. The project is consistent with the goals and policies of the General Plan. One of the policies of the General Plan is to actively promote the visual and performing arts in Winters and support development of facilities for the arts. This project will provide a tile mosaic on the public restroom facility in Rotary Park.

2. The project is consistent with the provisions of the Zoning Ordinance. Incorporation of public art in Downtown Winters is encouraged in the Zoning Code. This project will provide a tile mosaic on the public restroom facility in Rotary Park.

RECOMMENDATION

Staff recommends approval of the project by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION APPROVE THE DESIGN REVIEW APPLICATION FOR THE TILE MOSAIC ON THE PUBLIC RESTROOM FACILITY AT ROTARY PARK BASED ON THE IDENTIFIED FINDINGS OF FACT AND BY TAKING THE FOLLOWING ACTIONS:

- Confirmation of exemption from the provisions of CEQA.
- Confirmation of consistency findings with the General Plan and Zoning Ordinance
- Approval of the Design Review Application subject to the conditions of approval attached hereto.

ALTERNATIVES: The Commission can elect to modify any aspect of the approval or to deny the application. If the Commission chooses to deny the application, the Commission would need to submit findings for the official record that would illustrate the reasoning behind the decision to deny the project.

CONDITIONS OF APPROVAL FOR THE DESIGN REVIEW APPLICATION FOR THE TILE MOSAIC ON THE PUBLIC RESTROOM FACILITY AT ROTARY PARK, WINTERS, CA 95694.

1. This Design Review approval is based upon and limited to compliance with the project description, attachments, and conditions of approval set forth below. Any deviations from the project description, attachments or conditions must be brought to the attention of, reviewed and approved by the Planning Commission for conformity with this approval. Deviations may require modification to the permit and/or environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
2. In the event any claim, action or proceeding is commenced naming the City or its agents, officers, and employees as defendant, respondent or cross defendant arising or alleged to arise from the City's approval of this project, the project applicant shall defend, indemnify, and hold harmless the City or its agents, officers, and employees, from liability, damages, penalties, costs, or expenses in any such claim, action, or proceeding to attach, set aside, void, or annul an approval of the City of winters, the Winters Planning Commission, any advisory agency to the City and local district, or the Winters City Council. Project applicant shall defend such action at applicant's sole cost and expense, which include court costs and attorney fees. The City shall promptly notify the applicant of any such claim, action, or proceeding and shall cooperate fully in the defense. Nothing in this condition shall be construed to prohibit the City of Winters from participating in the defense of any claim, action, or proceeding, if City bears its own attorney fees and cost, and defends the action in good faith. Applicant shall not be required to pay or perform any settlement unless the applicant in good faith approves the settlement, and the settlement imposes no direct or indirect cost on the City of Winters, or its

agents, officers, and employees, the Winters Planning Commission, any advisory agency to the City, local district, and the City Council.

3. All electrical, mechanical, and engineering components related to the installation of the artwork may require approval by the City Engineer.
4. The artwork shall be designed and installed in such a way to avoid sharp edges, points, projections, or pinch-points, which may cut, puncture, or cause injury by impact, catch passing pedestrian clothing, or entrap limb.
5. The applicant shall be responsible for ensuring the placement, management and maintenance of the artwork.
6. A legal document defining the rights and responsibilities of the City, the applicant, and/or artist(s) shall accompany the artwork and shall be approved by the City Attorney prior to the acceptance of the artwork by the City of Winters.
7. The Planning Commission shall review the artwork within five (5) years of this design review approval. No work of art will be accepted with a guarantee in perpetuity of exhibition.
8. Failure to comply with the above conditions may result in the immediate revocation of the design review approval.

ATTACHMENTS:

- A. Proposed Tile Mosaic



TO: Chairman and Planning Commissioners
DATE: November 24, 2009
THROUGH: Nelia C. Dyer, Community Development Director
FROM: Dan Maguire, Housing Programs Manager
SUBJECT: Public Hearing and Consideration of a Recommendation to the Winters City Council to Adopt an Ordinance Adding Chapter 17.200 to the Winters Municipal Code Pertaining to Affordable Housing Requirements

RECOMMENDATION: Staff recommends that the Planning Commission take the following actions:

- 1) Receive Staff Report
- 2) Conduct Public Hearing
- 3) Recommend to City Council the Adoption of an Ordinance Adding Chapter 17.200 to the Winters Municipal Code Pertaining to Affordable Housing Requirements

BACKGROUND: In 1992, the City of Winters completed and adopted a comprehensive update of its General Plan. As part of this effort, the City also adopted the seven elements required for a General Plan. Subsequently, Legal Services of Northern California (LSNC) challenged the adequacy of the City's Housing Element, one of the required seven elements, and brought suit against the City in California Superior Court. The City incurred significant expenses during its defense and eventually a stipulated judgment was agreed to by all parties in 1994 and entered in Superior Court. The key provisions of the judgment included the City's adoption of an inclusionary housing ordinance in 1994 (Ordinance 94-10) which required that 15 percent of all new housing be affordable to very low-, low-, and moderate income households.

The Affordable Housing Steering Committee (AHSC), along with numerous stakeholders, including the Yolo County Housing Authority, Legal Services of Northern California (LSNC), Mercy Housing, and other stakeholders started studying potential revisions to the existing Inclusionary Housing Ordinance (IHO) at the AHSC meeting on November 24, 2008. Over the course of the last year, the AHSC and the aforementioned stakeholders have met several times, and agreement on the final version of the IHO was reached at the AHSC meeting on November 3, 2009.

DISCUSSION: The affordable housing requirements contained in this ordinance are the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low-, low-, and moderate income within the City.

The proposed amendment includes an exemption for developments of 15 dwelling units or less located in the Community Development Agency Project Area from the requirement to provide affordable housing. It was the consensus of the AHSC and the other participants that small infill projects would continue to be severely constrained if the requirements of the existing IHO were imposed. By allowing the exemption for small projects in the project area, it is anticipated this change will encourage infill development that encourages "smart growth".

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this project was prepared by the Community Development Director in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law. A legal notice was published in the Winters Express on Thursday, November 12, 2009. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since Thursday, November 19, 2009.

ENVIRONMENTAL DETERMINATION: Pursuant to Section 15061 (b) (3) of the State CEQA Guidelines, a project is exempt from the California Environmental Quality Act when it can be seen with certainty that there is not possibility that the proposed project may have a significant effect on the environment. The project entails the addition of a chapter to the Zoning Code regarding Affordable Housing, and therefore, constitutes administrative changes to the Zoning Code. As such, they will have no adverse effect on the environment; consequently, the project is not subject to environmental review under CEQA pursuant to Section 15061 (b) (3).

RECOMMENDATION

Staff recommends approval of the project by making an affirmative motion as follows:

I MOVE THAT THE WINTERS PLANNING COMMISSION RECOMMEND TO THE WINTERS CITY COUNCIL THE ADOPTION OF AN ORDINANCE TO ADD CHAPTER 17.200 TO THE WINTERS MUNICIPAL CODE PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS.

ATTACHMENTS:

1. Legal Services Stipulated Settlement
2. Existing Inclusionary Housing Ordinance (Ordinance 94-10)
3. Proposed Inclusionary Housing Ordinance
4. Historic Affordable Housing Production
5. Potential Exempted Properties

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LEGAL SERVICES OF NORTHERN CALIFORNIA, INC.
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JAN 03 1994
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOLO

MIGUEL MICHEL, LUCILA GOMEZ,
REBECCA RIVAS, MARIA GOMEZ,
and PATTY BERMUDEZ,

Case No. 70141

Plaintiffs/Petitioners,

vs.

