CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, April 26, 2016 @ 6:30 PM
City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 794-6713
Email: jenna.moser@cityofwinters.org

Chairman: Bill Biasi
Vice Chairman: Kate Frazier
Commissioners: Dave Adams, Lisa Baker, Paul Myer, Frank Neal, Patrick Riley
City Manager: John W. Donlevy, Jr.
Mgmt. Analyst, Planning: Jenna Moser

I CALL TO ORDER

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

A. Minutes of the March 22, 2016 meeting of the Planning Commission.

V STAFF/COMMISSION REPORTS

A. Informational Item: Carol Scianna, Environmental Services Manager, Wastewater Treatment Facility Plan Update

VI DISCUSSION ITEMS:

A. Public Hearing and consideration of an application from Project applicant AKM Railroad LLC – Ken Patel or Mike Olivas for Site Plan/Design Review for deferred submittal items (lighting, awnings & window treatments, sign plan, landscaping plan) as well as consideration of the addition of a roof-deck feature with elevator for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms.
B. Callahan Estates – Third Amendment to Development Agreement
C. Study Session – Consideration of various amendments to Chapter 8.20, Noise Control, and Section 17.68, Performance Standards, of the Winters Municipal Code

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT MANAGEMENT ANALYST POSTED THE AGENDA FOR THIS MEETING ON APRIL 21, 2016

JENNA MOSER, MANAGEMENT ANALYST, PLANNING – GIS

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".

MINUTES: THE CITY DOES NOT TRANSCRIBE ITS PROCEEDINGS. ANYONE WHO DESIRES A VERBATIM RECORD OF THIS MEETING SHOULD ARRANGE FOR ATTENDANCE BY A COURT REPORTER OR FOR OTHER ACCEPTABLE MEANS OF RECORDATION. SUCH ARRANGEMENTS WILL BE AT THE SOLE EXPENSE OF THE INDIVIDUAL REQUESTING THE RECORDATION.

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. 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.

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 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.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

MINUTES OF THE CITY OF WINTERS PLANNING COMMISSION MEETING HELD MARCH 22, 2016

DISCLAIMER: *These minutes represent the interpretation of statements made and questions raised by participants in the meeting. They are not presented as verbatim transcriptions of the statements and questions, but as summaries of the point of the statement or question as understood by the note taker.*

Chair Biasi called the meeting to order at 6:30 p.m.

PRESENT: Commissioners Adams, Baker, Frazier, Myer, Neal, Riley, Biasi

ABSENT: None

STAFF: Contract Community Development Director Dave Dowswell, Management Analyst Jenna Moser

Sherri Neal led the pledge of allegiance.

CITIZEN INPUT: None at this meeting.

CONSENT ITEM: Minutes of the January 26, and February 2, 2016 meetings of the Planning Commission and the February 2, 2016 Joint Workshop with the City Council.

Commissioner Baker moved and Riley seconded to approve Minutes of the January 26, and February 2, 2016 meetings of the Planning Commission and the February 2, 2016 Joint Workshop with the City Council with corrections to typos.

AYES: Commissioners Adams, Baker, Frazier, Myer, Neal, Riley, and Chair Biasi

NOES: None

ABSTAIN: None

ABSENT: None

Motion carried unanimously.

STAFF/COMMISSION REPORTS: Commissioner Baker asked about the maintenance of the Dollar General parking lot area as the landscaping is in bad shape. Moser responded that staff was in contact with Dollar General in order to improve the maintenance of the landscaping in the parking lot area.

Chairman Biasi reported on attendance at a parking committee meeting. Frazier reported attendance at the parking committee, veteran's dinner, PTA, and the dedication of Berryessa Snow Mountain. Myer reported attendance at the Yolo Federal Credit Union groundbreaking, and a meeting with Bill Dodd. Neal reported attendance at the Yolo Federal Credit union groundbreaking.

DISCUSSION ITEM:

A. Study Session – Consideration of various amendments to Chapter 17.80, Sign Regulations, in the Municipal Code (Zoning Ordinance).

Contract Community Development Director Dowswell provided an overview of the staff report and exhibits. Baker asked Dowswell to include signage on awnings in future edits. Biasi suggested more photo examples of good/bad signs. Myer asked about the ways in which building frontage is calculated. Discussion followed.

Dowswell continued and explained that the sizes described are maximums, not minimums and that the PC has ultimate control over what would be found to be reasonable. Myer asked about A-frame signs and enforcement. Dowswell responded that Code Enforcement (Gene Ashdown, Building Official) handles sign complaints and enforcement. To date no permits have been issued to businesses wishing to have an A-frame sign, however they do exist in town. Commissioners concurred that neon should not be prohibited in the downtown area, but may want to be considered prohibited in the Grant Ave corridor. Discussion followed regarding vehicle signs, sign waving humans and their definitions. Commissioners also discussed unusual signage such as the "big ball of yarn" or other "art signs".

Dowswell added that he will incorporate the revisions that came from the workshop and return with a formal item later in the summer.

B. Callahan Estates – Third Amendment to Development Agreement (Continued to April 26, 2016 Regular Meeting)

Commissioners concurred to continue the item to the April 26, 2016 meeting of the Planning Commission.

COMMISSIONER/STAFF COMMENTS: Chair Biasi asked about the schedule for construction for the roundabout at Walnut Lane. City Manager Donlevy responded that construction would begin this summer.

ADJOURNMENT: Chairman Biasi adjourned the meeting at 7:26 pm

ATTEST:_____

Jenna Moser, Management Analyst

_____

Bill Biasi, Chairman

CITY OF WINTERS
california
Est. 1875

PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners

DATE: April 26, 2016

FROM: Jenna Moser, Management Analyst
Dave Dowswell, Contract Planner

SUBJECT: Public Hearing and Consideration of Site Plan/Design Review for deferred submittal items (lighting, awnings & window treatments, sign plan, landscaping plan) as well as consideration of the addition of a roof-deck feature with elevator for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms. The project will be three stories and includes an approximately 7,500 square feet courtyard.

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

1) Receive the staff report; and
2) Conduct the Public Hearing to solicit public comment; and
3) Approve Site Plan/Design Review for the downtown hotel

BACKGROUND: At the November 18, 2014 City Council meeting, Council approved Resolution 2014-41, authorizing the City to enter into a Disposition and Development Agreement ("DDA") with Royal Guest, aka AKM Railroad LLC, for the sale and development of a downtown hotel on City owned property.

On December 18, 2014 the Design Review Committee ("DRC") reviewed the initial site plan and project design. Overall, the DRC was extremely favorable to the hotel project design; however, they did universally feel the "rain screen" element proposed for the northwestern-most façade was too modern and recommended it be removed. The City did receive comment from Bill Hailey.

On January 25, 2015 the Planning Commission approved Design/Site Plan Review, Parcel Map, and Conditional Use Permit for construction of a 70-room hotel, subject to the Conditions of Approval. According to Section 17.24.060B.1 of the Municipal Code (Zoning Ordinance) if a project has not commenced construction within one year after the date of the hearing it shall be deemed null and void without further action.

On January 5, 2016 the applicant's representative submitted a request to extend all of the approvals for the 70-room hotel for six months to allow completion of the final exhibits needed for approval by the planning commission and to complete the construction drawings.

On January 26, 2016 the Planning Commission approved an extension of the Site Plan/Design Review until June 30, 2016.

ANALYSIS: Remaining deferred Design Review items are outlined below:

Awnings/Window Treatments- Proposed are folding and stationary awnings with a bold black/white striped pattern. The retail storefronts are the areas where awnings are featured. (Exhibit A-1)

Lighting- Proposed is a suite of vintage inspired lighting fixtures that compliment the historic vicinity. Fixtures are evocative of barn, industrial, and nautical settings. (Exhibit A-2)

Signage- Proposed is a sign with 16 inch dimensional letters on a white background panel with backlighting (Exhibit A-3). Signage for individual storefronts will be reviewed as storefronts are leased; however an example of signage on awnings is available in Exhibit A-1. The applicant will need to submit a master signing program for staff approval prior to installing any storefront signs. The Program shall comply with the Form Based Code Sign Design Standards.

Landscaping- Proposed are medium and low water use plantings and container gardening for the courtyard landscaping. (Exhibit A-4). Street trees will be planted according to city standards along Abbey and Railroad. Staff recommends the applicant incorporate container gardening techniques used in the existing downtown area (succulents and native plants in rustic containers) in along the frontages along Abbey and Railroad Ave to continue the consistent look throughout downtown. Landscaping and Park Planning for the public Paseo area will be brought forward at a future meeting with the project led by the City.

Hotel Roof-Deck - As part of this final approval for Site Plan/Design Review the applicant has requested the addition and consideration of a roof-deck feature with elevator shaft. This element does effect the façade of the building (Exhibit A-5) and is to be considered as part of this Design Review. The applicant proposes this roof deck feature with glass railings and a rustic faux-water-tower element to camouflage the elevator shaft. Use of the roof deck is limited to hotel guests only, requiring access with a key-card. Construction drawings will note "Hotel Guests Only" and hotel staff will be instructed on the use of the roof-deck for hotel guests only. Since the roof-deck is to be used by existing hotel guests only, there are no additional impacts to previously calculated parking requirements. The Planning Commission will review should the applicant wish to make this space available for general public use.

PROJECT NOTIFICATION: Public notice advertising for the public hearing on this planning application was prepared by the Community Development Department's Management Analyst 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 04/07/16 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 04/21/16.

ENVIRONMENTAL ASSESSMENT: The proposed project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15332 (In-Fill Development Projects)

ALTERNATIVES:

a. Permit construction of the elevator and roof deck, but withhold occupancy/use of the feature until the hotel is constructed and under operation. At that time Commission to review use and occupancy of the roof-deck by guests and/or non-guests of the hotel.

The Planning Commission can elect to modify any aspect of the approval or recommend denial of the application. If the Planning 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 application.

RECOMMENDATION: Staff recommends approval of Site Plan/Design Review for deferred submittal items (lighting, awnings & window treatments, sign plan, landscaping plan) as well as the addition of a roof-deck feature with elevator for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms. The project will be three stories and includes an approximately 7,500 square feet courtyard.

I MOVE THAT THE CITY OF WINTERS PLANNING COMMISSION APPROVE SITE PLAN/DESIGN REVIEW FOR DEFERRED SUBMITTAL ITEMS (LIGHTING, AWNINGS & WINDOW TREATMENTS, SIGN PLAN, LANDSCAPING PLAN) AS WELL AS CONSIDERATION OF THE ADDITION OF A ROOF-DECK FEATURE WITH ELEVATOR FOR CONSTRUCTION OF A 70-UNIT HOTEL WITH BANQUET/CONFERENCE CENTER, AND APPROXIMATELY 10,500 SQUARE FEET OF COMMERCIAL SPACE AND MEETING ROOMS. THE PROJECT WILL BE THREE STORIES AND INCLUDES AN APPROXIMATELY 7,500 SQUARE FEET COURTYARD BY TAKING THE FOLLOWING ACTIONS:

- Confirmation of exemption from the provisions of CEQA - The proposed project is exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15332 (In-Fill Development Projects),.
- Approve Design Review/Site Plan, subject to the conditions of approval attached hereto.

ATTACHMENTS:

A. Design Exhibits
   1. Awnings
   2. Lighting
   3. Sign
   4. Landscape
   5. Roof-deck
B. Conditions of Approval
C. Public Hearing Notice

Overall Elevation of Retail with Awning Element

Example of Folding Awning and color/pattern of awnings

Examples of same colored Awning in a series

Example of Store Name Format

Ziv Davis LLC
2900 Bridgeway
Sausalito, CA 94965
zivdavis@mindspring.com

Zi

attachment A–2

FF&E Specifications

Related Documents:

Manufacturer/Source:

Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **D xx**
Room #
Date: 8.10.15
Revision:

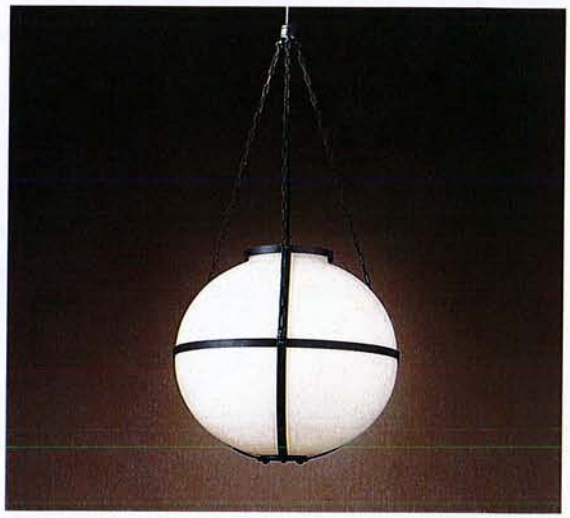
Job: Winters
Area: @ Restaurant entrance

Lighting

Quantity

Description : Circa 1900 Gaslight Pendant

3



Product Code:

Style: Pendant

Size: 22" Pendant: 22.75" diam., 48.5"H

Weight: 28 lbs.

Finish: Weathered Zinc

Shade: Opel Glass Shade

Lamp: N/A

Cord: N/A

Switch: NA

Data: NA

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod6430122&categoryId=cat1701028

FF&E Specifications

Related Documents:

Manufacturer/Source:

Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **DXX**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area: At Room Balconies
2nd and 3rd floors

Lighting

		Quantity
Description :	Harbor Pendant - Bronze	**4**
Product Code:		
Style:	Pendant	
Size:	Large: 11" diam. 12.25"H extends 12.75" from Wall; 16"H as flushmount	
Weight:	Verifying	
Finish:	Bronze	
Shade:	Aluminum	
Lamp:	N/A	
Cord:	N/A	
Switch:	Hardwire	
Data:	NA	

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod3420027&categoryId=search

FF&E Specifications

Related Documents:

Manufacturer/Source:

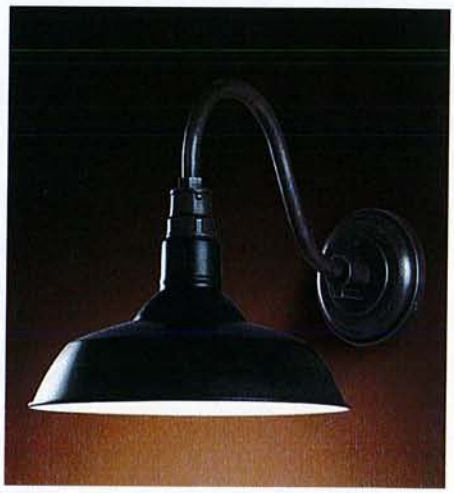
Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **D12**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

Quantity



Description :	Vintage Barn Sconce	**10**
Product Code:		
Style:	Sconce	
Size:	18" Sconce: 18"W x 25"D x 17.75"H	
Weight:		
Finish:	Weathered Zinc	
Shade:	Matte black shade has a distressed aluminum cap	
Lamp:	N/A	
Cord:	N/A	
Switch:	Hardwire	
Data:	NA	

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock Box/J Box**

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod691161&categoryId=search

FF&E Specifications

Related Documents:

Manufacturer/Source:

LightSF
Peter Judge
24 Commercial Blvd
Suite A
Novato, CA 94949
Tel: 415-884-2082
Fax: 415-223-9379

Item # **D-13**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Quantity

Lighting

Description :	Regent Sconce	**2**
Product Code:	E10411	
Style:	Sconce	
Size:	42 5/8" H x 8 3/4"W 10 1/2" Projection	
Weight:	22lbs	
Finish:	Satin Nickel	
Shade:		
Lamp:	N/A	
Cord:	N/A	
Switch:	Hardwire	
Data:	NA	

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.

http://www.boydlighting.com/fixture/e10411-regent-sconce

FF&E Specifications

Related Documents:

Manufacturer/Source:

Lampsplus.com

Item # **D14**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

		Quantity
Description :	Tremillo Collection Black 20.5" High Outdoor W	**6**
Product Code:		
Style:	Wall Light	
Size:	20.5" H x 10" W x 11.5" D	
Weight:		
Finish:	Weathered Zinc	
Shade:	Satin Etched Cased opal glass	
Lamp:	N/A	
Cord:	N/A	
Switch:	Hardwire	
Data:	NA	

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock box/ J Box**

http://www.lampsplus.com/products/tremillo-collection-black-20-and-one-half-inch-high-outdoor-wall-light__m7453.html

FF&E Specifications

Related Documents:

Manufacturer/Source:

Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **D15**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

Quantity

Description : Starboard Sconce - Mini **5**

Product Code:

Style: Sconce

Size: 5.5"L x 4.5D x 10"H
Backplate: 4.5" diam. .25"D

Weight:

Finish: Weathered Zinc

Shade: steel, aluminum

Lamp: N/A

Cord: N/A

Switch: Hardwire

Data: NA

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock box/ J Box**

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod6430493&categoryId=search

FF&E Specifications

Related Documents:

Manufacturer/Source:

Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **D16**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

Quantity

Description : Starboard with Shade Sconce - Mini **8**

Product Code:

Style: Sconce

Size: 8"L x 7"D x 10"H
Backplate: 4.5" diam., .25"D

Weight:

Finish: Weathered Zinc

Shade:

Lamp: N/A

Cord: N/A

Switch: Hardwire

Data: NA

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock box/ J Box**

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod6430494&categoryId=search

FF&E Specifications

Related Documents:

Manufacturer/Source:

Restoration Hardware
Chrystal Boone
805.551.3777
cboone@rh.com

Item # **D17**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

Quantity

Description : Vintage Barn Angled Shade Scon **1**

Product Code:

Style: Sconce

Size: Medium Shade: 11.25"W x 23"D x 22" H

Weight: 10 lbs.

Finish: Weathered Zinc

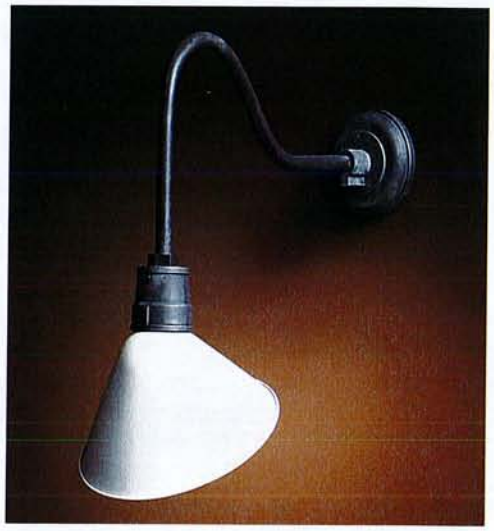
Shade: aluminum 9.75" diam.