JUDGMENT PURSUANT
TO AGREEMENT FOR
ENTRY OF
JUDGMENT
PURSUANT TO
STIPULATED
SETTLEMENT
[C.C.P. §664.6]

CITY OF WINTERS, a municipal entity,
J. ROBERT CHAPMAN, WILLIAM
PFANNER,
FRANK CURRY, ROGER MOSIER,
and TOM MARTIN in their
official capacities as the City
Council of Winters, and
DOES I through 20, inclusive,

Defendants/Respondents,

DOES I THROUGH XX,

Real Parties In Interest.

1 **MIGUEL MICHEL, LUCILA GOMEZ,**
2 **REBECCA RIVAS, MARIA GOMEZ,**
3 **and PATTY BERMUDEZ,**

4 **Plaintiffs/Petitioners**

5 **vs.**

6 **ALL PERSONS INTERESTED IN THE MATTER**
7 **OF THE VALIDITY OF THE REDEVELOPMENT**
8 **PLAN FOR THE WINTERS COMMUNITY**
9 **DEVELOPMENT PROJECT AREA, as adopted**
10 **Ordinance No. 92-08 on July 20, 1992,**
11 **by the City Council of the City of**
12 **Winters and the validity of all**
13 **proceedings taken or made for or in**
14 **way connected with the adoption**
15 **of the Redevelopment Plan for the**
16 **Winter Community Development Project**
17 **Area: CITY OF WINTERS, a Municipal**
18 **Corporation; COMMUNITY DEVELOPMENT**
19 **AGENCY OF THE CITY OF WINTERS, a**
20 **Redevelopment Agency of the State**
21 **of California, and DOES 1 through 20,**
22 **inclusive,**

23 **Defendants/Respondents**

24 The above entitled cases having been submitted for decision by counsel for the
25 respective parties, to the Honorable Donna M. Petre, Presiding Judge of the above entitled
26 Court, based on a written Agreement for Entry of Judgment Pursuant to Stipulated
27 Settlement attached hereto as Exhibit A; and the Court having considered the Agreement and
28 presentations of counsel:

IT IS ADJUDGED, ORDERED AND DECREED that

1. The terms of the Agreement for Entry of Judgment Pursuant to Stipulated
Settlement attached hereto as Exhibit A are entered as the judgment in the above-entitled
cases. The parties are hereby ordered to comply with the terms of the Agreement for Entry
of Judgment Pursuant to Stipulated Settlement.

2. This Court retains jurisdiction with respect to the implementation of all terms
and conditions set forth in the Agreement for Entry of Judgment Pursuant to Stipulated
Settlement. Plaintiffs may enforce the Agreement for Entry of Judgment Pursuant to

1 Stipulated Settlement by noticed motion.

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3 Dated: JAN - 3 1994

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DONNA M. PETRE

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JUDGE OF THE SUPERIOR COURT

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LEGAL SERVICES OF NORTHERN CALIFORNIA, INC.
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Attorneys for Plaintiffs/Petitioners
MIGUEL MICHEL, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YOLO

MIGUEL MICHEL, LUCILA GOMEZ,
REBECCA RIVAS, MARIA GOMEZ,
and PATTY BERMUDEZ,

Case No. 70141

Plaintiffs/Petitioners,

AGREEMENT FOR ENTRY
OF JUDGMENT
PURSUANT
TO STIPULATED
SETTLEMENT
[C.C.P. § 664.6]

vs.

CITY OF WINTERS, a municipal entity,
J. ROBERT CHAPMAN, WILLIAM PFANNER,
FRANK CURRY, ROGER MOSIER,
and TOM MARTIN in their
official capacities as the City
Council of Winters, and
DOES I through 20, inclusive,

Defendants/Respondents,

DOES I THROUGH XX,

Real Parties In Interest.

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EXHIBIT A

1 **MIGUEL MICHEL, LUCILA GOMEZ,**
2 **REBECCA RIVAS, MARIA GOMEZ,**
3 **and PATTY BERMUDEZ,**

3 **Plaintiffs/Petitioners**

4 vs.

5 **ALL PERSONS INTERESTED IN THE MATTER**
6 **OF THE VALIDITY OF THE REDEVELOPMENT**
7 **PLAN FOR THE WINTERS COMMUNITY**
8 **DEVELOPMENT PROJECT AREA, as adopted**
9 **Ordinance No. 92-08 on July 20, 1992,**
10 **by the City Council of the City of**
11 **Winters and the validity of all**
12 **proceedings taken or made for or in**
13 **way connected with the adoption**
14 **of the Redevelopment Plan for the**
15 **Winter Community Development Project**
16 **Area: CITY OF WINTERS, a Municipal**
17 **Corporation; COMMUNITY DEVELOPMENT**
18 **AGENCY OF THE CITY OF WINTERS, a**
19 **Redevelopment Agency of the State**
20 **of California, and DOES 1 through 20,**
21 **inclusive,**

14 **Defendants/Respondents**

16 **IT IS HEREBY STIPULATED AND AGREED** by and between plaintiffs,
17 **MIGUEL MICHEL, LUCILA GOMEZ, MARIA GOMEZ, PATRICIA BERMUDEZ, and**
18 **REBECCA RIVAS (hereinafter referred to as "plaintiffs"), and the CITY OF WINTERS,**
19 **a municipal entity, J. ROBERT CHAPMAN, WILLIAM PFANNER, FRANK CURRY,**
20 **ROGER MOSIER and TOM MARTIN in their official capacities as the City Council and**
21 **Directors of the Community Development Agency of Winters, and the COMMUNITY**
22 **DEVELOPMENT AGENCY OF THE CITY OF WINTERS, a Redevelopment Agency**
23 **of the State of California (hereinafter referred to collectively as "City"), as follows:**

24 **This Agreement for Entry of Judgment Pursuant to Stipulated Settlement (C.C.P.**
25 **§ 664.6) is a complete, final and binding resolution of all issues and claims raised in both**
26 **of these actions. Except as expressly set forth in this Agreement, all claims for relief in**
27 **these actions shall be deemed merged into the judgment. The judgment entered pursuant**
28 **to this agreement shall be binding and enforceable as to the matters set forth in this**

1 Agreement. Plaintiffs may enforce the terms of this Agreement by noticed motion. The
2 judgment entered pursuant to this Agreement shall not be res judicata as to any obligations
3 of the defendants or rights of the plaintiffs, or act as collateral estoppel with respect to any
4 facts or issues, except as to obligations and facts set forth in this Agreement. For purposes
5 of this Agreement, the following terms shall be defined as set forth currently in the Health
6 & Safety Code, as follows: "very low income" (Health & Safety Code § 50105); "low
7 income" (Health & Safety Code § 50079.5) and "moderate income" (Health & Safety Code
8 § 50093). For purposes of this agreement, the term "affordable" shall be understood to
9 have the meaning of that term in California as defined by the Department of Housing and
10 Community Development at the time of approval of the development project in question.
11

12 **THE PARTIES HEREBY STIPULATE AND AGREE:**
13

- 14 1. The City shall require, and amend its Housing Element to include a policy
15 requiring, that at least 15 percent of all new housing units will be affordable to very low,
16 low or moderate income households, with six percent of new housing units being
17 affordable to very low income households, and nine percent of new housing units being
18 affordable to low and moderate income households in proportion to the unmet affordable
19 housing needs for each as identified in the current Housing Element in effect during each
20 four year period described below. In the event that the City is no longer required to
21 identify housing needs in its Housing Element, the above nine percent of the units that
22 shall be affordable to low and moderate income households shall be affordable in
23 proportion to the unmet affordable housing needs for low and moderate income households
24 as identified in the most current analysis of housing needs for the City prepared by
25 SACOG or any other non-local governmental entity that has prepared such an analysis.
- 26 2. The City is required to satisfy its obligation over a succession of four year
27 periods. For each four year period, commencing January 1, 1994, the City must ensure
28 that 15% of all new units will be affordable according to the terms of Paragraph 1. The

1 City's obligation shall be satisfied for the aggregate number of new units citywide within
2 each four year period. The City may provide for different percentages of affordable units
3 in individual projects or subdivisions, so long as the 15% obligation is met citywide in
4 each four year period.

5 3. The 15 percent obligation for each four year period may be satisfied solely
6 through the construction of affordable multi-family units.

7 4. The City will make its best efforts to require that the Parkview and Winters
8 Highlands Tentative Subdivision Maps before the City are ultimately approved with the
9 condition that they provide affordable housing. The City currently intends to impose
10 conditions on the tentative maps stating that, as conditions of gaining final map approval,
11 the City may impose an affordability requirement. The City understands that Legal
12 Services has felt the need to exhaust its administrative remedies in writing as to its theory
13 that the maps should not be approved in what Legal Services believes to be the absence
14 of a legally satisfactory housing element. Regardless of whether the pending maps include
15 such conditions, approval of the maps will trigger the City's 15% obligation.

16 5. Affordable rental and ownership units for very low and low income
17 households shall remain affordable for a period of not less than 55 years.

18 6. Retroactive to adoption of the Redevelopment Plan in July 1992, 20% of
19 the gross Agency tax increment allocated to the Agency pursuant to Health & Safety Code
20 § 33670 shall be set aside in the Agency's Low and Moderate Income Housing Fund as
21 currently required by Health & Safety Code § 33334.2. The "20% set aside" from the
22 gross tax increment shall be calculated before the "pass through" of funds to Yolo County
23 and any other entities. The City and Agency shall deposit in the Low and Moderate
24 Income Funds any difference between the funds already deposited since the adoption of
25 the Redevelopment Plan and 20% of the gross Agency tax increment before the pass
26 through of funds to any other entity.

27 7. The City shall not get credit towards satisfying its 15% obligation for any
28 affordable units that are already approved outside the redevelopment project area, although

1 affordable units imposed on currently pending subdivision maps shall count toward the
2 total for the first four year period ending on January 1, 1998. The obligation within the
3 project area began running with the adoption of the Redevelopment Plan in July 1992.
4 Credit for any affordable units within the project area shall be granted only for affordable
5 units approved after July 1992. The 15 percent obligation outside the project area will be
6 deemed to have commenced as of October 15, 1993.

7 8. Plaintiffs waive their right to litigate any causes of action in the two
8 lawsuits, and instead retain only the right to enforce the Judgment Entered Pursuant to
9 Stipulated Settlement, as described in Paragraph 10. Plaintiffs further agree not to file
10 litigation challenging the Winters Highlands Tentative Subdivision Map and the Parkview
11 Tentative Subdivision Map currently pending before the City.

12 9. The City shall provide Plaintiffs' counsel annual written reports on its
13 progress towards meeting the 15 percent requirement, in the form of expanded Annual
14 Reports, as currently required by the Community Redevelopment Law at Health & Safety
15 Code §§ 33080.1 and 33080.4. If, at the time or publication of such a report, the City
16 cannot demonstrate that it is keeping pace towards satisfying the 15 percent obligation, the
17 report shall identify, based on the best information reasonably available, where and how
18 the new affordable units will be or are likely to be built.

19 10. The City's obligation to achieve the 15 percent requirement must first be
20 satisfied by, and becomes enforceable immediately after, January 1, 1998, and each
21 subsequent four year period. If, as of January 2, 1998, or immediately after the
22 completion of each subsequent four year period, Plaintiffs believe that the City has failed
23 to satisfy the 15 percent requirement, Plaintiffs may by way of noticed motion seek to
24 enforce the terms of the stipulated judgment. The City and Plaintiffs agree that, in the
25 event of non-compliance by the City, remedies available under the stipulated judgment
26 include a residential development moratorium, as well as any other remedy that the Court
27 can fashion based on its inherent equitable powers or any powers created by statute, which
28 may possibly include a commercial development moratorium. The City retains its right,

1 however, to argue as to the appropriateness of any such remedy.
2
3 11. The court's existing orders with regard to the City's motion for judgment
4 on the pleadings are vacated.

5 Mary W. White

6 Dated: 12-21-93

7 Frank Curry
8 **FRANK CURRY, City Councilmember**
9 **and Redevelopment Agency Director**
10 Defendant

11 Dated: 12-21-93

12 Roger Mosier
13 **ROGER MOSIER, City Councilmember**
14 **and Redevelopment Agency Director**
15 Defendant

16 Dated: 12/20/93

17 Tom Martin
18 **TOM MARTIN, City Councilmember**
19 **and Redevelopment Agency Director**
20 Defendant

21 12-21-93

22 Dated: 12-20-93

23 Maria Gomez
24 **MARIA GOMEZ**
25 Plaintiff

26 Dated: 12-20-93

27 Patricia Hernandez
28 **PATRICIA HERNANDEZ**
29 Plaintiff

30 Dated: 12/20/93

31 Rebecca Rivas
32 **REBECCA RIVAS**
33 Plaintiff

34 6. Dated: 12-20-93

1 APPROVED AS TO FORM ONLY:

2 Dated: 12-21-93

Dated: 12/20/93

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JAMES G. MOOSE, Esq.
Remy & Thomas

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DAVID E. JONES, ESQ.
LEGAL SERVICES OF
NORTHERN CALIFORNIA

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CITY OF WINTERS

ORDINANCE 94-10

AN ORDINANCE ESTABLISHING AN AFFORDABLE HOUSING PROGRAM
FOR THE CITY OF WINTERS

WHEREAS, the public welfare requires the establishment of a program to encourage the provision of new affordable housing in order to meet the housing needs of the citizens of the City of Winters;

WHEREAS, federal and state funds are either extremely limited or no longer available to facilitate the construction of new affordable housing which places greater emphasis on local government and the private sector in producing affordable housing; and

WHEREAS, the City of Winters General Plan provides for several housing policies which will facilitate the development of new and rehabilitated affordable housing; and

WHEREAS, the Winters General Plan also provides for programs, activities and incentives to implement housing policy to encourage the production of housing affordable to low and very low income households.

NOW, THEREFORE, the City Council of the City of Winters does ordain as follows:

Section 1. Article 31, Affordable Housing, is hereby added to Title VIII of the Winters Municipal Code to read as follows:

ARTICLE 31. AFFORDABLE HOUSING

Section 8-1.3101. PURPOSE. The public welfare requires the city to take action to ensure that affordable housing is constructed and maintained within the City of Winters. The General Plan contains goals, policies and implementation programs designed to facilitate the development of new and rehabilitation for affordable housing. Such policies include but are not limited to, achieving the community's fair share regional allocation for housing for very low and low income households, establishing density bonuses to facilitate construction of housing for targeted income groups, rezoning land to promote mixed uses and affordable housing, and seeking all available sources of funding (including redevelopment) to facilitate development of affordable housing by the private sector. Special needs must be addressed such as adequate bedrooms for large families and housing for seniors.