Lamp: N/A

Cord: N/A

Switch: Hardwire

Data: NA



Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock box/ J Box**

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod2460455&categoryId=search

FF&E Specifications

Related Documents:

Manufacturer/Source:

Lampsplus.com

Item # **A13**
Room #
Date: 8.10.15
Revision:

Job: Winters
Area:

Lighting

Quantity

Description : 1920S Porthole Sconce **3**

Product Code:

Style: Wall Light

Size: 6"2 x 3.75"D x 6"H

Weight:

Finish: Weathered Zinc

Shade: Domed, white-glass lens

Lamp: N/A

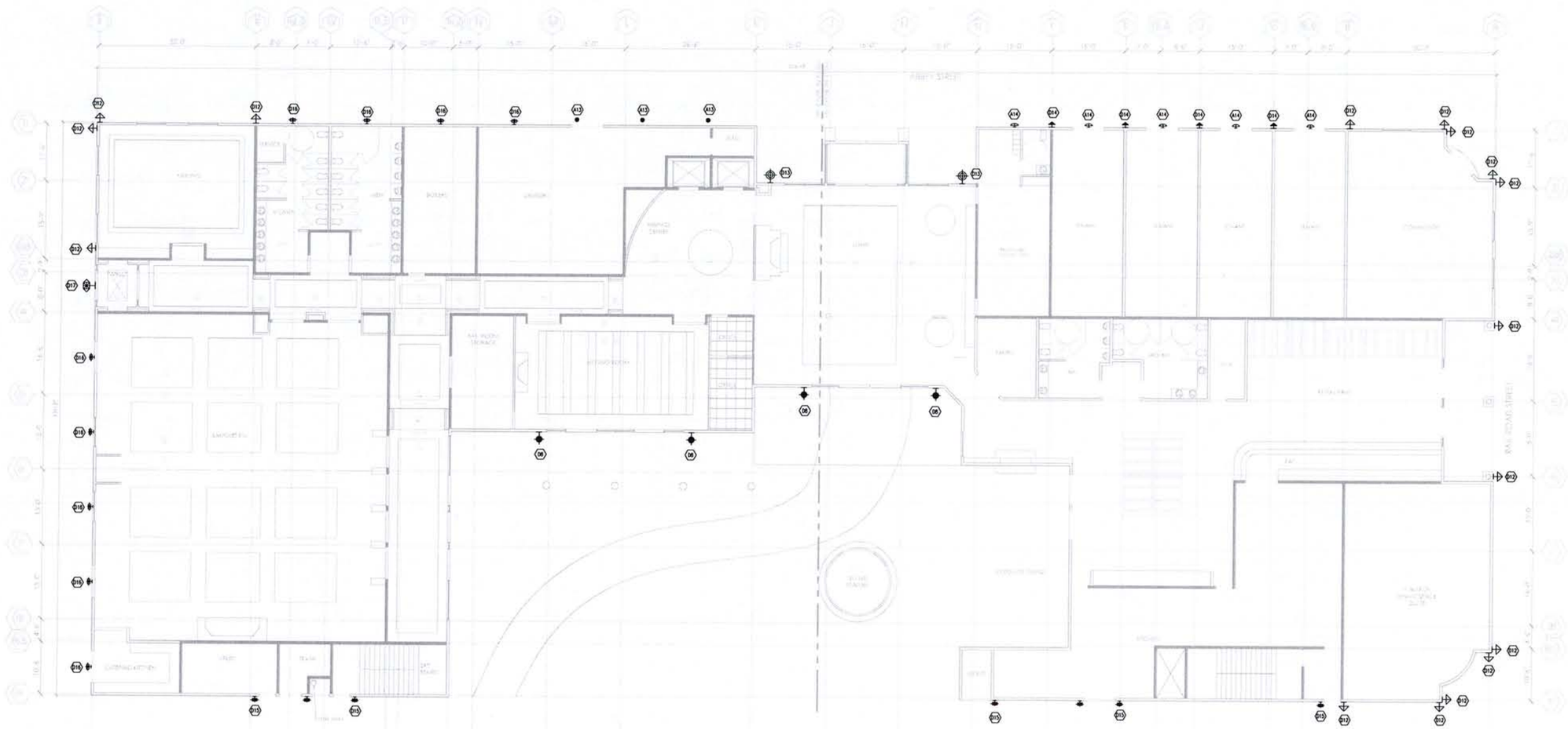
Cord: N/A

Switch: Hardwire

Data: NA

Notes:
1. Must meet or exceed all federal, state and local codes.
2. See attached photo copy.
3. Must be contract quality.
4. Must be UL approved.
5. **Requires Clock box/ J Box**

https://www.restorationhardware.com/catalog/product/product.jsp?productId=prod6430487&categoryId=search



1 FIRST FLOOR
SCALE: 3/32"=1'-0"

LEGEND

TAG	SYMBOL	DESCRIPTION
DW		DECORATIVE LED WALL SCONCE
D12		DECORATIVE LED WALL SCONCE
D13		DECORATIVE LED WALL SCONCE
D14		DECORATIVE LED WALL SCONCE
D15		DECORATIVE LED WALL SCONCE
D16		DECORATIVE LED WALL SCONCE
D17		DECORATIVE LED WALL SCONCE
D18		LED IN-GRADE UP LIGHT
D19		LED WALL SCONCE
D20		LED TAPE LIGHT

LUMENWORKS
3410 Lakeshore Ave
Suite 201
Oakland, CA 94610
510-835-7600

WINTERS HOTEL

SCHEMATIC

Date: 8-27-15

Scale: AS NOTED

Drw. By: ZZ

Description:
FIRST FLOOR
EXTERIOR
LIGHTING PLAN

Sheet No.
LT.E1

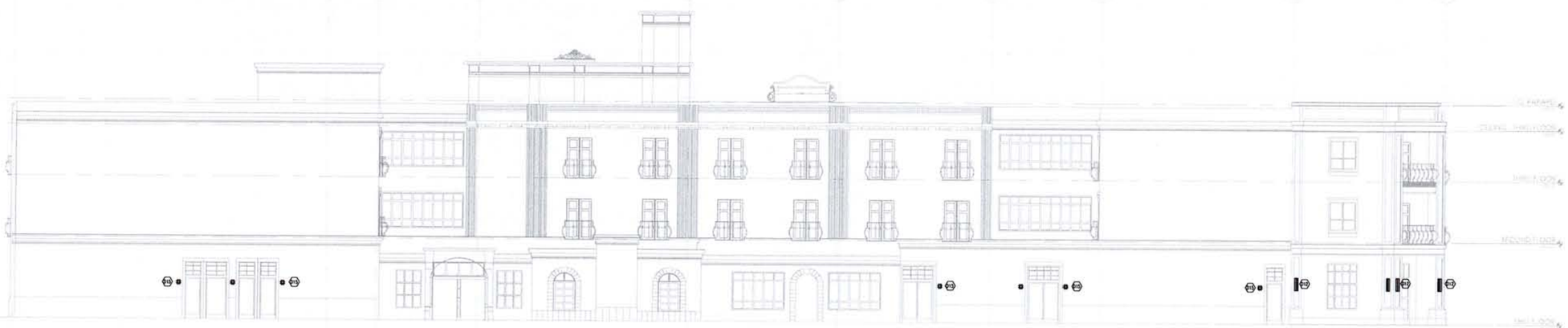
1 NORTH ELEVATION

LEGEND

TAG	SYMBOL	DESCRIPTION
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		DECORATIVE LED WALL SCONCE
		LED IN-GRADE UP LIGHT
		LED WALL SCONCE
		LED TAPE LIGHT

3 EAST ELEVATION

2 WEST ELEVATION



4 SOUTH ELEVATION

LUMENWORKS
3410 Lakeshore Ave
Suite 201
Oakland, CA 94610
510-835-7600

WINTERS HOTEL

SCHEMATIC

Date: 8-27-15

Scale: AS NOTED

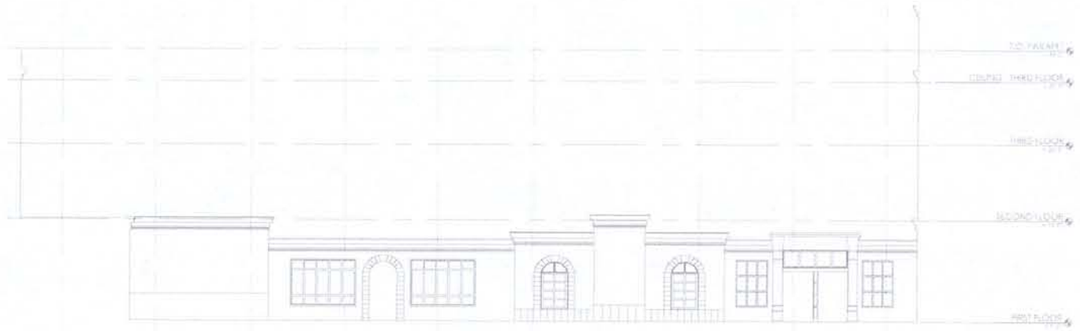
Drw. By: ZZ

Description:

EXTERIOR COURTYARD
ELEVATION
LIGHTING PLAN

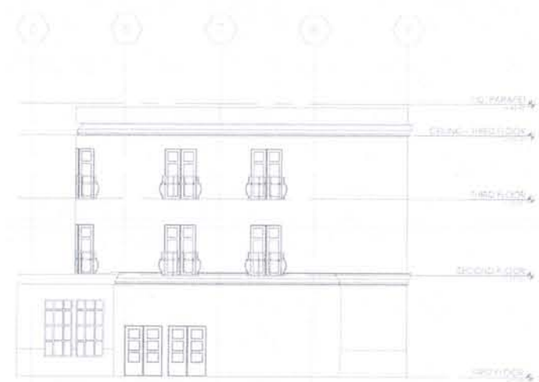
Sheet No.

LT.E2

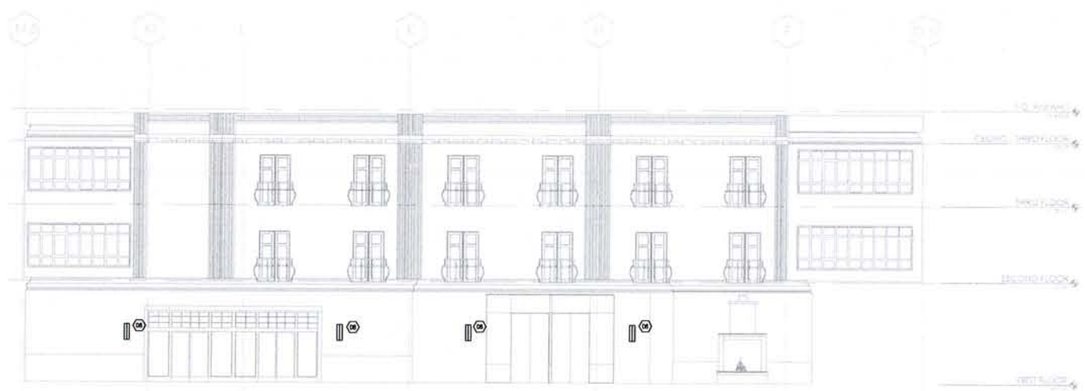


1 NORTH COURTYARD ELEVATION

3 EAST COURTYARD ELEVATION



2 WEST COURTYARD ELEVATION



4 SOUTH COURTYARD ELEVATION

LEGEND

TAG	SYMBOL	DESCRIPTION
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
WS		DECORATIVE LED WALL SCONCE
UG		LED IN-GRADE UP LIGHT
WS		LED WALL SCONCE
UG		LED TAPE LIGHT

LUMENWORKS
3410 Lakeshore Ave
Suite 201
Oakland, CA 94610
510-835-7600

WINTERS HOTEL

SCHEMATIC

Date: 8-27-15

Scale: AS NOTED

Drw. By: ZZ

Description:

EXTERIOR COURTYARD ELEVATION LIGHTING PLAN

Sheet No.

LT.E3

Partial elevation of Signage Location/ Hotel Entrance, North Elevation

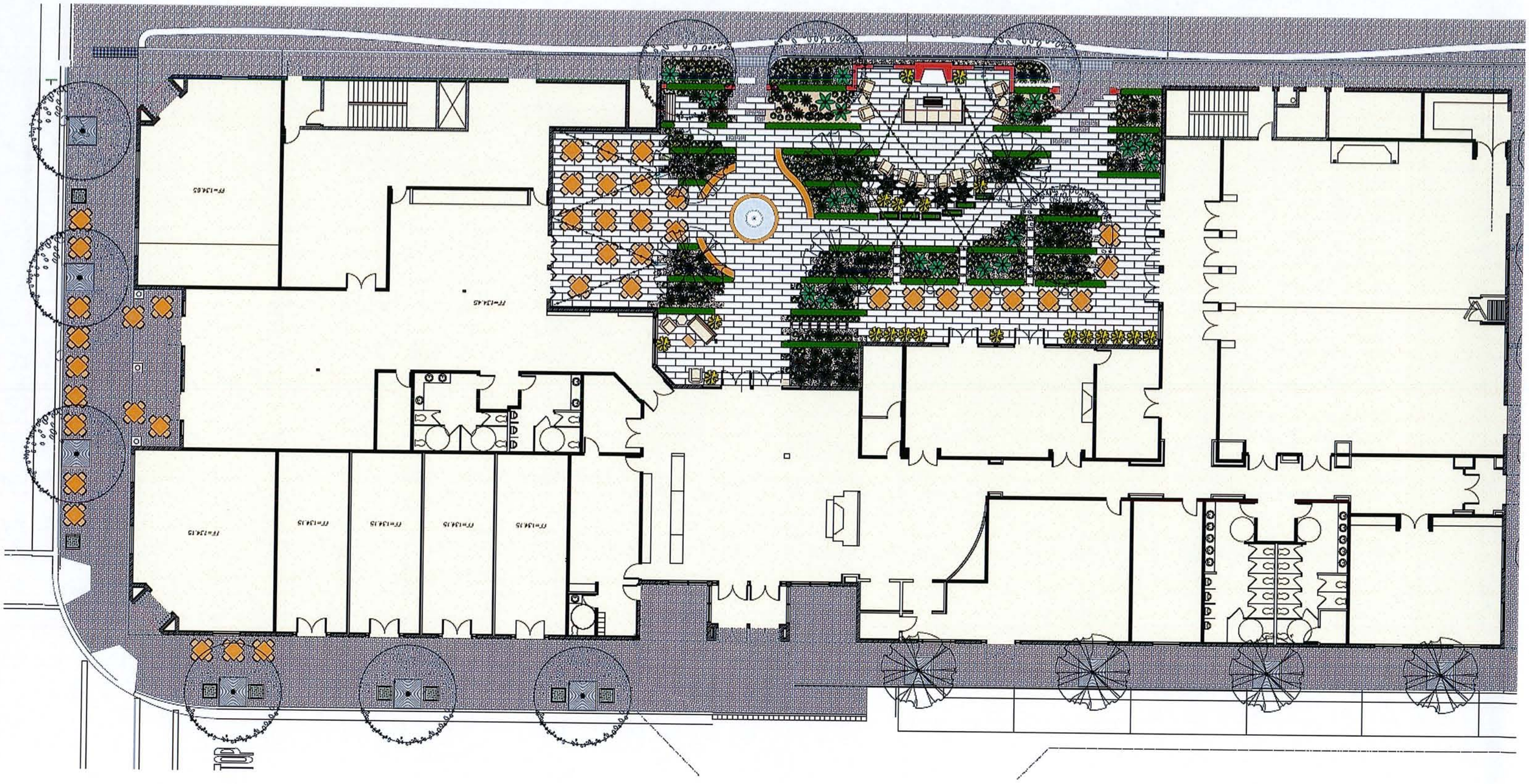
Enlarged Elevation of Signage

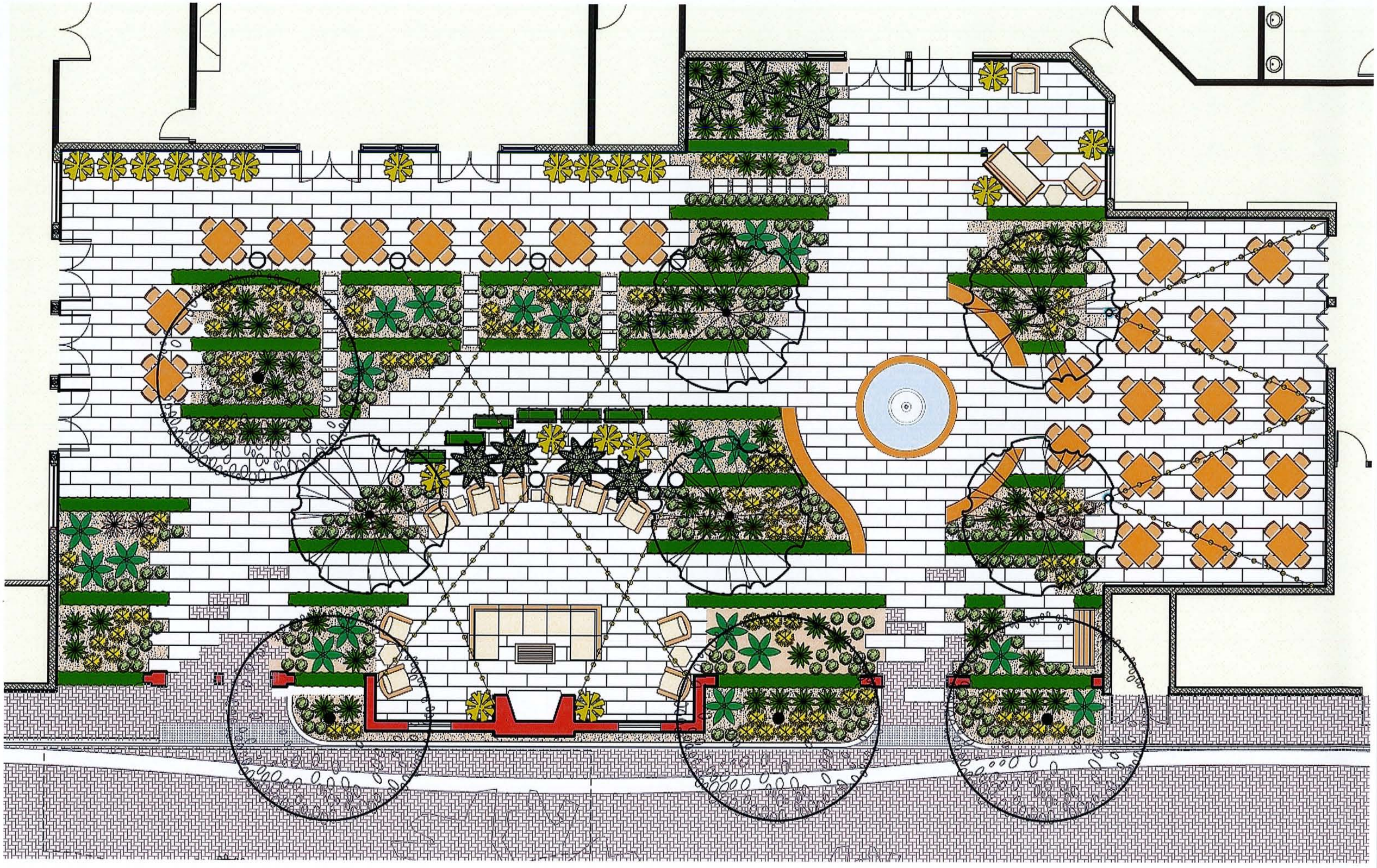
Letters:
Black Medium sheen finish,
16" high Fabricated Dimensional
Letters with Backlighting

Background Panel :
Background Panel to match white
horizontal paneling at Hotel façade.