Section 8-1.3102. DEFINITIONS. For the purposes of this article the following words and phrases shall have the meanings respectively ascribed to them by this section.

- (a) "Affordable housing" means affordable sales housing or affordable rental housing. Affordable housing focuses on moderate, low and very low income households as defined hereinafter and by State Statute. The ratio of household income to ability to pay may evolve over time. However, currently affordable housing purchase payments are approximately 30% of gross monthly household income less insurance and property taxes. Affordable rental housing payments are approximately 30% of gross monthly household income less utilities.
- (b) "Moderate income" means a household earning a gross income of more than 80 percent and less than 121 percent of the median income for Yolo County as determined by the U.S. Department of Housing and Urban Development.
- (c) "Low income" means a household earning a gross income of more than 50 percent and less than 80 percent of the median income for Yolo County as determined by the U.S. Department of Housing and Urban Development.
- (d) "Very low income" means households earning a gross income of less than 50 percent of the median income for Yolo County as determined by the U.S. Department of Housing and Urban Development.
- (e) "Density bonus" means entitlement to build additional residential units above the maximum number of units permitted pursuant to existing General Plan, applicable specific plan and zoning designations. Density bonus units may be constructed only in the development where the units of affordable housing are located. Density bonus means a bonus of units awarded to a development pursuant to Government Code Section 65915 et seq.

Section 8-1.3103. **APPLICABILITY OF ARTICLE.** This Article is enacted pursuant to the police power of the City of Winters and is for the purpose of providing affordable housing in Winters consistent with the General Plan.

Section 8-1.3104. **INDIVIDUALIZED PROJECTS.** The Winters General Plan contains a policy that at least 15 percent of all new housing units will be affordable to persons of very low, low, or moderate income households, with six percent of new housing being affordable to very low income households, and nine percent being affordable to low or moderate income households in proportion to the unmet needs for each identified in the current Housing Element. This policy may be met in a variety of ways, including but not limited to, construction of dwelling units (single-family or multi-family) and sales or rentals; dedication of land; monetary payments in lieu of dedication of land, cooperative ventures with non-profit housing corporations, mutual housing associations, limited equity housing cooperatives, self-help or "sweat equity" projects, etc.

The City will explore all avenues of funding and cooperative efforts to assist in the development of affordable housing by the private and non-profit sectors.

The City's policy is to cause to be constructed 15% of all new housing for very low, low and moderate income house holds. This is a community-wide policy. Each project/subdivision will be individualized or tailored to contribute to the end policy. Every project will not be identical. A project individualized program shall be developed jointly by the developer/builders and city. The city reserves the final authority to determine whether the developer's project individualized program meets the city's affordable housing requirements.

Such programs may included but are not limited to the following: Programs may use a combination of the following elements.

- a. Construct units for sale or rental.
- b. Provide an irrevocable offer of dedication of land.
- c. Payment of an in lieu fee instead of constructing units or dedicating land.
- d. Density bonuses shall be granted for low and lower income units pursuant to State Statute.

Sections 8-1.3105 TERM. Affordable housing for low and very low income house hold shall remain affordable for a period of not less than 55 years.

Section 8-1.3106 HOUSING MIX. A community-wide housing mix is essential. Seniors and large families must be addressed as well as average size house holds. Affordable housing units shall include a mis of units sizes, and to the extant feasible, should be dispersed throughout the development.

Section 8-1.3107 MINIMUM SIZE. The city shall approve development program for affordable housing proposals with a minimum acceptable size of land dedication based upon development feasibility included standard criteria such as parking, open space, building height, etc.

Section 8-1.3108 IN-LIEU FEES. In-lieu fees shall be established by Resolution of the City Council. Any such payment shall be deposited into a separate account for independent audit and entitled "Affordable Housing Fund". This in-lieu fee shall be levied on builders only when on-sit construction and dedication of land requirements are not deemed feasible or in combination with construction and dedication. The preferred action is construction of housing as compared to payment of in-lieu fees. The city shall determine whether the payment of in-lieu fees is appropriate to meet the affordable housing requirements. The city reserve the final authority to determine whether the developer's project

individualized program meets the city's affordable housing requirements.

This Ordinance was introduced at a regular meeting of the Winters City Council on the 19th day of April, 1994 and was passed and adopted on the 3rd day of May, 1994 by the following roll call vote:

AYES: Curry, Mosier, Pfanner, Mayor Chapman

NOES: None

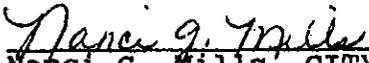
ABSENT: Martin

ABSTAINED: None



J. Robert Chapman, MAYOR

ATTEST:



Nanci G. Mills, CITY CLERK

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF WINTERS
ADDING CHAPTER 17.200 TO THE ZONING CODE
PERTAINING TO AFFORDABLE HOUSING REQUIREMENTS**

The City Council of the City of Winters hereby ordains as follows:

SECTION 1. Recitals.

- A. The City of Winters undertook a comprehensive study and analysis of its affordable housing program, which prompted certain revisions to the affordable housing program for the City.
- B. The affordable housing requirements contained in this Ordinance are the culmination of the City's efforts to develop an affordable housing program that promotes a balance between encouraging the development of market-rate housing and mixed use development in the City, while at the same time, providing for the creation of affordable housing necessary to meet the needs of individuals of very low, low and moderate income within the City.
- C. The City of Winters Planning Commission conducted a noticed public hearing regarding this Ordinance, which amends the Zoning Code to add Section 17.200 pertaining to affordable housing requirements within the City, and has recommended approval of the Ordinance.
- D. The City Council of the City of Winters has provided public notice of its intention to amend the Zoning Code to adopt Section 17.200, and conducted a public hearing thereon on _____.
- E. The proposed amendment of the Zoning Code to add Section 17.200 is consistent with the goals, policies, and objectives of the City of Winters General Plan, and in particular, the Housing Element, as adopted on _____.
- F. The proposed amendment of the Zoning Code to add Section 17.200 has been reviewed in accordance with the California Environmental Quality Act ("CEQA") and is exempt pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 2. Chapter 17.200 "Affordable Housing Requirements" is hereby added to the Winters Municipal Code to read as follows:

Section 17.200.010 Purpose and Intent

The public welfare requires the City to take action to ensure that affordable housing is constructed and maintained within the City. This Chapter is intended to provide that new

development projects in the City contain or assist in the production of a defined percentage of housing affordable to low income and very low income households, to provide for a program of incentives, and to implement the affordable housing policies contained in the Housing Element of the City's General Plan.

Section 17.200.020 Definitions

"Affordable Housing Steering Committee" means an advisory committee appointed by the City Council for the purpose of advising the City Council, Planning Commission, Community Development Agency and City staff on affordable housing policies and programs, use of redevelopment housing funds, proposed affordable housing projects, and other housing matters, at the request of the City Council.

"Community Development Director" means the director of the Community Development Department of the City, or his or her designee.

"Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks the City's approval of discretionary land use entitlements for all or part of a development project. "Developer" includes "owner"

"Development project" means any development project that contains residential units, including single family and multifamily units.

"Inclusionary housing agreement" means an agreement between the developer and the City setting forth the manner in which the inclusionary housing requirements will be met in the development project.

"Inclusionary housing plan" means the plan setting forth the manner in which the developer proposes to satisfy the inclusionary housing requirements of this Chapter within the development project.

"Inclusionary housing requirement" means the inclusionary housing requirements as specified in this Chapter.