Ziv Davis LLC
2900 Bridgeway
Sausalito, CA 94965
zivdavis@mindspring.com

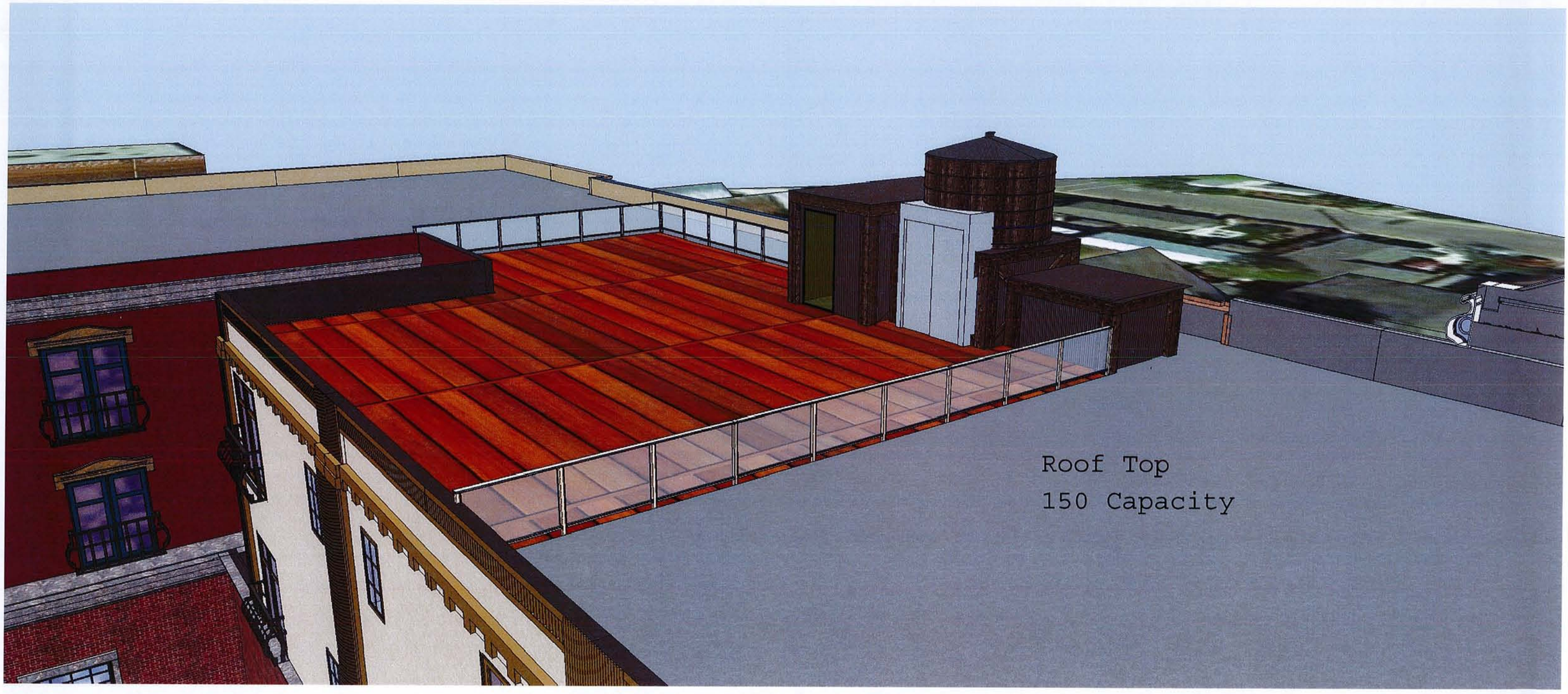
attachment A-4

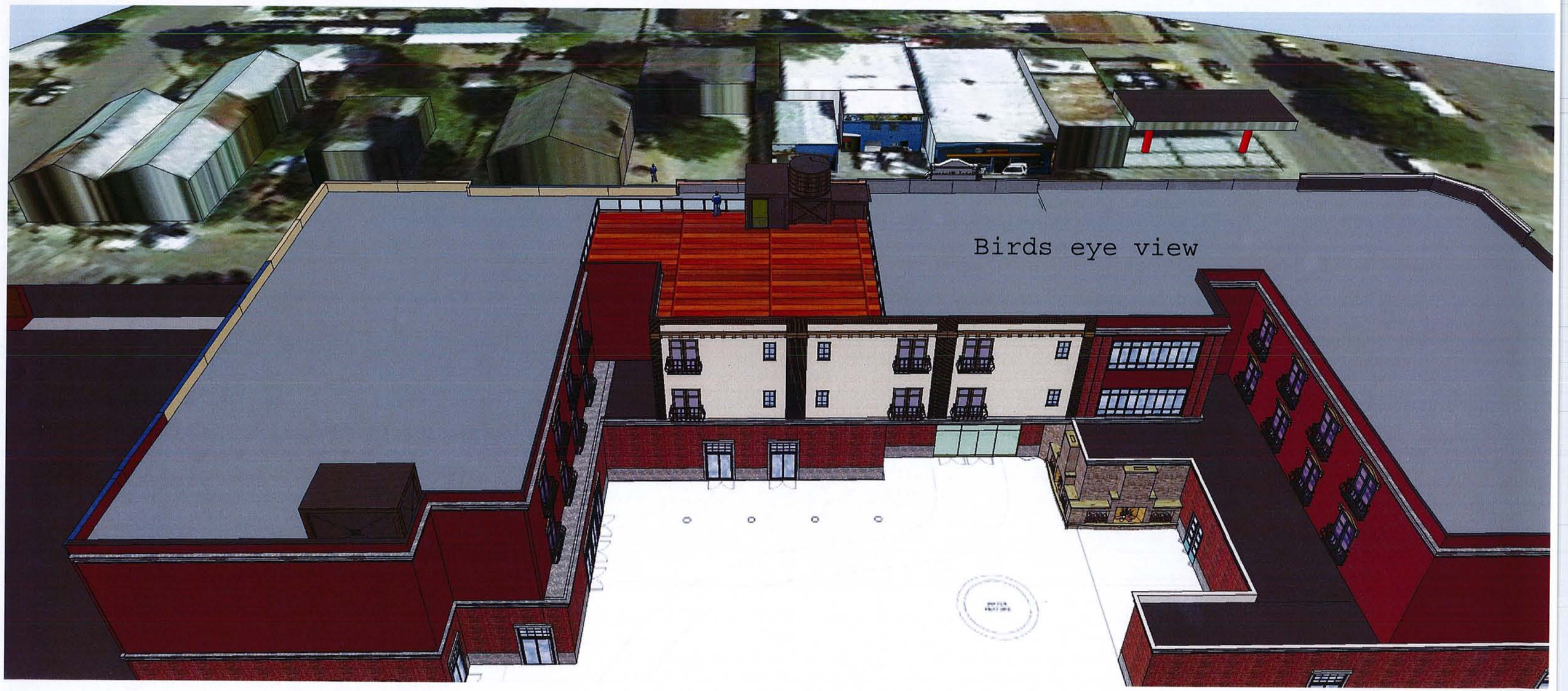


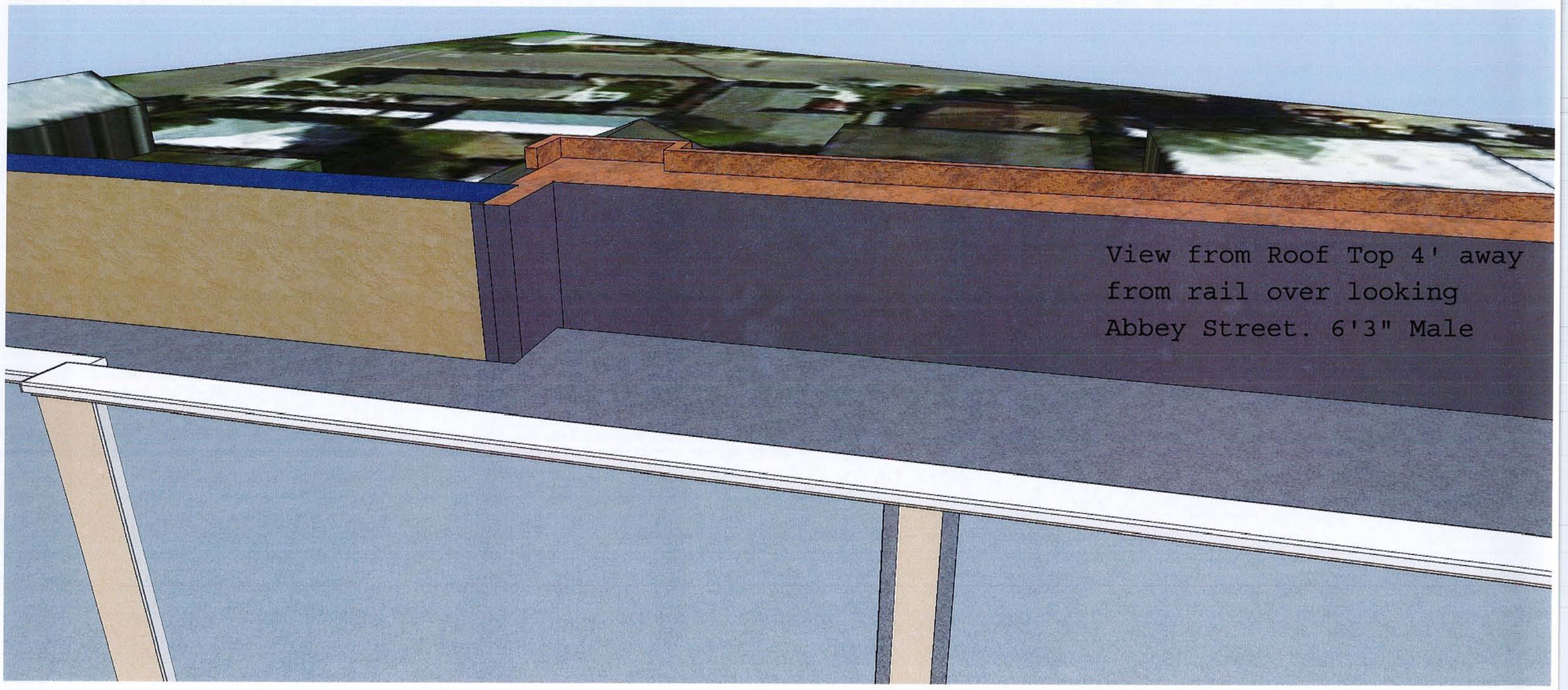


Abbrev.	Botanical Name	Common Name	Size	Comm	Height	Spread	Water
	Full Sun						
	Ful Sun and Partial Sun						
	Any Sun or Shade						
	Partial Shade						
	No Sun						
AGA SHA	AGAVE 'Sharkskin'	Sharkskin Agave	5 gal		2.50	4.00	L
BUX SEM	BUXUS microphyla 'Green Beauty'	Green Beauty Boxwood	5 gal		4.00	4.00	M
CAM SHI	CAMELLIA h. 'Shishi-Gashira'	Shishi-Gashira Camellia	15 gal		3.00	6.00	M
CAR DIV	CAREX divulsa	Sedge	1 gal		1.50	2.00	L
CHO TEC	CHONDROPETALUM tectorum	Small Cape Rush	5 gal		3.00	4.00	L
ERI KAR	ERIGERON karvinskianus	Mexican Daisy	1 gal		1.50	3.00	L
HEU SAC	HEUCHERA sanguinea	Santa Ana Cardinal Coral Bells	1 gal		1.50	1.50	M
LAG MUS	LAGERSTROEMIA i. 'Muskogee'	Muskogee Crapemyrtle	48" box		tree		L
LAV PRO	LAVANDULA i. 'Provence'	Provence Lavender	1 gal		2.00	3.00	L
PHO DAZ	PHORMIUM 'Dazzler'	Dazzler New Zealand Flax	5 gal		3.00	5.00	L
PHO GR	PHORMIUM 'Golden Ray'	Golden Ray Flax	5 gal		4.00	4.00	L
RHA BAL	RHAPHIOLEPIS 'Ballerina'	Ballerina India Hawthorn	5 gal		2.00	4.00	L
ROS FCW	ROSA 'Flower Carpet White'	Flower Carpet White Rose	2 gal		2.00		M
SAR RUS	SARCOCOCCA rusifolia	Fragrant Sarcococca	5 gal		4.00	3.00	M
THU EME	THUJA occidentalis 'Emerald'	Emerald Arborvitae	15 gal		12.00	3.00	M
ULM PRO	ULMUS wilsoniana 'Prospector'	Prospector Elm	15 gal		tree		L

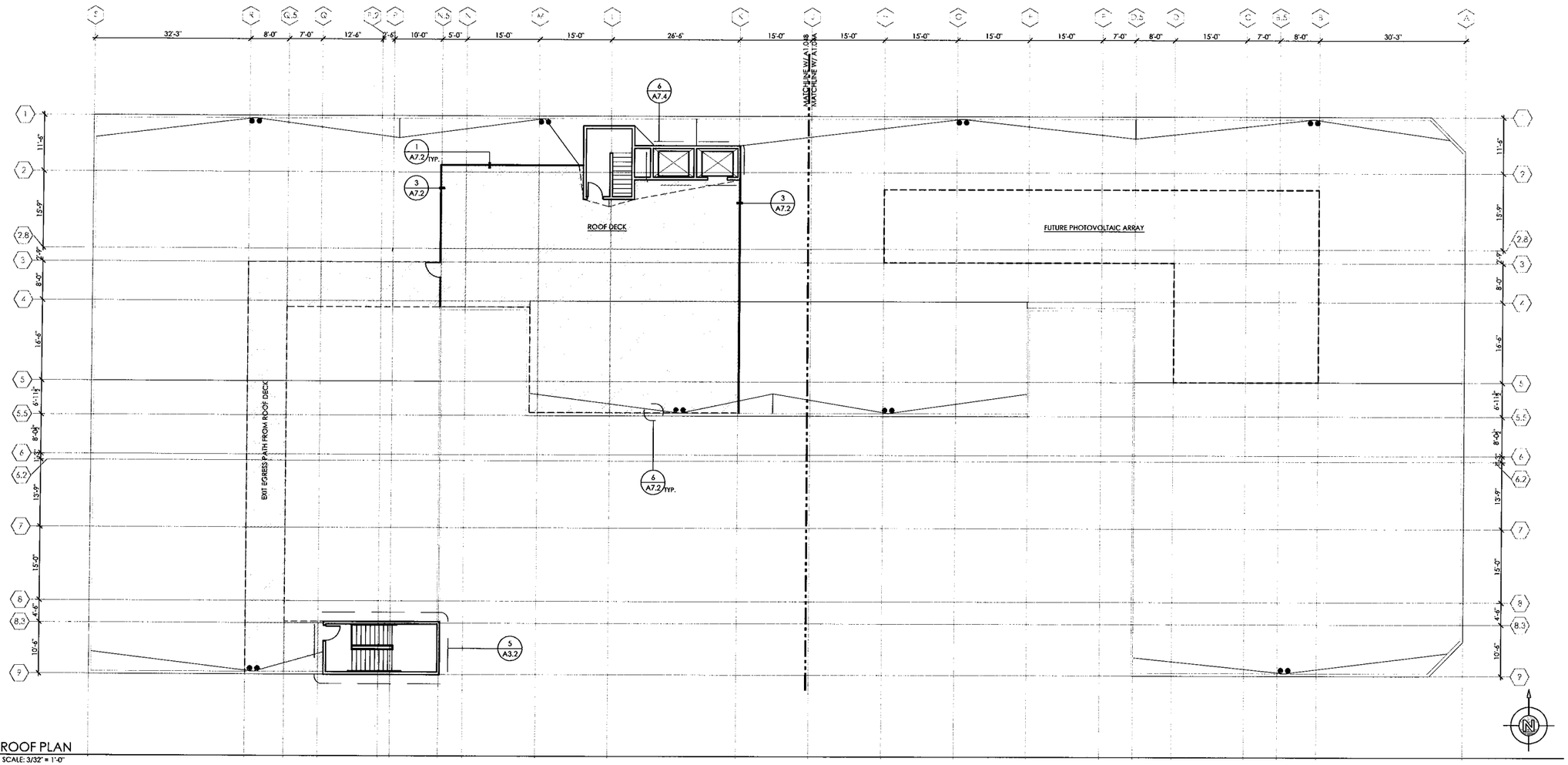
Street view from Abbey
Street.