"Inclusionary housing unit or inclusionary unit" means an ownership or rental unit developed or provided in satisfaction of the inclusionary housing requirements of a development project, as provided for in this Chapter, and which is affordable to very low, low income or moderate income households.

"Low income household" means a household whose income does not exceed eighty percent (80%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Moderate income household” means a household whose income does not exceed one hundred twenty percent (120%) of median income applicable to Yolo County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development.

“Very low income household” means a household whose income does not exceed fifty percent (50%) of the median income, adjusted for household size, applicable to Yolo County, as published and periodically updated by the United States Department of Housing and Urban Development.

Section 17.200.030 Inclusionary Housing Requirements

(A) Number and Affordability of Units. Except as otherwise provided for in this Chapter, all development projects consisting of five (5) or more residential units within the City of Winters shall include inclusionary housing units equal to fifteen percent (15%) of the total number of residential units in the development project, excluding density bonus units. The fifteen percent (15%) inclusionary housing requirement shall consist of six percent (6%) very low income units and nine percent (9%) low income or moderate income units in proportion to the unmet needs for each identified in the current housing element.

(B) Exception. The following development projects are exempt from the provisions of this Chapter:

1. Redevelopment Project Area. The fifteen percent (15%) inclusionary housing requirement provided in Subsection A above shall not apply to development projects within the Winters Community Development Agency Redevelopment Project Area that contain fifteen (15) or fewer residential units. This exception shall expire on December 31, 2013, unless extended by the City Council. Any development project that has not acquired a vested right to develop in accordance with existing laws and regulations by such expiration date shall be required to comply with the provisions of this chapter.
2. Project with prior approval. A development project that has obtained discretionary approval (e.g., a Development Permit, Use Permit, Design Review, Planned Development Permit, or Variance approval) before the effective date of this Chapter; or a building permit before the effective date of this Chapter; or a Certificate of Occupancy before the effective date of this Chapter.
3. Exempt by State law. A development project that is exempt from this Chapter by State law.
4. Project with vested rights. A development project for which the City has entered into a development agreement before the effective date of this Chapter, or which otherwise demonstrates a vested right to proceed without complying with this Chapter.

(C) Implementation. The developer shall propose an inclusionary housing plan to community development director as provided for in this Chapter. A condition requiring compliance with all of the terms of the inclusionary housing plan, as approved by the Planning Commission, shall be imposed on the development project. Further, the developer and the City shall enter into an inclusionary housing agreement that requires compliance with the inclusionary housing plan, and that will be recorded upon the property as provided in this Chapter.

(D) Density Ranges. Development projects which are proposed in areas of the City zoned for medium high and high density residential use, shall only be approved if density of the development project is in the upper one-half of the density ranges specified in the Zoning Code for developments in such zones, unless site constraints effectively prohibit such intensity of development.

(E) Unit Size. The inclusionary housing requirement shall accommodate diverse family sizes by including a mix of studio, one, two and/or three bedroom units where feasible.

(F) Exterior Appearance. The inclusionary units shall be visually compatible with and shall have similar external building materials and finishes as the market rate units in the immediate neighborhood.

(G) Access to Common Amenities. Tenants and residents of inclusionary units shall be provided the same rights and access to common amenities within the development project as tenants and residents occupying market rate units.

(H) Small Parts of Larger Projects. The City shall not approve development projects which reasonably appear to be smaller parts of a greater project and have the effect of circumventing the requirements of this Chapter.

Section 17.200.040 Inclusionary Housing Plan

(A) Submittal Requirements. At the time of and as part of the application for a discretionary land use entitlement for a development project, the inclusionary housing plan shall be submitted to the Community Development Director by the project developer, and shall include:

1. A detailed description of the method by which the developer will comply with the requirements of this Chapter.
2. The location of the inclusionary units within the development project, if applicable, the size of the inclusionary units, and any incentives requested by the developer in accordance with Section 17.200.060 of this Chapter.
3. Where an alternative to constructing inclusionary units on-site is intended, the developer shall provide detailed information regarding the alternative selected for meeting the inclusionary housing requirement, including a written statement that the proposed parcel(s), site, or existing market rate units, if applicable,

are available and capable of being dedicated to the City by the developer and that the affordable units shall be restricted as affordable housing, by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

4. A phasing plan that provides a schedule for the timely development of the inclusionary units as the development project is built out.
5. Any other information deemed necessary by the Community Development Director.

(B) Affordable Housing Steering Committee Meeting. Prior to the submittal of the inclusionary housing plan, the Affordable Housing Steering Committee shall meet with and provide recommendations to the project developer regarding compliance with this Chapter.

(C) Community Development Director Preliminary Review. Upon receipt of the proposed inclusionary housing plan, the Community Development Director shall review the plan, and thereafter shall meet with the project developer to discuss the proposed plan.

(D) Plan Approval. After the preliminary review by the Community Development Director, the inclusionary housing plan shall be subject to the same review and approval as the discretionary land use entitlements.

Section 17.200.050 Alternative Methods to Meeting Inclusionary Housing Requirements

The City strongly prefers and shall encourage on-site construction of inclusionary units, however alternatives to the on-site construction of the inclusionary housing units may be proposed by the developer, consistent with the requirements set forth below in this section. The alternative methods are subject to review and approval of the City, as part of the inclusionary housing plan review process. The developer shall have the burden of demonstrating that the alternative selected is equivalent to the on-site construction of inclusionary housing units. Alternatives may include:

(A) Land Dedication. A developer may propose to dedicate land within the City sufficient to construct at least the same number of units and infrastructure to support the number of units as the developer would have been required to construct on-site subject to the inclusionary housing requirement. Land may be dedicated pursuant to this alternative provided the site will support the same number of units the developer is required to construct, has zoning of a minimum density necessary to accommodate the inclusionary housing requirement, that the site is physically and legally acceptable to the City, and that the site is restricted to affordable housing. The developer shall dedicate the land to the City at no cost the City.

(B) On-Site or Off-Site Construction. A developer may propose to develop housing to satisfy the inclusionary housing requirement at an on-site or off-site location within the City.

(C) Acquisition, Rehabilitation, and Conversion of Market Rate Units. A developer may propose to acquire and rehabilitate existing market rate units in the City which are at or above existing affordable rents, which require repair, rehabilitation, modernization or other work and convert those units to affordable housing units.

(D) Conversion of Market Rate Units. A developer may propose to convert existing market rate units in the City which do not require rehabilitation and are at or above existing affordable rents to affordable housing units by way of contractual restrictions, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(E) Accessory Units. A developer may propose to construct accessory dwelling units (e.g. granny flats) on site of the development project to meet the inclusionary housing requirement. The lots upon which the accessory dwelling units are constructed shall be restricted to provide that the units remain affordable housing units by way of contract, recorded covenants or other legal mechanisms.

(F) Inclusionary Housing Credits. A developer may propose to use inclusionary housing credits, as defined in this Chapter, to meet the inclusionary housing requirement.

(G) Payment of In-Lieu Fees. A developer may propose to pay an in-lieu fee to the City instead of constructing affordable units to meet the inclusionary housing requirement.

(H) Cooperative Ventures. A developer may propose a cooperative venture with a non-profit housing corporation, mutual housing association, limited equity housing cooperative, or other entity.

(I) Sweat Equity Project. A developer may propose a self-help or “sweat equity” project with a non-profit corporation or other entity.

(J) Combination. A developer may propose to utilize a combination of the above alternatives to meet the inclusionary housing requirement.