Roof Top
150 Capacity


Birds eye view


View from Roof Top 4' away
from rail over looking
Abbey Street. 6'3" Male

View from Abbey Street
residential lot to
Roof Top 6'3" Male



1 ROOF PLAN
SCALE: 3/32" = 1'-0"

PRESSEY & ASSOCIATES
2015 H ST. THIRD FLOOR
SACRAMENTO, CA 95811
TEL 916-346-4280

REVISION HISTORY

LICENSED ARCHITECT
KEVIN W. PRESSEY
No. C35741
REN. 01/31/17
STATE OF CALIFORNIA

WINTERS HOTEL

340 RAILROAD AVE.
WINTERS, CA 95694

ROOF PLAN

PROJECT NO.	15012
SCALE	3/32"=1'-0"
DATE	-
DRAWN	DJD

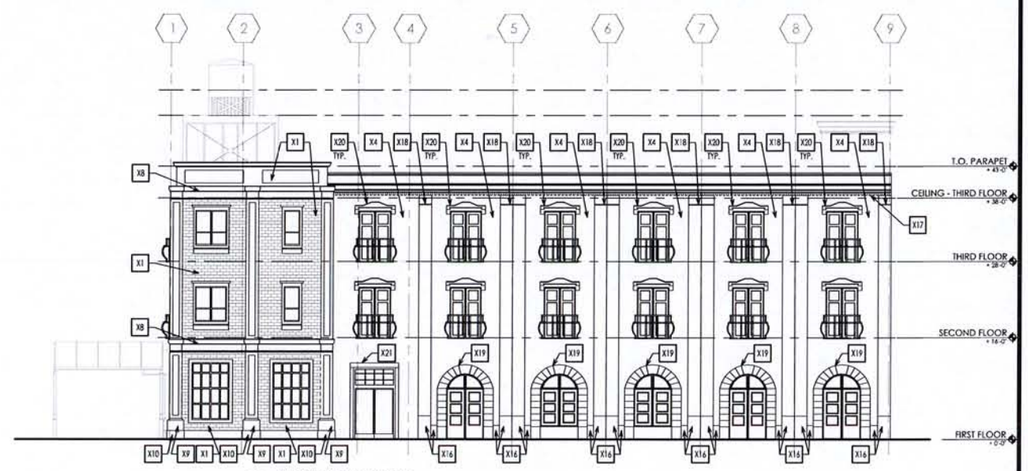
A1.4

- OF -

COPYRIGHT PRESSEY & ASSOCIATES

1 NORTH ELEVATION
SCALE: 3/32" = 1'-0"

3 EAST ELEVATION
SCALE: 3/32" = 1'-0"



2 WEST ELEVATION
SCALE: 3/32" = 1'-0"

FINISH KEYNOTES:

X1	BRICK VENEER - SEE [B-400]	X14	DENTIL CROWN - SEE [PC-407]
X2	BRICK VENEER - SEE [B-401]	X15	CAST STONE BALUSTRADE - SEE [PC-408]
X3	BRICK VENEER WINDOW TRIM - SEE [B-402]	X16	COLUMN BASE - SEE [PC-409]
X4	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-400]	X17	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-410]
X5	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-401]	X18	COLUMN - SEE [PC-411]
X6	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-402]	X19	ARCH TRIM AT DOOR - SEE [PC-412]
X7	FIBER CEMENT SIDING	X20	HEADER TRIM AT DOOR - SEE [PC-413]
X8	TRIM AT BRICK - SEE [PC-400]	X21	TRIM AT DOOR - SEE [PC-414]
X9	COLUMN BASE - SEE [PC-401]	X22	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-415]
X10	BASE - SEE [PC-402]	X23	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-416]
X11	COLUMN BASE - SEE [PC-403]	X24	WALL BASE - SEE [PC-417]
X12	FURRED COLUMN - SEE [PC-404]	X25	WINDOW SHUTTERS
X13	COLUMN BASE - SEE [PC-406]		

PRESSEY & ASSOCIATES
2015 H ST. THIRD FLOOR
SACRAMENTO, CA 95811
TEL 916-346-4280

REVISION HISTORY

LICENSED ARCHITECT
KEVIN W. PRESSEY
No. C25741
REN. 01/31/15
STATE OF CALIFORNIA

WINTERS HOTEL
340 RAILROAD AVE.
WINTERS, CA 95694

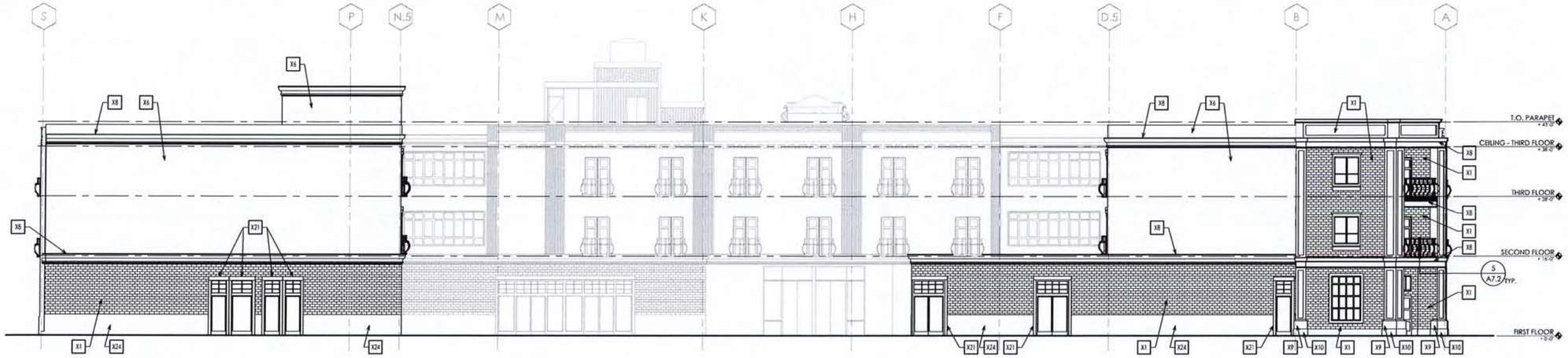
BUILDING ELEVATIONS

PROJECT NO.	15012
SCALE	3/32"=1'-0"
DATE	-
DRAWN	DJD

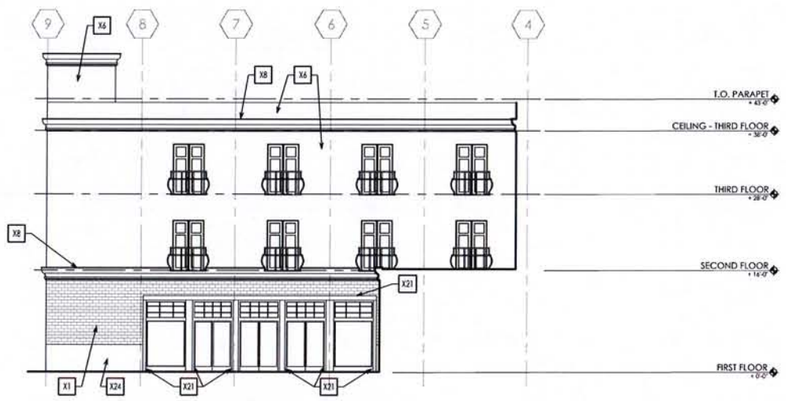
A4.0

- OF -

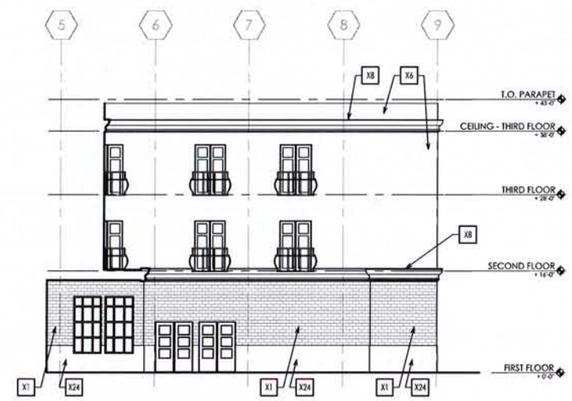
COPYRIGHT PRESSEY & ASSOCIATES



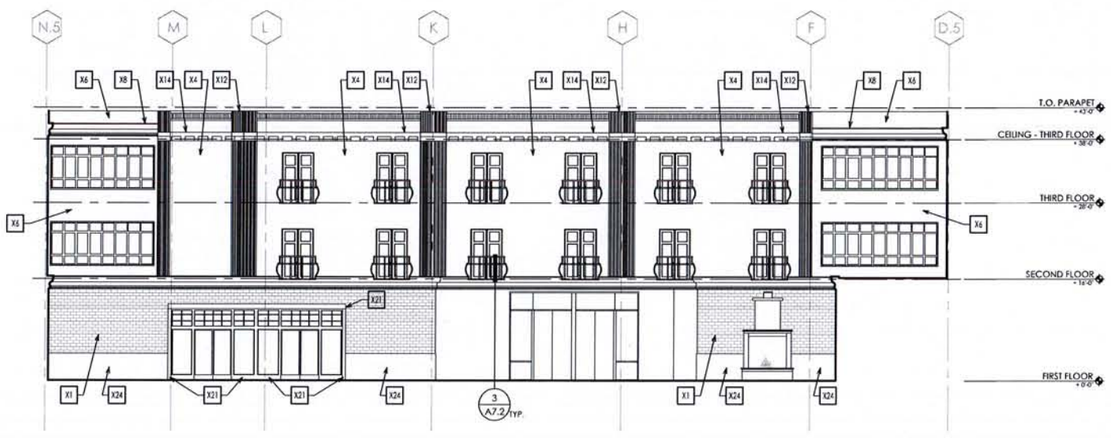
1 SOUTH OVERALL ELEVATION
SCALE: 3/32" = 1'-0"



3 EAST COURTYARD ELEVATION
SCALE: 3/32" = 1'-0"



2 WEST COURTYARD ELEVATION
SCALE: 3/32" = 1'-0"



4 SOUTH COURTYARD ELEVATION
SCALE: 3/32" = 1'-0"

FINISH KEYNOTES:

X1	BRICK VENEER - SEE [B-400]	X14	DENTIL CROWN - SEE [PC-407]
X2	BRICK VENEER - SEE [B-401]	X15	CAST STONE BALUSTRADE - SEE [PC-408]
X3	BRICK VENEER WINDOW TRIM - SEE [B-402]	X16	COLUMN BASE - SEE [PC-409]
X4	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-400]	X17	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-410]
X5	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-401]	X18	COLUMN - SEE [PC-411]
X6	CEMENT PLASTER SYSTEM (STUCCO) - SEE [S-402]	X19	ARCH TRIM AT DOOR - SEE [PC-412]
X7	FIBER CEMENT SIDING	X20	HEADER TRIM AT DOOR - SEE [PC-413]
X8	TRIM AT BRICK - SEE [PC-400]	X21	TRIM AT DOOR - SEE [PC-414]
X9	COLUMN BASE - SEE [PC-401]	X22	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-415]
X10	BASE - SEE [PC-402]	X23	TRIM AT CEMENT PLASTER SYSTEM - SEE [PC-416]
X11	COLUMN BASE - SEE [PC-403]	X24	WALL BASE - SEE [PC-417]
X12	FURRED COLUMN - SEE [PC-404]	X25	WINDOW SHUTTERS
X13	COLUMN BASE - SEE [PC-406]		

PRESSEY ASSOCIATES
ARCHITECTURE + PLANNING
2015 H ST. THIRD FLOOR
SACRAMENTO, CA 95811
TEL 916-346-4280

REVISION HISTORY

LICENSED ARCHITECT
KEVIN W. PRESSEY
No. C25741
REN. 01/31/17
STATE OF CALIFORNIA

WINTERS HOTEL
340 RAILROAD AVE.
WINTERS, CA 95694

COURTYARD ELEVATIONS

PROJECT NO.	15012
SCALE	3/32"=1'-0"
DATE	-
DRAWN	DJD

A4.1

- OF -

COPYRIGHT PRESSEY & ASSOCIATES

Downtown Hotel Project
Design Review

FINAL PLANNING CONDITIONS OF APPROVAL
April 26, 2016

1. The applicant requests deferral of Lighting, Awnings & Window Treatments, Sign Plan, and Landscaping Plan at this hearing, to return at a future hearing to be noticed.
2. To further meet design standards and enhance the look of the storefronts staff recommends adding a different style of awning above the storefronts on the section of hotel building that begins on Abbey Street and wraps around the corner on to Railroad Avenue. This element of design is deferred as part of the Awning & Window Treatment detail and will return at a future hearing to be noticed.
3. Staff and the applicant will collaborate on a parking design for the City Parking Lot that meets the shading requirements and maximizes available spaces with consideration for shading and accessibility. Parking lot plans shall be approved by the City Engineer.
4. A Bicycle Parking Plan will be submitted to the Community Development Department for approval – this plan should include bike rack options that consider high-end cyclists needs as well of those of the recreational cyclist.
5. Measures shall be taken to insure the longevity of cast stone used in the project.
6. The design of the landscape elements should be evocative of the UC Davis Arboretum near "The Commons" in Davis – with special consideration in selecting gates, tables, and other features.
7. The Design Review/Site Plan approval shall expire in one year from its date of approval unless the applicant begins construction of the infrastructure improvements necessary for the project or requests and receives an extension from the Community Development Director. The applicant shall bear all expenses for any extension request submitted to the Community Development Director.
8. Use of the hotel roof-deck shall be for hotel guests only.

FINAL PUBLIC WORKS CONDITIONS OF APPROVAL
April 26, 2016

1. 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 not 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.

2. The applicant shall submit a current title report to the City prior to approval of public improvement plans.

3. The City of Winters Plan Review Fee applies and is due upon submittal of plans for review.

4. All street and other required public improvements shall be constructed concurrently, in a single phase operation.

5. A Soils/Geotechnical Report shall be prepared by a qualified engineer to confirm onsite soil capabilities and geological conditions and make recommendations to be followed for development. Grading of the site, design of foundations for proposed structures and construction of other related facilities on the property shall follow the criteria identified in the report. The applicant shall submit the report with the initial improvement plans package. The improvement plans shall be approved and signed by the soils engineer prior to approval by the City.

6. Applicant shall construct public roadway frontage improvements along Abbey Street, to include curb, gutter, and sidewalk per the City of Winters Public Improvements Standards and Construction Standards.

7. A drainage plan shall be prepared by a registered civil engineer for project watershed(s), including the plan area. The plan shall identify specific storm drainage design features to control increased runoff from the project site. The drainage plan shall address water-quality, and demonstrate the effectiveness of the proposed storm drainage system to prevent negative impacts to the existing SD System. The applicant shall pay the cost associated with all improvements required by the plan.

8. A topographic survey of the entire site and a comprehensive grading plan prepared by a registered civil engineer, shall be required for the development. The plan shall include topographic information on adjacent parcels. In addition to grading information, the grading plan shall indicate all existing trees, and trees to be removed as a result of the proposed development, if any. A statement shall appear on the site grading plan, which shall be signed by a registered civil engineer or land surveyor and shall read, "I hereby state that all improvements have been substantially constructed as presented on these plans". Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

9. Construction materials for storm drain pipes within the water table shall be pre-cast rubber-gasket reinforced concrete pipe (RGRCP).

10. The differential in elevation between rear and side abutting lot lines shall not exceed twelve inches (12") without construction of concrete or masonry block retaining walls.

11. All projects shall include implementation of post-construction best management practices (BMPs). Post construction BMPs shall be identified on improvement plans and approved by the City Engineer. Construction of projects disturbing more than one acre of soil shall require a National Pollution Discharge Elimination System (NPDES) construction permit, or a WPCP.

12. Landscaped slopes along streets shall not exceed 5:1; exceptions shall require approval of the City Engineer. Level areas having a minimum width of two (2) feet shall be required at the toe and top of said slopes.

13. A registered civil engineer for project shall prepare the sewer collection system plan, for approval by the City Engineer. The plan shall include final sizing and location of conveyance facilities, structures, and engineering calculations. The applicant shall pay the cost associated with all improvements required by the plan. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

14. A registered civil engineer for project shall prepare the water system plan, for approval by the City Engineer. The plan shall include final sizing and location of conveyance facilities, structures, and engineering calculations. The applicant shall pay the costs associated with all improvements required by the plan. Reference the City of Winters Public Improvements Standards and Construction Standards for additional requirements.

15. At the time the Building Permit is issued, the applicant will be required to pay the appropriate City connection fees. All domestic water services will be metered. Water meters shall be installed on all water services to the satisfaction of the Public Works Department.

16. Per City of Winters Cross Connection Control Program, all types of commercial buildings and landscape irrigation services are required to maintain an approved backflow prevention assembly, at the applicant's expense. Service size and flow-rate for the backflow prevention assembly must be submitted. Location of the backflow prevention assembly shall be per the City of Winters Public Improvements Standards and Construction Standards. Prior to the installation of any backflow prevention assembly between the public water system and the owner's facility, the owner or contractor shall make application and receive approval from the Public Works Department.

17. A hydrant use permit shall be obtained from the Public Works Department, for water used in the course of construction.

18. Landscaping and irrigation plans shall be prepared by a registered landscape architect, and included as part of the improvement plans and/or site plans. These plans shall be per City Standards and the Water Conservation in Landscaping Act of 2006 (AB 1881) and shall be subject to review and approval by the City. The improvement plans shall include landscaping and automatic irrigation for the public right-of-way. Drip irrigation systems shall be used. No substantial change to an approved landscaping or irrigation plan may be made without written approval by the original approving person or body.

19. All public landscape areas shall include water laterals with meters and PG&E power service points for automatic controllers. The landscape water meter shall be installed to the satisfaction of the Public Works Department.

20. Occupancy shall not occur until on-site and off-site improvements have been accepted by the City Council and the City has approved as-built drawings. Applicants, and/or owners shall be responsible to so inform prospective buyers, lessees, or renters of this condition.

21. If relocation of existing infrastructure is deemed necessary, the applicant shall perform the relocation, at the applicant's expense unless otherwise provided for through a reimbursement agreement. All public utility standards for public easements shall apply.

22. A Public Improvement and Maintenance Agreement shall be entered into and recorded prior to construction of improvements and/or issuance of any building permits.

23. Appropriate easements shall be required for City maintained facilities located outside of City owned property or the public right-of-way.

24. The applicant shall facilitate, with City cooperation, the abandonment of all City easements and dedications currently held but no longer necessary as determined by the Public Works Department.

25. Project proponents shall enter into the Citywide Landscape and Lighting Maintenance District, in order to maintain and provide for the future needs of street lighting and landscaping, and other related

aspects of development. The project proponent is responsible for all costs associated with this condition. The project proponent shall fulfill this condition prior to issuance of a building permit.

26. Applicant shall provide refuse enclosure detail showing bin locations and recycling facilities to the approval of the Public Works Department and the Community Development Department.

27. Prepare improvement plans for any work within the public right-of-way and submit them to the City Engineer for review and approval. The improvement plan sheets shall include the title block as outlined in the City of Winters Public Improvements Standards and Construction Standards. This submittal is separate from the building permit submittal. The Applicant shall provide, to the City Engineer, two sets of the improvement plans and electronic media (AutoCAD .DWG or DXF on Zip Disk or Compact Disk), for approval of plans by the City Engineer. Final Record Drawings shall be provided on Mylar and electronic media.

28. Conform to County Health regulations and requirements for the abandonment of any septic tanks and water wells.

29. Existing public and private facilities damaged during the course of construction shall be repaired by the Applicant at his/her sole expense, to the satisfaction of the City Engineer.

30. All conditions identified herein shall be fully satisfied prior to occupancy, unless otherwise stated.

31. The project shall operate within all applicable requirements of the City Code at all times

32. Landscape material may not be located such that, at maturity it interferes with safe distances for vehicular, bicycle or pedestrian traffic; conflicts with overhead utility lines, overhead lights, or walkway light; or blocks pedestrian or bicycle ways.

33. Street lighting location plan shall be submitted and approved by the City Engineer prior to approval of improvement plans. Decorative Street Lights shall be placed along Railroad and Abbey, and be consistent with existing decorative street lights in the downtown area.