(K) Other Alternatives. A developer may propose, and the City may accept, other alternatives that meet the requirements and intent of this Chapter.

Section 17.200.060 Incentives and Assistance

(A) Request for Incentives and Assistance. The developer of a development project subject to the inclusionary housing requirements of this Chapter, may request, and the City, in its discretion, may grant or deny the request for incentives as set forth in this section.

(B) Fee Waivers or Deferrals. The City may grant to a developer a program of waivers, reduction or deferrals of development fees or administrative fees for the inclusionary units.

(C) Inclusionary Housing Credits. A developer may submit as part of the inclusionary housing plan a proposal to provide affordable housing units or a donation of land in connection with a development project beyond the requirements of this Chapter. The developer may credit the additional affordable units or land against future development projects proposed by the developer within the City, subject to the provisions of this chapter. Inclusionary housing credits may also be transferred or sold to any other person or entity subject to the following conditions:

(1) Inclusionary housing credits must be applied to another development project within five (5) years of issuance of a certificate of occupancy for the inclusionary units(s) or implementation of an alternative method of meeting the inclusionary method of meeting the inclusionary housing requirement which gives rise to the credits, such as land dedication. A developer who has not used, transferred or sold credits within the time specified in this section may apply to the City for a one (1) year extension on the life of the credits. A request for extension of the inclusionary housing credit shall be reviewed by City Council who shall grant or deny the request for extension. The City Council shall consider progress and efforts the developer has made to utilize the credits during the previous five (5) years, the impact on affordable housing in the City if the extension is granted, any proposals for use of the credits should the extension be granted and other relevant factors.

(2) Inclusionary units receiving monetary subsidies through the City shall not receive credits unless the City has been reimbursed for its financial assistance.

(D) Local Public Funding. A developer may apply to the community development agency for local public funding to assist in the financing and development of affordable housing to meet the inclusionary housing requirement.

(E) Modification of Development Standards. To the extent feasible in light of the uses, design and infrastructure needs of the development project, modifications to existing City planning standards may be made for the development project. Such modifications shall be requested through a development permit, or other such permit that allows the modification of planning standards, and shall be considered in conjunction with the other discretionary land use entitlements for the development project.

(F) Mixed Use Projects. Mixed use projects containing affordable units may be proposed and approved in areas of the City where the Zoning Code and the General Plan allow such development to help off-set the cost of developing affordable units pursuant to the requirements of this chapter.

Section 17.200.070 Density Bonus

Inclusionary units required by this Chapter or otherwise proposed to be constructed as part of a development project shall not be counted towards the number of units necessary to qualify for a density bonus under applicable state or local laws.

Section 17.200.080 Restrictions on Inclusionary Units

Each inclusionary unit created as a result of this Chapter shall have limitations governing its rental, sale, and/or resale and its occupancy, unless such limitations would be in conflict with federal or state law. The purpose of these limitations is to preserve the long-term affordability and to ensure its continued availability for income eligible households.

(A) Duration of Affordability for Rental and Resale of Inclusionary Units. All rental and for-sale inclusionary housing units developed within the City shall remain affordable for a period of not less than that required by Section 33334.3(f)(1) of the California Health and Safety Code (fifty-five years for rental units, forty-five years for owner-occupied units and fifteen years for mutual self-help housing units), and shall be regulated by regulatory agreement, recorded covenants or other legal mechanisms to assure that the units remain affordable housing units, as determined by City.

(B) Occupancy Requirements.

(1) Rental Units. Any person(s) who occupies a rental inclusionary unit shall occupy that unit as his or her principal residence and shall annually certify that he or she qualifies for the applicable affordable rent level. The Community Development Director shall annually initiate this certification process. If and when any person(s) who rents an inclusionary unit no longer qualifies at the applicable affordable rent and income levels, the person(s) shall be required to vacate the unit or pay the market rate for the unit provided another rental unit is made available at the income level of the inclusionary unit.

(2) For-Sale Units. (i) Except as provided in this section, an initial owner who purchases a for-sale inclusionary unit shall occupy that unit as his or her principal residence. The inclusionary housing agreement shall provide that a for-sale inclusionary unit may only be rented or leased with the written permission of the City, and then, only to an income eligible person and the inclusionary unit shall be rented at no greater a rental rate than the affordable rent level as defined in Health and Safety Code Section 50053. The inclusionary unit shall be rented or leased at the same income level of the original for-sale affordable housing price. For example, if the initial owner bought the unit at the very low income housing price the unit shall be rented at the very low income rent level currently in effect. Any person intending to offer a for-sale inclusionary unit for rent or lease shall first notify the City housing coordinator in writing, prior to the renting of the unit. (ii) An initial owner shall be required to execute a promissory note, secured by a deed of trust, payable to the City, for the difference between the fair market value of

the unit and the actual purchase price ("Silent Second Note"). The Silent Second Note shall accrue interest at the Local Agency Investment Fund ("LAIF") rate, and shall be due and payable upon the sale, transfer or refinancing of the unit, unless the sale is to another low income eligible buyer, as determined by the City. The proceeds of any Silent Second Notes shall be deposited in an account designated for uses related to the provision of affordable housing in the City.

(C) Resale of For-Sale Units. The initial owner or any subsequent owner may sell a for-sale unit pursuant to the following requirements. Inclusionary for-sale units shall remain affordable to subsequent income eligible buyers pursuant to the resale restricted term provided for in subsection (A) above, and in accordance with the affordable housing costs set forth in Health and Safety Code Section 50052.5. The inclusionary for-sale unit shall be sold at the same affordable housing price income level as it was originally sold, and the new income eligible buyer shall be required to execute a new inclusionary housing agreement and Silent Second Note, secured by a deed of trust.

(1) Option to Sell to City. If the owner is unable to sell the inclusionary unit within one hundred and eighty (180) days of offering and advertising the unit for sale, the owner may offer to sell the unit to the City at the affordable housing price at the time offer. The Community Development Director may reduce the one hundred and eighty (180) day requirement specified above if the owner demonstrates, to the satisfaction of the Director, that such limit would create a hardship for the owner. If the City or its assignee does not complete the purchase of the unit within ninety (90) days of the owner's offer of sale to the City, the resale obligation of this section shall terminate; however, the provisions of this section relating to recapture upon sale shall continue to apply and remain in full force and effect.

(2) Recapture Upon Sale. If the inclusionary unit does not sell within one hundred and eighty (180) days of offering and advertising the unit for sale, or such lesser time as established by the Community Development Director upon a finding that a hardship exists, and if the City does not acquire the inclusionary unit as specified in this section, the inclusionary unit may be sold at the current market price. Upon the sale of a unit at market price, the seller shall pay to the City housing trust fund the full amount of the Silent Second Note, described above in this section. The owner shall be entitled to any appreciation in the fair market value of the unit from the time of initial sale to the present sale.

Section 17.200.090 Administration of Inclusionary Housing Requirements

(A) Inclusionary Housing Agreement. Upon approval of the inclusionary housing plan pursuant to Section 17.200.030, the Community Development Director shall prepare an inclusionary housing agreement for the development project that is consistent with inclusionary housing plan, and shall indicate ownership information, type of inclusionary unit (for-sale or rental), the number and size of the inclusionary units, the developer of the inclusionary units, the phasing and construction scheduling of the inclusionary units,

commitments for inclusionary incentives and any other information required by the City relative to the inclusionary housing requirement. In the case of alternatives to the inclusionary housing requirement, the agreement shall also contain the information required in this chapter pertaining to the alternative. Upon completion, the inclusionary housing agreement shall be recommended for approval by the City Council at the next regular City Council meeting. The inclusionary housing agreement shall provide a direct financial contribution by the City in the amount of not less than one hundred dollars (\$100) per inclusionary unit.