34. If diagonal parking is proposed along Abbey, then a street cross-section plan shall be developed for approval of the City Engineer, to ensure adequate travel-way width for east-west traffic.

35. The van/bus drop-off at the entrance on Abbey shall be limited, to avoid conflicts with eastbound traffic.

36. A registered civil engineer shall develop a parking lot plan for the corner of Abbey and First, showing number of spaces and circulation to the streets and alleyway, for approval by the City Engineer.

attachment C

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Winters will conduct a Public Hearing by the Planning Commission on Tuesday, April 26th, 2016 at 6:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California to consider an application from Project applicant AKM Railroad LLC – Ken Patel or Mike Olivas for Site Plan/Design Review for deferred submittal items (lighting, awnings & window treatments, sign plan, landscaping plan) as well as consideration of the addition of a roof-deck feature with elevator for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms. The project will be three stories and includes an approximately 7,500 square feet courtyard. The Planning Commission will take final action on the project unless appealed to the City Council.

The purpose of the public hearing will be to provide citizens an opportunity to make their comments on the project known. If you are unable to attend the public hearing, you may direct written comments to the City of Winters, Community Development Department, 318 First Street, Winters, CA 95694 or to jenna.moser@cityofwinters.org. In addition, the staff report will be available on the City's website on 04/21/16.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one-full business day before the start of the hearing.

The City does not transcribe its hearings. If you wish to obtain a verbatim record of the proceedings, you must arrange for attendance by a court reporter or for some other means of recordation. Such arrangements will be at your sole expense.

If you wish to challenge the action taken on this matter in court, the challenge may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission prior to the public hearing.

Availability of Documents: Copies of the Staff Report will be available on the City's website www.cityofwinters.org

For more information regarding this project, please contact Jenna Moser, Management Analyst – Planning & GIS, at (530) 794-6713.

CITY OF
WINTERS
california
Est. 1875

PLANNING COMMISSION
STAFF REPORT

TO: Chair and Planning Commissioners

DATE: April 26, 2016

FROM: David Dowswell, Community Development Director

SUBJECT: Callahan Estates Subdivision – Public Hearing and consideration by the Winters Planning Commission of the proposed Amended and Restated Development Agreement and Amended Tentative Map Conditions

---

RECOMMENDATION: Staff recommends the Planning Commission:

1) Receive a Staff Report on a proposed amendments to the Callahan Estates Subdivision; and

2) Conduct a Public Hearing to consider comments on the Amended Tentative Subdivision Map and Amended and Restated Development Agreement; and

3) Consider the previously certified and approved CEQA clearance for the Callahan Estates Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-06) adopted on March 15, 2005. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement; and

4) Adopt a Planning Commission Resolution No. PC 2016-01 (Attachment E) recommending that the Winters City Council adopt an ordinance approving the Amended and Restated Development Agreement between the City of Winters and Turning Point Acquisitions V, LLC, pursuant to Government Code sections 65864 through 65869.5, for the property commonly known as the Callahan Estates.

BACKGROUND: In April 2005, the City approved the Callahan Estates Subdivision (Attachment A) and Development Agreement (DA). In February 2009 a First Amendment was approved regarding the deferral of development impact fees from building permit to certificate of occupancy, conveying a portion of the land needed for the new public safety facility and revising the maximum number of non-market rate units that can be built per year. In August 2013 a Second Amendment was approved transferring the ownership from Winters Investors, LLC to Turning Point Acquisitions V, LLC, regarding the expiration date of the DA, combining the affordable housing obligation with the Hudson-Ogando subdivision (Winters Ranch) further clarifying the various impact fees and requiring an annuity in-lieu of establishing a Mello-Roos District to pay for the municipal services cost related to this subdivision.

Since 2006, the City has entered into five (5) development agreements with various developers for the subdivision and development of residential projects. In 2007, when the real estate market essentially "crashed" none of the proposed projects proceeded. Because of this, amendments have been initiated and adopted over the past eight years to keep the agreements current and viable for when the real estate market returned. Staring last year a number of the owners of the various approved subdivisions have come forward to commence development. Winters Ranch has begun construction and Winters Highlands is in the process of moving forward.

Late last year the City met with a representative of Turning Point Acquisitions V, LLC, to discuss possible amendments to the DA. These amendments to the Callahan Estates DA are essentially to "modernize" it to recognize capital improvements made during the interim, needs of the City and the Developer, and also to acknowledge the new fiscal realities of residential development. The amendments are discussed below.

This item was to have been heard at the March 22, 2016 Planning Commission meeting. At the applicant's request this item was continued from that hearing to the April 26, 2016 Planning Commission meeting.

ANALYSIS:

Development Agreement The proposed Amended and Restated DA (Attachment C) includes the following changes to the original DA and the First and Second amendments:

1. Term: Establishes a new term for the DA of ten (10) years effective from the date of recording.

2. Reduction in the Number of Lots: Reduces the number of lots from 111 to 109 due to a realignment of Taylor Street in cooperation with the Hudson-Ogando subdivision.

3. Affordable Housing: Requires the developer to pay to City the amount of One Hundred Ten Thousand Dollars ($110,000) upon the recordation of the Final Map for the Callahan Estates project and provide 4 low- and very-low income deed restricted affordable single-family homes within the adjoining Hudson-Ogando (Winters Ranch) subdivision.

4. Cooperative Development and Reimbursement Agreement: For the purpose of constructing the "Joint Improvements" as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner's Property, the Owners shall make reasonable efforts to enter into a "Joint Cooperative Development and Reimbursement Agreement". The "Joint Cooperative Development and Reimbursement Agreement" shall be prepared and executed among the Owners prior to the City's approval of the first final map associated with the Callahan Estates or Winters Highlands properties.

5. Annuity: Revises the original DA by deleting Section 4.5 regarding the provision requiring a fiscal neutrality annuity payment of $2,402 per unit. This is being deleted after the same requirement for the Hudson-Ogando and Winters Highlands Subdivisions was recently deleted from those DAs based on a revised fiscal analysis for the project.

6. Broadband Infrastructure: Revises the DA to include the installation of and dedication to the City of broadband conduit infrastructure for all units within the subdivision.

7. Urban Water Management Plan: Revises language to allow pro-rata share of cost, sharing with Winters Highlands, Hudson-Ogando, and Creekside. The payment shall be due and payable no later than the issuance of the 50th market-rate building permit.

8. Pedestrian Circulation and Safety Improvements: Eliminates the requirement to construct pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street because the City has no actual plan for a pedestrian crossing. The City will install this improvement in the future as a separate capital project.

Tentative Map As mentioned above, the Developer is requesting a reduction in the number of lots from 111 to 109 by amending the Tentative Map (Attachment E, Exhibit 2). The reduction in lots is due to the reconfiguration of Taylor Street necessitated by changes to the Hudson-Ogando Subdivision.

PROJECT NOTIFICATION: A notice advertising for the public hearing (Attachment C) on this application was prepared by the Community Development Department in accordance with notification procedures set forth in the City of Winters' Municipal Code and State Planning Law and was published in the Winters Express on 3/3/16 ten days

prior to the hearing. At the March 22, 2016 Planning Commission meeting the Commission continued the public hearing until April 26, 2016. Copies of the staff report and all attachments for the proposed project have been on file, available for public review at City Hall since 3/17/16.

ENVIRONMENTAL ASSESSMENT: Consider the previously certified and approved CEQA clearance for the Callahan Estates Development Agreement in the form of a Mitigated Negative Declaration and Mitigation Monitoring Program (Resolution No. 2005-06) adopted on March 15, 2005. Per Section 15060c2 of the CEQA Guidelines, the proposed DA Amendment is not subject to CEQA due to the lack of direct or reasonably foreseeable indirect physical change to the environment which would result from the adoption of the proposed Amendment to that Development Agreement

PLANNING COMMISSION ACTION: Staff recommends the Planning Commission make a recommendation to the Winters City Council to adopt an ordinance (Attachment D) approving the Amended and Restated Development Agreement between the City of Winters and Turning Point Acquisitions V, LLC, pursuant to Government Code sections 65864 through 65869.5, subject to the CEQA findings, for development of the property commonly known as the Callahan Estates Subdivision.

CEQA findings:

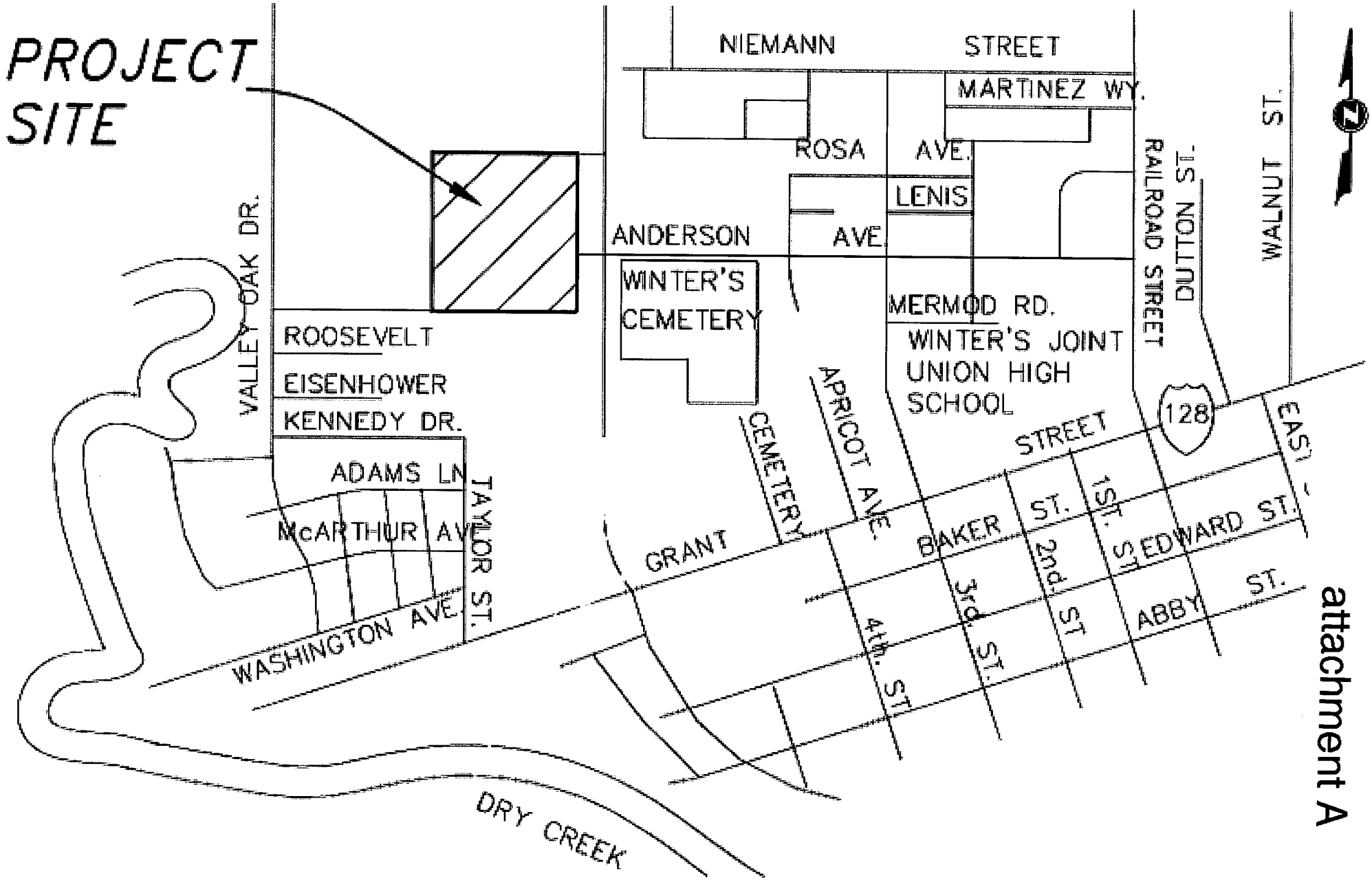
1. The Planning Commission finds that based the on their review of the Amended and Restated Development Agreement and Tentative Map ("the project") the changes are not considered significant enough to require preparation of a subsequent environmental document.

2. The Planning Commission has considered comments received on the project during the public review process.

3. The decision not to prepare a subsequent environmental document reflects the independent judgment and analysis of the City of Winters.

ATTACHMENTS:

A. Project Map
B. Notice of Public Hearing
C. Redlined Comparison to Original Development Agreement with First and Second Amendments
D. Ordinance
E. Planning Commission Resolution No. PC 2016-01



VICINITY MAP

NTS

attachment A

attachment B

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Winters will conduct a Public Hearing by the Planning Commission on Tuesday, March 22nd, 2016 at 6:30 p.m. at the City Council Chambers located on the first floor of City Hall at 318 First Street, Winters, California to consider an application from Turning Point Acquisitions V, LLC, to amend the Development Agreement for the Callahan Estates Subdivision. The development consists of approximately 109 single family lots on approximately 26.4 acres, with Yolo County Assessor's Parcel Number 030-220-49(formerly 22) located at the western terminus of Anderson Avenue. The proposed amendment would extend the term of the agreement to December 31, 2019, amend the affordable housing obligation requirements, and make certain other amendments regarding public improvements and joint obligations among adjacent development projects. The City Council will take final action on the project.

The purpose of the public hearing will be to provide citizens an opportunity to make their comments on the project known. If you are unable to attend the public hearing, you may direct written comments to the City of Winters, Community Development Department, 318 First Street, Winters, CA 95694 or to dave.dowswell@cityofwinters.org. In addition, the staff report will be available on the City's website on 03/17/16.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in these hearings, please contact City Clerk Nanci Mills at (530) 795-4910, ext. 101. Please make your request as early as possible and at least one-full business day before the start of the hearing.

The City does not transcribe its hearings. If you wish to obtain a verbatim record of the proceedings, you must arrange for attendance by a court reporter or for some other means of recordation. Such arrangements will be at your sole expense.

If you wish to challenge the action taken on this matter in court, the challenge may be limited to raising only those issues raised at the public hearing described in this notice, or

in written correspondence delivered to the Planning Commission prior to the public hearing.

Availability of Documents: Copies of the Staff Report will be available on the City's website www.cityofwinters.org

For more information regarding this project, please contact Jenna Moser, Management Analyst – Planning & GIS, at (530) 794-6713.

attachment C

DRAFT—FOR DISCUSSION PURPOSES

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Winters
318 First Street
Winters, California 95694
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27383

(Space Above This Line Reserved For Recorder's Use)

~~AN~~AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

~~WINTERS INVESTORS~~TURNING POINT ACQUISITIONS V, LLC,

A CALIFORNIA LIMITED LIABILITY COMPANY

[CALLAHAN PROPERTY]

~~RELATING~~

82573.00023\24471502.1
~~City of Winters/Winters Investors, LLC - Redline 3/21/05~~
~~812088v3 04691/0011~~

DRAFT—FOR DISCUSSION PURPOSES

TABLE OF CONTENTS

Page

ARTICLE 1. DEFINITIONS 3

Section 1.1 Definitions 3

ARTICLE 2. GENERAL PROVISIONS 7

Section 2.1 All Exhibits Deemed Incorporated by Reference 7
Section 2.2 Property to be Developed 7
Section 2.3 Agreement to be Recorded; Effective Date; Term 7
Section 2.4 Equitable Servitudes and Covenants Running With the Land 8
Section 2.5 Right to Assign; Non-Severable Obligations 8
Section 2.6 Amendment of the Agreement 9
Section 2.7 Whole Agreement; Conflict with Municipal Code 10
Section 2.8 Choice of Law; Venue; Attorneys' Fees; Dispute Resolution 10
Section 2.9 Notices 11
Section 2.10 Waivers 12
Section 2.11 Signatures 12
Section 2.12 Severability 12
Section 2.13 Unapproved Transfers Void 12
Section 2.14 Notice of Default to Mortgate, Deed of Trust or Other Security Interest Holders; Right to Cure 12

ARTICLE 3. DEVELOPMENT OF THE PROPERTY 14

Section 3.1 Land Use Entitlements 14
Section 3.2 Consistency with General Plan 16
Section 3.3 Vested Rights of Developer 16
Section 3.4 Rights Retained by the City 17
Section 3.5 Other Vesting Laws Inapplicable. 18
Section 3.6 Commencement and Phasing of Development 18
Section 3.7 Building Permits; Non-Market Rate Units 19
Section 3.8 Installation of Public Improvements 19
Section 3.9 Property for Public Improvements; Offsite Improvements 20
Section 3.10 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed 21
Section 3.11 Subsequent Discretionary Approvals. 23
Section 3.12 Review of Agreement 24
Section 3.13 Compliance with Government Code § 66006 24
Section 3.14 Subdivision Maps 24
Section 3.15 Deferral of Impact Fees 24

DRAFT—FOR DISCUSSION PURPOSES

Page

ARTICLE 4. DEVELOPMENT OBLIGATIONS 25

Section 4.1 Schools. 25
Section 4.2 Park Land and Fees 25
Section 4.3 Public Safety 26
Section 4.4 Intentionally Omitted 26
Section 4.5 Installation of Conduit 26
Section 4.6 Cooperative and Reimbursement Agreement 26
Section 4.7 Wastewater Treatment Plant Expansion 27
Section 4.8 Urban Water Management Plan 29
Section 4.9 Water Well 29
~~Section 4.9 Pedestrian Circulation and Safety Improvements ..... 37~~
Section 4.10 Taylor Street Improvements~~Walnut Street-Dutton Street-East Street Intersection Corridor~~ ..... 3~~7~~0
~~Section 4.12 Installation of Conduit ..... 40~~

ARTICLE 5. DEFAULT; REMEDIES; TERMINATION ..... ~~40~~30

Section 5.1 Application of Article. ..... ~~40~~30
~~Section 5. 2 Termination of Agreement ..... 40~~
Section 5.3 City's Remedies. ..... ~~41~~30
Section 5.4 Developer's Remedies ..... ~~44~~33

ARTICLE 6. HOLD HARMLESS AND INDEMNIFICATION ..... ~~46~~34

Section 6.1 Limitation of Legal Relationship ..... ~~46~~34
Section 6.2 No Liability for Acts of the Developer ..... ~~46~~35
Section 6.3 Duty to Defend Challenges to this Agreement ..... ~~47~~35

EXHIBITS

A Map of Callahan Property

B Legal Description of Callahan Property

C Callahan Estates Tentative Subdivision Map

D Conditions of Approval, Including Mitigation Measures

DRAFT—FOR DISCUSSION PURPOSES

AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WINTERS AND TURNING POINT ACQUISITIONS V, LLC RELATING TO THE DEVELOPMENT ~~OF THE PROPERTY~~ OF THE PROPERTY COMMONLY KNOWN AS THE CALLAHAN PROPERTY

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and ~~WINTERS INVESTORS~~TURNING POINT ACQUISITIONS V, LLC, a California limited liability company~~, a company associated with THE HOFMANN LAND DEVELOPMENT COMPANY, a California corporation~~ (the "Developer"), under the authority of § 65864 *et seq*. of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters ~~City~~Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County. The City and the Developer are sometimes referred to herein as the Parties.