No final map shall be approved and no grading permit or building permit shall be issued by the City prior to the full execution and recordation of the inclusionary housing agreement against the property.

(B) Action on Inclusionary Housing Agreement. The City Council shall approve the inclusionary housing agreement upon a finding that the agreement meets all the requirements of this chapter and shall direct that the agreement be recorded upon the subject property.

(C) Affordable Rental and Affordable Housing Agreements. Prior to obtaining a certificate of occupancy for a development project which includes inclusionary units, the developer shall cause an affordable rental agreement to be executed between the owner of the property and the City which shall be recorded with the county recorder's office against the parcels identified in the inclusionary housing agreement as being inclusionary units, in a form reviewed and approved by the City Attorney. Where the inclusionary unit is a for-sale unit within a development project, prior to obtaining a certificate of occupancy for that unit the developer shall cause an affordable sale agreement to be executed between the initial owner of the inclusionary unit and the City, which shall be recorded with the county recorder's office against the parcel, in a form reviewed and approved by the City Attorney.

(D) Administrative of Affordability for Rental Inclusionary Housing. The owner of rental inclusionary units or for-sale inclusionary units offered for rent shall be responsible for certifying the income of the tenant or owner to the City at the time of initial rental and annually thereafter. The owner of a for-sale inclusionary unit shall certify to the City the income of the initial purchaser.

(E) Accessory Dwellings. Prior to obtaining a certificate of occupancy for an accessory dwelling which is designated as an inclusionary units pursuant to an inclusionary housing agreement, the developer shall cause an affordable sale agreement to be executed between the initial owner of the accessory dwelling unit and the City, which shall be recorded with the county recorder's office against the accessory dwelling unit, in a form reviewed and approved by the City Attorney.

(F) Guidelines. The Community Development Director may develop additional guidelines as necessary for implementation of this chapter.

(G) Appeal. Where the provisions of this Chapter vest the Planning Commission with final decision making authority, any applicant aggrieved by the decision of the Planning Commission may appeal the decision to the City Council, within ten (10) days of the final decision of the Planning Commission. Any appeal of a decision of the Planning Commission must be filed with the City Clerk. The City Clerk shall set the appeal before the City Council within forty (40) days of receipt of the appeal.

Section 17.200.100 Monitoring of Inclusionary Housing

(A) Developers. Developers that have entered into an inclusionary housing agreement requiring the provision of inclusionary housing units will be monitored by the City annually to assure compliance with the inclusionary housing agreement.

(B) Inclusionary Units. Inclusionary housing units developed within the City will be monitored by the City annually to verify that the units remain affordable in accordance with Section 17.200.080(B) of this chapter.

(C) Reporting. An annual reporting mechanism shall be created by the City to identify the number of inclusionary housing units that have been required for development within the City by inclusionary housing agreements during the annual reporting period and shall include the number of inclusionary housing units that have actually been developed during the annual reporting period. The report shall also include the results of the monitoring of developers and inclusionary units already in existence.

Section 17.200.110 Administrative and In-Lieu Fees

The City Council may, by resolution, establish an in-lieu fee and reasonable fees and deposits to defray costs of processing applications, proposals pursuant to this Chapter.

Section 17.200.120 Enforcement and Penalties

It is unlawful to offer for sale or to rent or lease any inclusionary unit without compliance with this Chapter. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor. Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day which any person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

SECTION 4. Effective Date.

This Ordinance shall be in full force and effective 30 days after its adoption and shall be published and posted as required by law. The City Clerk of the City of Winters shall cause this Ordinance to be published and posted in accordance with 36933 of the Government Code of the State of California.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Winters, California, held on _____, 2010, and was passed and adopted at a regular meeting of the City Council held on _____, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

1160228.15

Project Area Housing Production and Affordable Housing Obligation

Year(s)	Total Units	Affordable Obligation		Affordable Production		Reserve Affordable Production	
		Very Low 6%	Low & Moderate 9%	Very Low	Low & Moderate	Very Low	Low & Moderate
1992 - Jun-08	473	29	43	87	103	58	60

Pipeline project(s) **Central Valley Coalition for Affordable Housing (CVC) - Orchard Village project. 74 affordable units on Railroad Ave. (just north of Winters Self Storage - APN # 003-360-05-1) 10 acre site with 5 acres zoned R-4. Anticipated affordability is 26 units designated for very low-income households and 48 units for low-income households.**

City of Winters Non-Project Area & Project Area Housing Production and Affordable Housing Obligation

Year(s)	Total Units	Affordable Obligation		Affordable Production		Reserve Affordable Production	
		Very Low 6%	Low & Moderate 9%	Very Low	Low & Moderate	Very Low	Low & Moderate
1992 - Jun-08	570	35	52	87	103	52	51

Pipeline project(s) **Central Valley Coalition for Affordable Housing (CVC) - Orchard Village project. 74 affordable units on Railroad Ave. (just north of Winters Self Storage - APN # 003-360-05-1) 10 acre site with 5 acres zoned R-4. Anticipated affordability is 26 units designated for very low-income households and 48 units for low-income households.**

9/14/2009

NOTE: Revised to include extremely low income units and manager's unit is not income restricted

Properties with potential for affordable units lost due to small development exemption

APN #	Zoning	Property Size	Potential Units	Owner	Miscellaneous	Potential Lost units
003 230 17 1	R1 & OS	R1 = 7.31 ac* OS = 7.7 ac*	8 to 54 2	Paradise Farms LLC	property south of Westwood /Riverside * est. based on GIS	3
003 230 08 1	R1 & OS	R1 = 2.05 ac* OS = 1.41 ac*	3 to 15 1	T & J Pearse	property south of 3rd * est. based on GIS	3
003 224 02 1	C2	.6 ac	6 to 12	J & M Pickerei		2
003 224 01 1	C2	.435 ac	10	City of Winters	Monticello project	2
038 210 1-11 1	C1	.66 ac	10	Village Townhomes LLC	Winters Village West	2
038 220 2-6 1	C1	.49 ac	5	Winters Village East		1
003 391 05 1	R1	4.21 ac	5 to 29	Valadez		3
003 392 01 1	R1	3.838 ac net				
030 220 34 1	R1	3.29 ac	4 to 25	LDS		3
003 424 26 1	R2	1.21 ac	7 to 11	M & S Briggs		2
030 220 10 1	R1	3.28 ac	4 to 24	V & L Pinkston		3
003 360 02 1	R1	1.72 ac	2 to 13	Robert Polkington Jr Tr		2
038 050 71 1	R4	.65 ac	7 to 13			2
038 050 21 1	R4	1.0 ac	11 to 20	G & L Davis Tr		3
003 360 10 1	R4	1.09 ac	12 to 22	C & P Floyd Tr		3
003 360 14 1	R4	1.197 ac	13 to 24	Sergio Jiminez		3
Total						37