FACTS AND CIRCUMSTANCES

This Agreement is entered into based on the following facts and circumstances, among others:

1. ~~1.~~ The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.

2. ~~2.~~ The Developer is in the business of developing residential communities in Northern California, including the development of property in a manner which promotes the goals envisioned by the City for its residents.

3. ~~3.~~ In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Callahan Property and further depicted in Exhibit A and described in Exhibit B to this Agreement, is through the use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer entered into a Development Agreement approved by Ordinance No. _____ on _____, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0026332-00, which Development Agreement has been amended by a First Amendment to Development Agreement dated January __, 2009 and recorded in the Official Records of Yolo County as Document No. _____, and a Second Amendment to Development Agreement dated _____ 2013 and recorded in the Official Records of Yolo County as Document No. _____ (collectively, the "Original Development Agreement").

5. The City and Developer desire to enter into this Agreement to incorporate the previously approved amendments into a single document and make additional amendments to extend the term of the Original Development Agreement and to further update the term and conditions to reflect the current needs and objectives of the Parties.

~~4.~~6. ~~4.~~ It is the intent of the Parties in entering into this Agreement supersede and replace the Original Development Agreement in its entirety, and further to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain ~~vested~~ rights to

develop the Callahan Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient discretionary control and police power authority to protect the health, safety, and general welfare.

~~**THE PARTIES AGREE AS FOLLOWS:**~~

~~**TABLE OF CONTENTS**~~

~~This Agreement is divided into articles, sections, and subsections as set forth below. The title of an article, section, or sub-section is for the convenience of the Parties only and a title is not intended to alter the content or meaning of any article, section or subsection.~~

ARTICLE 1~~Article 1.~~

DEFINITIONS

~~Article 2. General Provisions~~

~~Article 3. Development of the Property~~

~~Article 4. Special Development Obligations~~

~~Article 5. Default, Remedies, and Dispute Resolution~~

~~Article 6. Hold Harmless and Indemnification~~

~~**ARTICLE 1**~~

Section 1.1 Definitions.

The following words ~~and~~or phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such

words in the parlance of the planning and development of real property in the State of California.

1. ~~Section 1.1~~ "Agreement" means this Development Agreement.

2. ~~Section 1.2~~ "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.

3. ~~Section 1.3~~ "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.

~~Section 1.4 "Callahan Property" or "The Property" means the real property which is the subject of this Agreement. It is legally identified as Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.~~

4. ~~Section 1.5~~ "Callahan Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property ~~concurrently with the approval of this Agreement~~ in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Callahan Estates Tentative Subdivision Map is attached as Exhibit C.

5. ~~Section 1.6~~ "~~"~~Callahan Estates~~"~~" means the single family residential development created by the Callahan ~~Estates~~Estates~~d~~ Tentative Subdivision Map.

6. ~~Section 1.7~~ "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It

also includes each person duly appointed to carry out a specific function as required in this Agreement. (e.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

7. ~~Section 1.8~~ "City of Winters" means the physical boundaries of the City of Winters.

8. "City Public Works Improvement Standards and Construction Specifications" means the City of Winters Public Works Improvement Standards and Construction Specifications, dated September, 2003, and as amended from time to time.

9. ~~Section 1.9~~ "Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

10. ~~Section 1.10~~ "Conditions of Approval" means the conditions placed on the approval of the Callahan Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

11. ~~Section 1.11~~ "Developer" means ~~the Winters Investors,~~TURNING POINT ACQUISITIONS V LLC, a California limited liability company, ~~the members of which are associated with The Hofmann Land Development Company, a California corporation,~~ and/or its successor(s) in interest.

12. ~~Section 1.12~~ "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

13. ~~Section 1.13~~ "Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

14. ~~Section 1.14~~ "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of the Property ~~for such things as the expansion of the Wastewater Treatment Plant, traffic circulation, sewer and water conveyance facilities, and similar matters~~and used to pay for public facilities attributable to the development project.

15. ~~Section 1.15~~ "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval issued ~~to The Property~~ by the City for the development of the Property under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law~~, which permits development on The Property. Examples: zoning; a conditional use permit; a tentative or final subdivision map; a building permit; a sewer or water connection~~.

16. ~~Section 1.16~~ "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

17. ~~Section 1.17~~ "Mitigation Measures" means the requirements placed on the development of the Property to cure or lessen the environmental

impact of a particular physical activity as identified as part of the analysis done for the Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

18. "Nexus Study" means a study used as the basis for imposing an Impact Fee on new development in accordance with California Government Code section 66000, *et seq.*

19. ~~Section 1.18~~ "Off-site improvement" means a public improvement constructed outside the physical boundaries of the Property.

20. ~~Section 1.19~~ "On-site improvement" means a public improvement constructed within the physical boundaries of the Property.

21. ~~Section 1.20~~ "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

22. ~~Section 1.21~~ "Phase" means a portion of the Callahan Estates Tentative Subdivision Map ~~which~~that is reduced to a final subdivision map.

23. "Property" means the property commonly known as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.

24. ~~Section 1.22~~ "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property~~. Examples:~~, including but not limited to roads~~;~~, sewer and water lines~~;~~ and traffic signals.

25. Section 1.23 ""Vesting law"" means any State or federal law whichthat gives the ownerowenrowner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated By Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22. A map showing the location and boundaries of the Property is attached as Exhibit A and a legal description describing the Property is attached as Exhibit B. In this Agreement the Callahan Property will, in most instances, be referred to simply as "the "Property.""

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County, and upon recordation of this Agreement, it shall replace and supersede the Original Development Agreement in its entirety, and the Original Development Agreement shall be of no further force and effect.

~~b. The term of this Agreement is six (6) years, commencing on the date it is recorded. The term may be extended by mutual consent of the Parties. It may be terminated as provided in Article 5.~~

b. The term of this Agreement shall expire on December 31, 20~~19~~21, unless otherwise extended in accordance with State law and City ~~ordinances .~~ ordinances.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In no event shall an owner or tenant of an individually completed residential unit within the Callahan Estates Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

a. ~~a.~~ The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its

rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. ~~b.~~ No assignment shall be effective until the City~~, by action of its City Council,~~ approves the assignment~~. Approval~~, which shall not be unreasonably withheld provided:

1. ~~1.~~ The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. ~~2.~~ The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to ~~Callahan Estates and has successfully completed such developments~~the portion of the Project that is the subject of the assignment.

Comment [DD1]: This wording is confusing.

c. ~~c.~~ The provisions of subsection b~~.~~ do not apply to the sale of five (5) or fewer finished ~~residential~~ lots to individual buyers or builders.

~~d. The special development conditions set forth in Article 4 are not severable, and any sale of The Property, in whole or in part, or assignment of this Agreement, in whole or in part, which attempts to sever such conditions shall constitute a default under this Agreement and shall entitle the City to terminate this Agreement in its entirety.~~

d. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related

expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and ~~Title 11, Chapter 2, Article 6~~Section 15.72.210 (Amendment or Cancellation by Mutual Consent) of the Winters ~~City~~Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

Section 2.7 Whole Agreement; Conflict with ~~City~~Municipal Code.

a. ~~a.~~ This Agreement, together with any subsequent addenda~~.~~, amendments, or modifications, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. ~~b.~~ The provisions of Title ~~11~~15, Chapter ~~2~~15.72 of the Winters ~~City~~Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific

provision of the Winters ~~City~~Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorneys' Fees; ~~Alternative~~ Dispute Resolution.

a. ~~a.~~ This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be ~~venued in~~ the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. ~~b.~~ Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. ~~a.~~ Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. ~~1.~~ Via certified U.S. Mail, return receipt requested.

2. ~~2.~~ Via an overnight mail service of the type normally used by the business community, such as Federal Express~~,~~ or UPS Overnight~~, and California Overnight~~.

~~3. By facsimile, provided a "hard" copy is sent at the same time by regular U.S. Mail.~~

~~b.~~ The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate.

b. ~~c.~~ Notices to the City shall be given as follows:

City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Telephone (530) 795-4910~~ x 110~~
~~FAX (530) 795-4935~~

c. ~~d.~~ Notices to the Developer shall be given as follows:

~~Winters Investors,~~Turning Point Acquisitions V LLC
3314 Freeman Road
~~c/o The Hofmann Land Development Company~~
~~1380 Galaxy Way~~

~~P.O. Box 758~~
~~Concord~~Walnut Creek, CA ~~94522~~94595
Attn: Jim Hildenbrand
Telephone (925) ~~682~~639-~~4830~~4204
~~FAX (925) 682-4771~~

Section 2.10 Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 2.11 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall insure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 2.12 Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 5.2 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the

foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

Section 2.13 Unapproved Transfers Void.

Any assignment or attempted Assignment that is inconsistent with Article 2 shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

~~Section 2.10~~Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.

The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

DRAFT—FOR DISCUSSION PURPOSES

ARTICLE 3~~ARTICLE 3~~

DEVELOPMENT OF THE PROPERTY

Section 3.1 ~~Section 3.1~~ Land Use Entitlements~~; One or More Final Subdivision Maps~~.

a. ~~a.~~ The Property ~~will~~shall be developed ~~under~~in accordance with the Conditions of Approval and the following ordinances, policies and Land Use Entitlements, all of which ~~are~~have been adopted or approved ~~contemporaneously with the recording of this Agreement~~by the City Council:

~~1. This Agreement as adopted by Ordinance No. _____ adopted _____ and effective _____.~~

1. This Amended and Restated Development Agreement (Ordinance No. 201~~5~~6-__ adopted _____, 20__ and effective on _____, (the "Enacting Ordinance")).

~~1.~~2. ~~2.~~ An exclusion for the Property from the West Central Master Plan.

~~2.~~3. ~~3.~~ A rezoning to add a Planned Development (PD) overlay zone to allow for a subdivision in which the ~~avereage~~average lot size ~~t~~does not meet the minimum requirement of the zone (7,000 square feet) and to allow for one lot (Lot 1) which does not meet the width requirement (60 feet).

~~3.~~4. ~~4.~~ The approval of a Planned Development Permit for an unlimited term pursuant to the requirements of Section ~~8~~

~~1.5117.E~~17.48.050.A.1 and .2 of the Zoning Ordinance and ~~the~~ Conditions of Approval.

4.5. ~~5.~~ An amendment to the Circulation Master Plan (May 19, 1992) and Standard Cross-Sections (adopted October 2, ~~2001~~2011) to remove the requirement for on-street Class II bike lanes on West Main Street and replace with off-street Class I bike path.

~~5.~~6. ~~6.~~ An amendment to the Bikeway System Master Plan (~~November 19, 2002~~January 2013) text and Figure 3 to identify a Class I bike path along West Main Street and Class II bike lanes along Anderson Avenue.

~~7.~~ Approval of Callahan Estates Tentative Subdivision Map, together with the Conditions of Approval, dividing 26.4 acres into ~~120~~109 single-family lots; ~~Parcels A and D (exchange lots);~~ Parcels E, F, and G (Open Space Lots); and Parcel X (detention pond/sewer force main~~potential well site~~). The ~~120~~109 single-family lots will be ~~built with:~~

~~6.~~ ~~a) 102~~ market rate units, of which ~~12~~10 must be made available to local builders as defined by the ~~City's~~City's land use regulations~~; and~~.

~~7.~~ ~~b) 18 deed restricted, below market rate units (seven (7) very low income, seven (7) low income, and four (4) moderate income).~~

~~8.~~7. ~~8.~~ ~~A lot line adjustment on the north property line to exchange Parcel D for Parcel C from the adjoining Winters Highlands property.~~

~~9.~~8. ~~9.~~ A lot line adjustment on the south property line to exchange Parcel A for Parcel B from the adjoining Ogando/Hudson property.

~~10.~~9. ~~10.~~ Subsequent discretionary approvals (such as design review) pursuant to the ~~City's~~City's generally applicable land use regulations.

b. ~~b.~~ The Developer may apply for ~~and~~an receive one final subdivision map for Callahan Estates, or the Developer may choose to file separate final maps for various phases of Callahan Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in Section 3.8.

c. ~~c.~~ Under the provisions of Government Code ~~§~~section 66452.6(a), the ~~life of the Callahan Estates~~term of the ~~Winters Highlands~~Callahan Estates Subdivision Tentative ~~Subdivision~~ Map is hereby extended to be co-terminus with the ~~life~~term of this Agreement.

Section 3.2 ~~Section 3.2~~ Consistency with General Plan.

The City finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the General Plan of the City of Winters, as amended.

Section 3.3 ~~Section 3.3~~ Vested Rights of Developer.

a. ~~a.~~ The Developer shall, solely with respect to the Property, have the right to the following land use entitlements regardless of subsequent

amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City.

1. ~~1.~~ The right to the number of single family residential lots, dwelling units, and the density of development (dwelling units per acre) of those units, as shown on the Callahan Estates Tentative Subdivision Map.

2. ~~2.~~ Exclusion from:

a) ~~a)~~ the West Central Master Plan; and

b) ~~b)~~ subsequently enacted building moratoria.

3. ~~3.~~ The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. ~~4.~~ The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established in the Conditions of ~~Approavl~~Approval for the Callahan Estates Tentative Subdivision Map.

5. ~~5.~~ The Mitigation Measures.

b. ~~b.~~ Subdivision a. does not apply to changes effecting development of the Property as mandated by State and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will permit the development of the Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 ~~Section 3.4~~ Rights Retained by the City.

a. ~~a.~~ Except as specifically provided in section ~~3.2~~3.3, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. ~~1.~~ Discretionary approvals. (The only discretionary approval contemplated at this time is design review pursuant to the Zoning Code.)

2. ~~2.~~ Subdivision standards in effect when a final subdivision map is approved.

3. ~~3.~~ The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. ~~4.~~ Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. ~~b.~~ The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to the Property under its general police

power, provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 ~~Section 3.5~~ Other Vesting Laws Inapplicable.

a. ~~a.~~ It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of State or federal law pertaining to the vested rights of the Developer to develop the Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (~~§~~section 65864 *et seq.*) and Development Rights [vesting tentative maps] (~~§~~section 66498 *et seq.*).

b. ~~b.~~ Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded ~~shall be made~~and it is specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

c. ~~c.~~ The Developer shall not make any application to develop the Property, in whole or in part, under any vesting law, unless the right to do so is specifically granted by State and/or federal law which becomes effective after the date of the recording of this Agreement.

Section 3.6 ~~Section 3.6~~ Commencement and Phasing of Development.

~~a. Unless excused by the City for circumstances beyond the control of the Developer, the Developer shall, within one hundred fifty (150) days after this Agreement is recorded, submit for approval by the City the final map for Callahan~~

~~Estates (or the first phase, as the case may be) and accompanying subdivision improvement plans. For purposes of this subsection a., "circumstances beyond the control of the Developer" shall include, but are not limited to, inclement weather, acts of God, natural disasters, acts of the State and/or federal government, a referendum of the ordinance adopting this Agreement, or third party litigation challenging the validity of this Agreement. However, "circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.~~

~~d. Any time limit prescribed for any action required by this Agreement shall be extended by the number of days during which circumstances beyond the control of the Developer preclude the action from being taken.~~

a. The Developer shall have sole discretion to determine when the final map for the Callahan ~~Estaes~~Estates Subdivision, or first phase thereof, and accompanying subdivision improvement plans, are submitted for City review and approval.

Section 3.7 ~~Section 3.7 Maximum Number of~~ Building Permits ~~Per Year~~; Non-Market Rate Units.

~~a. To provide for orderly growth within the City of Winters, the Developer shall be entitled to apply for and receive no more than the following number of single family residential building permits per year for the 102 market rate residential units (including the 12 units to be offered for sale to local builders) in Callahan Estates. For purposes of this section, the first year commences on the date this Agreement is recorded.~~

~~1. Year 1: 51~~

~~2. Year 2: 51~~

~~3. Year 3: 25~~

~~4. Year 4: 25~~

~~5. Year 5: 25~~

~~6. Year 6 : 27~~

~~b. No building permit shall be issued for any residential lot for which the Developer has not made application at the time of the expiration of this Agreement.~~

~~c. There are 18 deed restricted, below market rate units to be built in Callahan Estates pursuant to the City's land use regulations. The Developer may apply for and receive building permits for these units at any time during the life of this Agreement. The permits for the below market rate units are in addition to, and not part of, the number of units per year set forth above. However, the Developer must complete the construction of the below market rate units prior to the expiration of this Agreement.~~

~~d. The Parties agree that the purpose of limiting the number of building permits issued in any year is to allow the City to meter growth in such a manner that the total number of new units built per year, both within Callahan Estates and on other properties, does not exceed the number which can reasonably be served with municipal and education services without unduly impacting those existing units which receive such services.~~

~~e. Should circumstances beyond the control of the Developer preclude the Developer from applying for and/or being issued the number of building permits specified in subsection a. in the year specified, then the City shall adjust the schedule accordingly. For purposes of this subsection e., "circumstances beyond the control of the Developer" shall include, but are not limited to, acts of God, natural disasters, and acts of the State and/or federal government. However,~~

~~"circumstances beyond the control of the Developer" do not include a change in economic conditions which affect either the Developer individually or the land development/building industry generally.~~

a. City and Developer agree that Developer shall satisfy the City's affordable housing requirements as follows:

1. The Developer shall pay to City the amount of One Hundred Ten Thousand Dollars ($110,000.00) upon the recordation of the Final Map for the Project, or in the event that Developer files more than one Final Map, upon the recordation of the first Final Map.