CDA Project Area Land Inventory

APN #	Zoning	Property Size	Potential Units	Owner	Miscellaneous
003 430 10 1	A1	3.22 ac	1	Country Investors	
003 430 11 1	A1	1.28 ac	1	Country Investors	
003 430 12 1	R2	11 ac	40	Lilly Ogden Tr.	Creekside
003 120 04 1	R2	2.75 ac		Lilly Ogden Tr.	Creekside
003 183 49 1	R1	.42 ac	1 to 3	Janet Aguiar	
003 230 17 1	R1 & OS	R1 = 7.31 ac* OS = 7.7 ac*	8 to 54 2	Paradise Farms LLC	property south of Westwood /Riverside * est. based on GIS
003 230 08 1	R1 & OS	R1 = 2.05 ac* OS = 1.41 ac*	3 to 15 1	T & J Pearse	property south of 3rd * est. based on GIS
003 241 01 1	R1 & OS	R1 = 4.69 ac* OS = 4.17 ac*	4	T & J Pearse	Pearse project residual land?
003 241 113 1	OS	1.424 ac*	1	George Castro Tr.	property south of Wolfskill
003 224 02 1	C2	.6 ac	6 to 12	J & M Pickerele	
003 224 01 1	C2	.435 ac	10	City of Winters	Monticello project property
003 160 04 1	C2	.227 ac / 3.018 ac	31 to 61	Mariani	Baker to Grant
003 160 33 1	C2	.186 ac		Mariani	block
003 160 03 1	C2	.24 ac		Mariani	
003 160 20 1	C2	1.405 ac (net)		M & L Fruit	
003 160 62 1	C2	.96 ac		Mariani	
003 160 10 1	C2	1.157 ac / 3.051 ac	31 to 62	Mariani	Edwards to Baker
003 160 48 1	C2	.487 ac		Mariani	block
003 160 54 1	C2	.141 ac		Mariani	
003 160 47 1	C2	.384 ac		Mariani	
003 160 63 1	C2	.882 ac		Mariani	

APN #	Zoning	Property Size	Potential Units	Owner	Miscellaneous
003 160 23 1	C2	.816 ac / 2.296 ac	24 to 46	Mariani	Abbey to Edwards block
003 160 55 1	C2	.086 ac		Mariani	
003 160 25 1	C2	.512 ac		Mariani	
003 160 64 1	C2	.882 ac		Mariani	
003 155 15 1	C2	0.116 ac	1 to 2	J & Y Platt	
038 210 1-11 1	C1	.66 ac	10	Village Townhomes LLC	Winters Village West
038 220 2-6 1	C1	.49 ac	5	Winters Village East	
003 430 13 1	R3 & R1	15.97 ac	72	Hoffman	Hudson Ogando
003 430 05 1	R1				
003 524 19 1	R2	5.69 ac	29	Carter Tr	Mary Rose Gardens
003 391 05 1	R1	4.21 ac	5 to 29	Valadez	
003 392 01 1	R1	3.838 ac net			
030 391 06 1	R2	.47 ac	6	Sac Pacific	Cottages at C.R.
030 220 34 1	R1	3.29 ac	4 to 25	LDS	
003 321 01 1	C2	2.98 ac / 3.853 ac	39 to 78	Mariani	North of Grant
003 321 03 1	C2	.326 ac		Mariani	
003 321 04 1	C2	.547 ac		Mariani	
003 322 20 1	C2 & OF	2.13 ac	28	Brzeski	Anderson Place
003 360 05 1	R4 & PR	10.65 ac	74	Central Valley Coalition	Orchard Village
003 360 18 1	R4				
003 424 26 1	R2	1.21 ac	7 to 11	M & S Briggs	

APN #	Zoning	Property Size	Potential Units	Owner	Miscellaneous
030 220 10 1	R1	3.28 ac	4 to 24	V & L Pinkston	
003 360 02 1	R1	1.72 ac	2 to 13	Robert Polkington Jr Tr	
038 050 71 1	R4	.65 ac	7 to 13		
038 050 21 1	R4	1.0 ac	11 to 20	G & L Davis Tr	
038 050 23 1	R4	3.692 ac	38 to 74	W & E MacMillan	
003 360 10 1	R4	1.09 ac	12 to 22	C & P Floyd Tr	
003 360 14 1	R4	1.197 ac	13 to 24	Sergio Jiminez	
038 050 68 1	R3 & OS & C1	R3 = 8.11 ac OS = 15 ac C1 = 3.53 ac	50 to 82 3 22 to 36	Greyhawke LLC	est based on GIS



PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners
DATE: November 24, 2009
THROUGH: Nelia C. Dyer, Community Development Director
FROM: Laura Hollender, Contract Attorney
SUBJECT: Information Item - Draft Code Enforcement Ordinance

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

The feedback received from the Planning Commission tonight will be incorporated into the final version of the code enforcement ordinance that will be presented to the City Council for first reading on December 1, 2009.

BACKGROUND:

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

Purpose of Code Enforcement

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

Code Enforcement Options

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

1. Criminal Enforcement

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

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

2. Civil Actions

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

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

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

3. Nuisance Abatement

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

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

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

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

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

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

4. Administrative Citations

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

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

ATTACHMENTS: Draft Code Enforcement Ordinance

ORDINANCE NO. _____

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

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

SECTION 1. Adoption of Title 19

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

Chapter 19.04 CODE ENFORCEMENT GENERALLY

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

19.04.010 Purpose and authority.

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

19.04.020 Definitions.

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

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

19.04.030 Code violations.

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

19.04.040 Criminal enforcement.

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

19.04.050 Civil actions.

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

19.04.060 Public nuisance.

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

19.04.070 Administrative citations.

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

19.04.080 Reservation of rights.

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

19.04.090 Service procedures.

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

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

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

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

19.04.100 Authority to inspect property.

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

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

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

19.04.110 Authority to obtain records.

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

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

Chapter 19.08 NUISANCE ABATEMENT

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

19.08.010 Nuisance abatement (non-emergency).

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

19.08.020 Summary abatement (emergency).

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

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

19.08.030 Notice of violation; stop work order.

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

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

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

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

19.08.040 Time allowed for abatement by the Responsible Party.

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

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

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

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

19.08.050 Violation Disputes

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

19.08.060 Abatement hearing.

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

19.08.070 Abatement order and abatement warrant.

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

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

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

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

19.08.080 Appeal of an abatement order.

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

19.08.090 Recovery of abatement costs.

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

19.08.100 Report and confirmation of abatement costs.

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

Chapter 19.12 ADMINISTRATIVE CITATIONS

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

19.12.050 Hearing contesting an administrative citation.

19.12.010 First offense warning.

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

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

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

19.12.020 Violation Disputes

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

19.12.030 Administrative citation.

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

B. Each administrative violation shall include the following:

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

19.12.040 Administrative fines.

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

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

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

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

19.12.050 Payment of fines; late payment charges.

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

19.12.060 Hearing contesting an administrative citation.

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

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

Chapter 19.16 HEARING PROCEDURE

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

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

19.16.010 Preservation of the status quo pending hearing.

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

19.16.020 Waiver of deposits and fees.

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

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

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

19.16.030 Administrative hearing.

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

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

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

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

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

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

19.16.040 Decision of the Hearing Officer.

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

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

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

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

19.16.050 Appeal of Hearing Officer decision.

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

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

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

19.16.060 Collection of fines and costs.

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

19.16.070 Requirement to exhaust administrative remedies.

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

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

19.16.080 Judicial review.

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

SECTION 2. Amendment of Code.

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

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

SECTION 3. Amendment of Code.

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

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

SECTION 4. Amendment of Code.

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

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

SECTION 5. Repeal of Section 8.16.040 of Code.

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

SECTION 6. Amendment of Code.

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

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

SECTION 7. Amendment of Code.

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

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

SECTION 8. Severability.

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

SECTION 9. Effective Date.

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

1284651.2