Section 3.8 ~~Section 3.8~~ Installation of Public Improvements.

a. ~~a.~~ Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be ~~constructed both~~constructed both on-site and off-site during the development of the Callahan Estates Subdivision. When the Final Map for all of the Callahan Estates Subdivision (or a phase, as the case may be), is approved, the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it ~~contracts~~commits to build and dedicate to the City or applicable public agency, the public improvements required either in all of Callahan Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by State law and City law.

b. ~~b.~~ If the Developer proceeds by filing final maps for various phases of Callahan Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase

(both on-site and off-site of the entirety of Callahan Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

Section 3.9 ~~Section 3.9~~ Property for Public Improvements; Offsite Improvements.

a. ~~a.~~ The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Callahan Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements ~~contemplated~~required by this Agreement.

b. ~~b.~~ In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the applicable Final Subdivision Map for the Callahan ~~Estates (or the first phase as the case may be)Estaes~~Estates Subdivision is filed with the City.

c. ~~c.~~ In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public

improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by State law, use its power of eminent domain to acquire the property interests. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest. Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, ~~and for purposes of eminent domain,~~ the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

Section 3.10 ~~Section 3.10~~ Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed.

a. ~~a.~~ In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the ~~residents~~~~residentis~~residents of Callahan Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

b. ~~b.~~ There are two sources from which the Developer may be reimbursed for oversizing:

1. ~~1.~~ By way of a separate agreement between the City and the Developer which will provide that when a particular property

benefiting from the oversizing is developed, the City will require the benefiting property owner to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. ~~2.~~ By way of ~~the~~ payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. ~~c.~~ In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. ~~1.~~ Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the ~~prorata~~*pro rata* share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. ~~2.~~ When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. ~~d.~~ The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing properties or from mitigation fees as described in subsection b.

~~1.~~

3.1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

4.2. 2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

5.3. 3. If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

d.e. e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a Building Permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a Building Permit is issued. The amount ofamount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the Building Permit.

e.f. f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of $1,000 is normally collected at the time a building

permit is issued for improvement X, and the Developer installs improvement X at a cost of $20,000, then the Developer will be credited with having paid that fee for 20 building permits.).

Section 3.11 ~~Section 3.11~~ Subsequent Discretionary Approvals.

a. ~~a.~~ To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those Discretionary Approvals in the same manner as any other person applying for ~~land use entitlements~~such Discretionary Approvals from the City. All Application fees then applicable for the type of ~~land use entitlement(s) sought~~Discretionary Approvals shall apply. The City will review these applications in good faith within a reasonable time to insure that the Developer may proceed to develop the Property in the manner contemplated by this Agreement.

b. ~~b.~~ The only remaining Discretionary Approval which is contemplated at this time is design review under the Zoning Ordinance.

Section 3.12 ~~Section 3.12~~ Review of Agreement.

~~Reviews~~Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in ~~Title 11, Chapter 2, Article 7 (~~Section 15.72.230 (Periodic Review) of the Winters ~~City~~Municipal Code.

Section 3.13 ~~Section 3.13~~ Compliance with Government Code ~~§~~Section 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the

requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Section 3.14 Subdivision Maps.

A subdivision, as defined in Government Code section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Government Code.

Section 3.15 Deferral of Impact Fees.

In order to encourage the Developer to proceed with construction of new market rate housing within the City of Winters, except as provided for herein, the City hereby agrees to defer all development impact fees imposed by the City on building permits issued until the earlier of (1) issuance of a Certificate of Occupancy; or (2) six (6) months after the issuance of a building permit. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval. This provision is not intended to restrict, limit, or waive any rights which Developer may acquire pursuant to subsequently enacted state legislation.

ARTICLE 4~~ARTICLE 4~~

~~SPECIFIC~~ DEVELOPMENT OBLIGATIONS

Section 4.1 ~~Section 4.1~~ Schools.

~~a.~~ The Developer acknowledges and agrees that the mitigation of the impact of Callahan Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a

consequence, the Developer states that ~~its intention entering into this Agreement is~~ it has entered into an Agreement (Restated Mutual Benefit Agreement for the Mitigation of Development Impacts Upon the School Facilities of the Winters Joint Unified School District) to mitigate the impact on schools ~~to the greatest reasonable extent, in accordance with the terms of an agreement negotiated between the Developer and the Winters Joint Unified School District. A copy of the agreement is attached as Exhibit E.~~recorded October 24, 2013 as Instrument No. 2013-0034136 of Official Records County of Yolo.

~~b. As a condition to the approval of this Agreement by the City, the Developer shall present to the City Council, at the time of the first reading of the ordinance approving this Agreement City Council, a fully executed agreement acceptable to the City between the Developer and the Winters Joint Unified School District ("School District"). That agreement shall provide, in addition to such other matters as the parties to it may agree, that the Developer will pay to the School District, at the time of the issuance of a building permit:~~

~~1. for each of the 120 residential units in Callahan Estates, fees designated as "Level 2" fees as that term is commonly used in the K-12 education community; and~~

~~2. for all units in Callahan Estates, except the very low income and low income affordable units, "Level 3" fees as those terms are commonly used in the K-12 education community.~~

~~c. The Developer acknowledges receipt of the document dated October 2004 adopted by the School District entitled "School Facility Needs Analysis" prepared by Government Financial Strategies, Inc. This document will be used by the Developer and the School District in reaching the agreement referred to in subsection b.~~

~~Section 4.2 Conveyance of 1.39 +/- Acres of Land.~~

~~Contemporaneously with the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be), the Developer shall grant to the City, free and clear of all encumbrances, a 1.39 +/- acre portion of a parcel of land consisting of 2.15 +/- acres. The 2.15± acre parcel borders a parcel of land consisting of 1.3+/- acres currently owned by the City. A map showing the location of the parcel to be conveyed and the City-owned parcel is attached as Exhibit F. If required by the City Engineer, the Developer shall have a metes and bounds legal description prepared and submitted to the City Engineer along with the final map.~~

Section 4.2 ~~Section 4.3~~ ~~2.7 Acre~~ Park Land and Fees.

~~Developer shall satisfy its 1.64 acre park obligation as follows: Developer shall pay a park fee, in the aggregate totaling Five Hundred Sixteen Thousand Four Hundred Seventy-one Dollars ($516,471.00) as follows: Developer shall pay the sum of Seven Thousand One Hundred Seventy-three Dollars ($7,173.00) at the time of issuance of a building permit for each residential structure. Developer shall fund and construct the park on Parcel A (0.1230 acres). Developer shall be further credited against Park Improvement Fees for the provision of infrastructure improvements, planning, developing and equipping the park on Parcel A, not to exceed Thirty-eight Thousand Seven Hundred Thirty-five Dollars ($38,735.00). This credit shall be applied on against parkland and parkland improvement fees otherwise applicable the Project. The amount of the Parcel A park credit is based on the pro-rata cost per acre obligation established for the 1.64 acre park. The cost per acre is $516,471/1.64 acres = $314,921. Parcel A is 0.1230 acres. Therefore, the Parcel A park credit is $314,921 x 0.1230 = $38,735.~~ Developer shall satisfy its 2.7 acre park obligation as follows: Developer shall pay a park fee, in the

aggregate totaling Eight Hundred Fifty Thousand Two Hundred Eighty-six Dollars ($850,286.00) as follows: Developer shall pay the sum of $6,024 in equal installments at the time of issuance of a certificate of occupancy for each residential structure. Developer shall fund and construct the parks on Parcels E, F, and G (equal to 0.6149 acres). Developer shall be further credited against park improvement fees for the provision of infrastructure improvements, planning, developing, and equipping the park on Parcels E, F, and G, not to exceed One Hundred Ninety-three Thousand Six Hundred Forty-four Dollars ($193,644.00). This credit shall be applied on a pro rata basis against the anticipated development of 111 lots. The amount of the Parcels E, F, and G park credit is based on the pro rata cost per acre obligation established for the 2.73 acre park. The cost per acre is $850,286/2.73 acres = $314,921. Parcels E, F, and G are equal to 0.6149 acres. Therefore, Parcels E, F, and G park credit is $314,921 x 0.6149 = $193,644.

Section 4.3 Public Safety Facility.

~~a. Developer shall provide a 2.7 +/- acre neighborhood park ("the Park Obligation"). The Park Obligation consists of three components:~~

~~1. Providing land.~~

~~2. Providing infrastructure.~~

~~3. Planning, developing, and equipping the park.~~

~~b. The Parties acknowledge that it is in the best interests of the community that the City accept a sum of money which represents the monetary value of the Park Obligation rather than have the Developer include a fully operational 2.7 acre park within Callahan Estates. The payment of the Park~~

~~Obligation by the Developer is in lieu of the payment of any park impact fees as provided by City ordinance.~~

~~c.~~ Developer ~~agrees to satisfy the Park Obligation as follows~~shall pay the City's Public Safety Facility fee.

~~1. At the time of filing the final map for Callahan Estates (or the first phase thereof, as the case may be) a payment of one hundred percent (100%) of the amount calculated by the City Engineer as set forth in e., below.~~

~~2. An additional fifty percent (50%) of the amount calculated under 1., above, payable as follows:~~

~~a) The additional fifty percent (50%) shall be divided by the number of market rate units in Callahan Estates (102 units). The resulting amount shall be paid each time a building permit is issued for one of the 102 market rate units.~~

~~b) If at the end of thirty (30) months from the recording of the final map for Callahan Estates (or the first phase thereof, as the case may be), the full amount under this subsection 2. has not been fully paid, then the Developer shall pay the remaining amount owing within ten (10) business days of being notified by the City to do so. (Example: If at the end of thirty (30) months, the Developer has obtained eighty (80) building permits for market rate units and has paid fees under this subsection, then the Developer, upon notice from the City, shall pay the fees owed under this subsection for the remaining twenty two (22) market rate units.)~~

~~d. Once all amounts owed under c. above have been paid, the Developer will have satisfied the Park Obligation.~~

~~e. The Park Obligation shall be computed by the City Engineer as follows:~~

~~1. The land value will be determined by an appraisal made at the Developer's expense. The Developer shall provide to the City the names of three (3) qualified appraisers acceptable to the City who are both licensed by the State of California and members of the Appraisal Institute (MAI) and knowledgeable in appraising property similar in nature to The Property. The City shall select the appraiser to be used from the list and notify the Developer of its decision. The appraisal shall be presented to the City within ninety (90) days thereafter, unless the Parties agree to a different date. The appraisal shall determine the fair market value of 2.7 +/- acres of The Property with the development entitlements specified in this Agreement. The date of value shall be the date of the recording of this Agreement.~~

~~2. The estimated cost of the infrastructure improvements will be calculated by the City Engineer using the per acre cost of Sixty Thousand Dollars ($60,000).~~

~~3. The estimated cost of the development of a park (including planning, developing, and equipping the same) will be calculated by the City Engineer using the per acre cost of Two Hundred Twenty Nine Thousand Five Hundred Dollars ($229,500).~~

~~4. To the total determined by adding the costs determined under 1., 2., and 3., above, shall be added five percent (5%) for administration, including, but not limited to, the use of eminent domain by the City as necessary to acquire park land.~~

~~Section 4.3~~Section 4.4 Intentionally Omitted.

~~Section 4.4 Advance Funding of Fees For Construction of Police/Fire/Corporation Yard Facility.~~

~~a. The Parties acknowledge that the City intends to construct a joint use facility for police and fire services, and for a corporation yard, on the 3.45+/- acre parcel shown on Exhibit F. In order to provide sufficient funds for the City to commence construction of this facility, the Developer shall, concurrently with the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be), pay to the City development fees as follows:~~

~~1. A police facilities fee at its then current rate for all 120 residential units in Callahan Estates.~~

~~2. A fire facilities fee at its then current rate for all 120 residential units in Callahan Estates.~~

~~3. A general municipal facilities fee at its then current rate for all 120 residential units in Callahan Estates.~~

~~b. Each time the Developer applies for and receives a building permit thereafter, the Developer shall be credited with the amount paid under subsection a. for each permit.~~

~~c. If, at the time of the actual issuance of a building permit, the fees payable at that time have increased since the payment made under subsection a., the Developer shall pay the difference between the two amounts.~~

~~Section 4.4~~Section 4.5 Installation of Conduit.

Developer shall provide design and construction for conduit and boxes suitable for broadband internet service to each residential unit, within the joint trench for the Winters Highlands Subdivision. The conduit shall be coordinated with all other utilities and shown on the joint trench composite plans. The conduit and boxes are to be constructed with the joint trench and completed before certificate of occupancy is issued. The utility company providing broadband internet service will install the wire necessary to provide the service; the timing of

which will not delay the issuance of a certificate of occupancy.

~~Section 4.5~~Section 4.6 Cooperative and Reimbursement Agreement.

The developers of Callahan Estates and Winters Highlands, referred to in this section as "Owners," intend to subdivide their respective properties into residential lots which will be served by public streets and improvements, easements and rights-of-way. Each Owner will require access to portions of the Other's property for purposes of installation of streets, utilities conduit, storm drains, sewer and other improvements for future use and/or dedication for the benefit of their respective residential project, as well as for the benefit of all the Owners. Public streets and improvements, easements and rights-of-way that are reasonably expected to benefit all of Owners are defined herein as "Joint Improvements." Joint Improvements may include, but are not limited to, streets, curbs, gutters, street lighting, sidewalks, joint trench, storm drains, storm water pumping station, sewer and water collection systems, sewer pump station, utilities, and other public improvements.

~~Section 4.5. Annuity in Lieu of Mello-Roos District.~~

~~a. The Developer agrees that the City will establish, and the Developer will fund, an annuity to offset the projected fiscal deficit to the General Fund of the City created by the development of Callahan Estates per the Economic & Planning Systems report titled "City of Winters Fiscal Impact Analysis Callahan Estates Subdivision", dated August 20, 2003. Such an annuity is in lieu of the creation of a Mello-Roos Community Facilities District or other similar financing device.~~

~~b. The funding of the annuity will be created and funded as follows:~~

~~1. Subject to the provisions of b.3., below, from the escrow for the sale of each residential unit to a third party the Developer will pay to the City the sum of Eight Thousand Six Hundred ($8,600.00).~~

~~2. The City will invest the amounts received under this section in an annuity, or other similar investment, which will create a stream of income to be paid into the City's General Fund to pay for the increase in the cost of municipal services resulting from the development of Callahan Estates.~~

~~3. The amount of Eighty-six Hundred Eighty Dollars ($8,680.00) will be adjusted with the first closing of a residential unit to a third party and on or before April 30 of each subsequent year to take into account rising assessed values resulting from increased new home prices within Callahan Estates, if any. The formula for making this adjustment is set forth in Exhibit G.~~

~~c. At the end of the third year after the recording of this Agreement, the City will prepare an updated fiscal analysis. The amount set forth in subsection b. 4., as may be amended from time to time by the formula set out in Exhibit G, shall be modified according to the results of that analysis.~~

For the purpose of constructing the Joint Improvements as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner's Property, the Owners shall use best efforts to enter into a "Joint Cooperative Development and Reimbursement Agreement." The Joint Cooperative Development and Reimbursements Agreement shall be prepared and executed among the Owners prior to the City's approval of the first final map associated with any of the Owner's properties. The City shall not approve a final map for any of the Owner's ~~three~~two respective projects until the Owners submit to City the Joint Cooperative Development and Reimbursement Agreement executed by all the Owners, or the Owner applying for

a final map can show to the reasonable satisfaction of the City Manager that it has used best efforts to enter into said agreement but has been unable to agree to terms with the other Owners.

~~Section 4.6 Payment to Library Fund.~~

~~Prior to recording of the final map for Callahan Estates (or the first phase, as the case may be) the Developer shall pay to the City the sum of Sixty-seven Thousand Four Hundred Fifty-nine Dollars ($67,459.00). This amount shall be kept in a specific designated account and used solely for constructing, maintaining, and/or improving a public library facility in the City of Winters.~~

~~Section 4.6~~Section 4.7 ~~Section 4.7~~ Wastewater Treatment Plant Expansion.

a. ~~a.~~ Wastewater (sewage) from Callahan Estates will be treated in ~~an~~the City's ~~expanded and upgraded~~ Wastewater Treatment Plant ("WTP"), which may be expanded in the future. The WTP Master Plan was updated in 2015, which updated the available capacity of the WTP and determined what the next phase of WTP expansion should be, when that phase will be triggered by development, and what the associated tasks and costs are for the expansion. The expansion ~~to~~will be built by the City using sewer impact fees collected from the developers of property within the City of Winters. The Developer shall be required to pay sewer impact fees in effect at the time of the first Final Map.

~~a.~~b. Wastewater from Callahan Estates will eventually flow to the ~~expanded and upgraded~~ WTP through conveyance facilities to be constructed to the north of The Property across adjacent property commonly referred to as Winters Highlands.

~~b.~~ Winters Highlands is expected to construct the conveyance improvements north to the WTP prior to the Callahan Estates moving forward. However, if ~~b. The Developer shall be required to pay all applicable sewer impact fees.~~

~~c.~~ ~~c. Neither the WTP expansion and upgrade, nor~~ the facilities through Winters Highlands, are not ~~expected to be~~ completed by the time the first residential unit of Callahan Estates requires sewer treatment~~. To facilitate the treatment of sewage from Callahan Estates pending the expansion and upgrade of the WTP and the construction of facilities across Winters Highlands,~~ then the Developer shall install all wastewater conveyance facilities north of the Property to the WTP as determined by the City Engineer to be necessary to serve Callahan Estates, subject to a *pro rata reimbursement from others as provided in Section 3.10.* The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly. Such facilities include, but are not limited to, the installation of the West Main SS Pump Station "A" and the sewer force mains. ~~may, at its sole cost and expense and without reimbursement or fee credit from the City, connect to the City's existing sewage collection facilities located to the south of The Property on Grant Avenue. This will be an interim connection only. All necessary improvements to the Grant Avenue facilities as determined by the City Engineer will be paid by the Developer.~~

~~d.~~ ~~d. When the WTP is expanded and upgraded, and the facilities across Winters Highlands are installed, sewage from Callahan Estates will be redirected to the new facilities. This will be the permanent connection. The cost of disconnecting the interim connection and connecting to the permanent connection will be paid by the Developer. Since the time for construction of the new facilities~~

described above is unknown, the City Engineer may require the Developer to post security in the amount determined to be the cost of connecting to the permanent connection. Such security, if required, will be posted at the time of the filing of the final subdivision map for Callahan Estates (or the first phase, as the case may be).

e. e. If the Developer chooses not to construct the interim connection to the south of The Property, then the Developer shall install all wastewater conveyance facilities to the north of The Property as determined by the City Engineer to be necessary to serve the Callahan Estates, subject to a *pro rata* reimbursement as provided by section 3.10. Such facilities include, but are not limited to, the installation of a regional pump station at Niemann St./Railroad Avenue.

f.c. f. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.7Section 4.8 Section 4.8 Urban Water Management Plan.

a. The Developer shall pay its *pro rata* share, based on number of units in relation to Hudson/Ogando, Winters Highlands, and Creekside, of the cost for preparation of a City Urban Water Management Plan ("Management Plan"). Payment shall be due and payable no later than the date upon which the final map for Callahan Estates (or the first phase, as the case may be) is recorded. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the Management Plan to be paid by other developments benefiting from the Management Plan, but only those commonly identified as Winters Highlands and Hudson-Ogando, as provided by section 3.10.issuance of the 50th market rate unit building permit.No later than the issuance of the 50th building permit for the

Callahan Estates Subdivision the Developer shall pay to the City its *pro rata* share of ninety thousand dollars ($90,000) for the cost of a City Urban Water Master Plan.

Section 4.9 Water Well.

a. Water Well No. 7 was constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision, and other developing properties.

b. Conditions of Approval No. 121 and 40- (Mitigation Measure 21), in part, required Developer to advance the costs for the design and construction of a water well, subject to pro rata reimbursement in accordance with the provisions of section 3.11.

c. The City funded a portion of the construction of Well No. 7 from sources other than water development impact fees. The City shall be reimbursed from water development impact fee funds, when available, and prior to the reimbursement of any costs incurred by Developer.

d. City acknowledges that Developer has advanced funding for partial construction of Well No. 7 in the amount of $615,313.03 (reduced to $361,676.03 as a result of credits being transferred to Winters Ranch), which amount shall entitle Developer to receive fee credits. ~~Notwithstanding section~~Notwithstanding section 3.11(f) of the Development Agreement, Developer shall be entitled to apply credits ~~against any~~against any water facility fee then due, without reduction for any sums that might otherwise be owed to the City.

e. ~~b.~~ The amount and timing of reimbursement ~~under this section shall be subject to a separate~~for funds advanced by Developer and related to the

construction of Well No. 7 shall be set forth in a separate Credit and Reimbursement Agreement ~~between the City and the~~in accordance with section 4.10 (d) above and shall include the same annual inflationary adjustment used to calculate the City's impact fees on any outstanding amount still owed to Developer.

~~a. ,~~

~~b.~~

~~Flood Overlay Zone; Payment of Impact Fees.~~

~~a. As part of the Land Use Entitlement for the Winters Highlands Subdivision, Developer requested and City approved a General Plan Amendment to remove approximately thirty (30) acres of the Property from the Flood Overlay Area. This area of the Property is referred to herein as the "Winters Highlands Flood Overlay Area".~~

~~b. To accommodate the development of the Winters Highlands Flood Overlay Area, the drainage from this portion of the Property will be directed to the Rancho Arroyo Detention Basin. Developer shall fund and construct all drainage improvements necessary to develop the Winters Highlands Overlay Area. The drainage improvements currently contemplated include a pump station in the Rancho Arroyo Pond and storm drainage piping. Developer understands and acknowledges that all costs for the drainage improvements relating to the Winters Highlands Overlay Area shall be paid for by Developer, and Developer shall not be entitled to reimbursement from the City or other property owners.~~

c. Notwithstanding the amendment of the General Plan to remove the Winters Highlands Overlay Areas from the General Plan Flood Overlay Area, Developer agrees to pay, with respect only to development within the Winters Highlands Flood Overlay Area, any drainage Impact Fee adopted or enacted by the City to fund drainage improvements in the General Plan Flood Overlay Area, at the applicable rate and at the time established by ordinance or resolution, less any credits are received for drainage improvements installed by the Developer. If the drainage Impact Fee is required to be paid prior to the approval of a final map, and a final map has already been approved for all or a portion of the Winters Highlands Flood Overlay Area prior to the Impact Fee being adopted, then the Impact Fee shall be paid at or prior to the issuance of any Building Permit for development within the portion of the Winters Highlands Flood Overlay Area covered by the final map. If a Building Permit has been issued within the portion of the Winters Highlands Flood Overlay Area covered by a final map prior to the Impact Fee being adopted, then the Impact Fee shall be paid by Developer to the City within ninety (90) days from the adoption or enactment of the drainage Impact Fee.

d. Developer waives any and all rights to challenge or protest the imposition or payment of a drainage Impact Fee for the General Plan Flood Overlay Area.

Masonry WallThe Developer is responsible for the cost and construction of a six foot tall masonry wall and landscaping along the north and east sides of the mobile home park for the Hudson-Ogando Subdivision. The City has constructed the masonry wall along the east side of the Mobile Home Park. The Developer shall complete construction of the construction of the masonry wall and installation of

landscaping concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47.

Section 4.10 Section 4.9 Water Well.

a. A water well will be constructed at the location to be determined by the City Engineer according to the design and specifications approved by the City. A potential well site is shown as Parcel X on the Callahan Estates Tentative Subdivision Map. The Developer understands and agrees that the well may, at the direction of the City Engineer, be built in some location other than Parcel X. Provision for the construction of the well and security for its construction shall be included in the agreement for the installation of public improvements which is entered into between the City and the Developer in connection with the recording of the final map for Callahan Estates (or the first phase, as the case may be). The City Engineer, in his sole discretion, shall determine whether the well will be built by the Developer or whether it will be built by a third party under contract with the City. The Developer shall be entitled to a *pro rata* reimbursement of the cost of the water well to be paid by other developments benefiting from it, including, but not limited to, those commonly identified as Winters Highlands, Hudson-Ogando, and Creekside, as provided by section 3.10.

b. The amount and timing of reimbursement under this section shall be subject to a separate reimbursement agreement between the City and the Developer.

Section 4.11 Masonry Wall

~~The Developer is responsible for the cost and construction of a six foot tall masonry wall and landscaping along the north and east sides of the mobile home park for the Hudson-Ogando Subdivision. The City has constructed the masonry wall along the east side of the Mobile Home Park. The Developer shall complete construction of the construction of the masonry wall and installation of landscaping concurrently with the issuance of the first building permit, in satisfaction of Conditions of Approval No. 47.~~ Section 4.10~~Pedestrian Circulation and Safety~~Taylor Street Improvements.

~~a. Subject to the provisions of Section 3.8, the Developer shall construct pedestrian circulation and safety improvements at the intersection of Grant Avenue and Morgan Street according to one of the four options selected by the City Engineer as those options are described in the Morgan Street Area Circulation Study, July 1999.~~

~~b. The Developer may receive, but is not guaranteed, a *pro rata* reimbursement for these improvements from other developments benefiting from it, including, but not limited to those commonly identified as Winters Highlands, Hudson-Ogando, and Creekside, as provided by section 3.10.~~

~~c. The amount and timing of reimbursement under this section, if any, shall be subject to a separate reimbursement agreement between the City and the Developer.~~

Taylor "A" Street knuckle to the west of the Tentative Map boundary through the Ogando property, to the Callahan property, is no longer applicable, and a realignment of Taylor Street was approved by the City and incorporated into the Hudson-Ogando plans. The revised alignment is included on a revised Tentative Map dated August 17, 2015 and shall be constructed as part of the Callahan Estates

Development ~~and shall be constructed~~ with the same cross section dimensions with the ped/bike landscape corridor on the west side and the sidewalk on the east side. ~~The Hudson-Ogando development shall participate in sharing 50% of the cost for acquisition of right of way and construction of full improvements of this section of roadway.~~

ARTICLE 5~~ARTICLE 5~~

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 ~~Section 5.1~~ Application of Article.

The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 ~~Section 5.2~~ City's Remedies.

a. ~~a.~~ The City's remedies under this Agreement are as follows:

1. ~~1.~~ Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. ~~2.~~ An action for injunctive relief to preserve the physical or legal status quo of the development of Callahan Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. ~~3.~~ Specific performance as provided in subsection c.

4. ~~4.~~ An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. ~~5.~~ A action for damages as provided in subsection d.

b. ~~b.~~ Default by the Developer.

1. ~~1.~~ Notice of Default. With respect to a default by the Developer under this Agreement, the City shall first submit to the Developer a written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided Developer has continuously and diligently pursued such remedy at all times until such default(s) is cured.

2. ~~2.~~ Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters ~~City~~Municipal Code.

3. ~~3.~~ Modification or Termination of Agreement. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. ~~c.~~ Specific Performance. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. ~~1.~~ To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. ~~2.~~ To dedicate and properly complete any public improvements which are required by this Agreement.

3. ~~3.~~ To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

d. ~~d.~~ The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for Callahan Estates.

Section 5.3 ~~Section 5.3~~ Developer's Remedies.

a. ~~a.~~ The Developer's remedies under this agreement are as follows:

1. ~~1.~~ An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. ~~2.~~ An action for injunctive relief to preserve the physical or legal status quo of the development of Callahan Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. ~~3.~~ An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. ~~b.~~ Default and Notice of Default. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. ~~c.~~ Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry

out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver.

ARTICLE 6~~ARTICLE 6~~

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 ~~Section 6.1~~ Limitation of Legal Relationship.

a. ~~a.~~ The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b. ~~b.~~ In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

c. ~~c.~~ In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

Section 6.2 ~~Section 6.2~~ No Liability for Acts of the Developer.

a. ~~a.~~ It is expressly understood that the development of the Callahan Estates Subdivision is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. ~~b.~~ Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents, and employees from any claim of injury to person or property arising out of or relating to this Agreement or the operations of the Developer in the development of ~~Callahan Estates~~~~The Winters Highlands~~Callahan Estates Subdivision under the terms of this Agreement~~ or otherwise~~.

c. ~~c.~~ Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of~~ this section,~~ or to collect damages for, any breach of ~~it~~this Section 6.2.

Section 6.3 ~~Section 6.3~~ Duty to Defend Challenges to this Agreement.

a. ~~a.~~ The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

~~b.~~ The Parties

b. agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. ~~c.~~ In the event of any such challenge, each Party shall bear its own attorneys' fees and other litigation expenses~~.~~, unless the City elects to tender the defense to the Developer pursuant to subsection e. below.

d. ~~d.~~ Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. ~~e.~~ Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter. ~~However, nothing herein obligates the Developer, should the City tender its defense to the Developer, to defend the action if it determines that it is in its best interests not to do so.~~

SIGNATURE PAGE TO FOLLOW~~**DEVELOPER**~~

~~**WINTERS INVESTORS, LLC**~~

~~By:~~ _____

~~Its:~~ _____

~~Dated:~~ _____

~~**CITY OF WINTERS**~~

~~By:~~ _____

~~Mayor~~

DRAFT—FOR DISCUSSION PURPOSES

~~Dated:~~ _____

DRAFT—FOR DISCUSSION PURPOSES

"DEVELOPER"
TURNING POINT ACQUISITIONS V, LLC, a California limited liability company

By:_____

Its:_____

Dated:_____

"CITY"

CITY OF WINTERS, a municipal corporation

By:_____
Mayor

Dated:_____

Attest:_____
City Clerk

Approved as to form:

_____
Ethan Walsh, City Attorney

~~Attest:~~

~~City Clerk~~

DRAFT—FOR DISCUSSION PURPOSES

~~Approved as to form:~~

_____

~~John Wallace, City Attorney~~

_____

~~Joel Ellinwood, AICP~~
~~Abbott & Kindermann, LLP, Attorneys for Developer~~

. . . . . .

DRAFT—FOR DISCUSSION PURPOSES

~~This Agreement was adopted by Ordinance No. _____ of the City Council of the City of Winters. Ordinance No. _____ was adopted on _____, 2005 and is effective on the date it is recorded with the Yolo County Recorder.~~

LIST OF EXHIBITS~~:~~

~~EXHIBIT~~ A Map of Callahan Property

~~EXHIBIT~~ B Legal Description of Callahan Property

~~EXHIBIT~~ C Callahan Estates Tentative Subdivision Map

~~EXHIBIT~~ D~~:~~ Conditions of Approval, Including Mitigation Measures

~~EXHIBIT E School Agreement~~

~~EXHIBIT F Map of 2.6 +/- Parcel~~

~~EXHIBIT G Annuity Adjustment Formula~~

Summary report: **Litéra® Change-Pro 7.5.0.135 Document comparison done on 2/18/2016 9:59:24 AM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS:iw://iManage/iManage/5374677/3	
Modified DMS: iw://iManage/iManage/24471502/1	
Changes:	
Add	479
~~Delete~~	416
~~Move From~~	14
Move To	14
Table Insert	1
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	924

attachment D

ORDINANCE NO. 16-05

AN ORDINANCE OF THE CITY OF WINTERS APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WINTERS AND TURNING POINT ACQUISITIONS, LLC FOR THE CALLAHAN PROPERTY

WHEREAS, the City of Winters ("City") and Turning Point Acquisitions, LLC ("Developer") entered into a Development Agreement, approved by Ordinance No. 2005-01 on April 5, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0026332-00, ("Development Agreement"), for land located at the western terminus of Anderson Avenue and commonly known as the Callahan Property (the "Project"), within the boundaries of the City of Winters; and

WHEREAS, the Development Agreement has been amended by a First Amendment to Development Agreement dated January 20, 2009 and recorded in the Official Records of Yolo County as Document No. 2009-007220-00, and a Second Amendment to Development Agreement dated August 20, 2013 and recorded in the Official Records of Yolo County as Document No. 2013-0032342-00 (collectively, the "Original Development Agreement").

WHEREAS, Developer and City desire to incorporate the clarifications and modifications of the First and Second Amendments, and make additional modifications to the obligations of Developer in connection with the Project, which clarifications and modifications are incorporated into an Amended and Restated Development Agreement (the "Amended and Restated Development Agreement"), in the form attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, on April 26, 2016 the Winters Planning Commission conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, on _____, the Winters City Council conducted a public hearing pursuant to Government Code section 65867, notice of which was provided in accordance with Government Code section 65090 and 65091, at which hearing all persons wishing to testify in connection with the proposed Amended and Restated Development Agreement were heard and at which the Amended and Restated Development Agreement was comprehensively reviewed; and

WHEREAS, the City Council has reviewed and studied the environmental documents prepared for the Original Development Agreement and concluded that adopting the Amended and Restated Development Agreement will not result in any new significant environmental impacts and therefore requires no additional procedures under the California Environmental Quality Act ("CEQA").

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

SECTION 1. RECITALS. The recitals set forth above are true and correct and are incorporated as though fully set forth herein.

SECTION 2. ADOPTION OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT. Pursuant to California Government section 65868, the City Council hereby approves the Amended and Restated Development Agreement, in the form attached hereto as **Exhibit A**.

SECTION 3. FINDINGS. Pursuant to Government Code section 65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council makes and adopts the following findings:

A. That the Amended and Restated Development Agreement promotes the public health, safety, and welfare of the community because the Amended and Restated Development Agreement will allow the Developer to complete the residential development that will benefit the entire community by providing additional residential units.

B. That the Amendment is consistent with the City's General Plan, as it will allow the Developer to complete the Project, which the City Council previously found to be consistent with the City's General Plan.

SECTION 4. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Yolo in accordance with CEQA Guidelines.

SECTION 5. RECORDATION. Pursuant to Government Code section 65868.5, within ten (10) days following the execution of the Amended and Restated Development Agreement, the City Clerk shall record with the County of Yolo Recorder a copy of the Amended and Restated Development Agreement.

SECTION 6. SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of such be declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective thirty (30) days from and after its passage and adoption.

SECTION 8. PUBLICATION. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Winters.

The foregoing ordinance was introduced on _____, 2016, and passed and adopted during a regular meeting of the City Council of the City of Winters on _____, 2016, by the following vote to wit:

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

City of Winters

_____

By: Cecilia Aguilar-Curry, Mayor

ATTEST:

_____

Nanci Mills, City Clerk

APPROVED AS TO FORM:

_____

Ethan Walsh, City Attorney

EXHIBIT "A"

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

EXHIBIT "A"

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

(SEE EXHIBIT "A" ATTACHED TO RESOLUTION)

attachment E

RESOLUTION NO. 16-01

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WINTERS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE CALLAHAN ESTATES SUBDIVISION AND APPROVAL OF AN AMENDED TENTATIVE SUBDIVISION MAP

WHEREAS, the Winters Planning Commission held a duly noticed public hearing on April 26, 2016 to review and consider recommending to the City Council approval of the proposed Amended and Restated Development Agreement and amended Tentative Map Subdivision Map for the Callahan Estates Subdivision; and

WHEREAS, the Planning Commission reviewed and considered a proposal to amend various provisions of the exiting Development Agreement, which includes the First and Second Amendments, for the Callahan Estates Subdivisions, including extending the existing term, differing the payment of impact fees, amendments regarding the provisions of certain infrastructure improvements and financial contributions for related purposes; and

WHEREAS, the Planning Commission further reviewed and considered a proposal to amend the existing Tentative Subdivision Map for Callahan Estates by reducing the number of lots from 111 to 109; and

WHEREAS, the Planning Commission found the amendments in the Amended and Restated Development Agreement and to the Tentative Subdivision Map were not significant to require any additional environmental review; and

WHEREAS, proper notice of this public hearing was given in all respects required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and all oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Winters, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, recommends that the City Council approve the Amended and Restated Development Agreement for the Callahan Estates Subdivision, attached hereto as Exhibit 1.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Winters, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, recommends that the City Council approve the Amended Tentative Map for the Callahan Estates Subdivision, attached hereto as Exhibit 2.

BE IT FURTHER RESOLVED, that the Planning Commission recommends that the City Council find that based on substantial evidence in the administrative record of the proceedings the Amended and Restated Development Agreement and amended Tentative Map do not require any additional environmental review.

PASSED and ADOPTED, by the Planning Commission of the City of Winters at a regular meeting on the 26th day of April 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

Chairperson

ATTEST:

_____

Planning Commission Secretary

EXHIBIT 1

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

DRAFT—FOR DISCUSSION PURPOSES

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Winters
318 First Street
Winters, California 95694
Attention: City Manager

No fee for recording pursuant
to Government Code Section 27383

(Space Above This Line Reserved For Recorder's Use)

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF WINTERS

AND

TURNING POINT ACQUISITIONS V, LLC,

A CALIFORNIA LIMITED LIABILITY COMPANY

[CALLAHAN PROPERTY]

DRAFT—FOR DISCUSSION PURPOSES

TABLE OF CONTENTS

Page

ARTICLE 1. DEFINITIONS 3

Section 1.1 Definitions 3

ARTICLE 2. GENERAL PROVISIONS 7

Section 2.1 All Exhibits Deemed Incorporated by Reference 7
Section 2.2 Property to be Developed 7
Section 2.3 Agreement to be Recorded; Effective Date; Term 7
Section 2.4 Equitable Servitudes and Covenants Running With the Land 8
Section 2.5 Right to Assign; Non-Severable Obligations 8
Section 2.6 Amendment of the Agreement 9
Section 2.7 Whole Agreement; Conflict with Municipal Code 10
Section 2.8 Choice of Law; Venue; Attorneys' Fees; Dispute Resolution 10
Section 2.9 Notices 11
Section 2.10 Waivers 12
Section 2.11 Signatures 12
Section 2.12 Severability 12
Section 2.13 Unapproved Transfers Void 12
Section 2.14 Notice of Default to Mortgate, Deed of Trust or Other Security Interest Holders; Right to Cure 12

ARTICLE 3. DEVELOPMENT OF THE PROPERTY 14

Section 3.1 Land Use Entitlements 14
Section 3.2 Consistency with General Plan 16
Section 3.3 Vested Rights of Developer 16
Section 3.4 Rights Retained by the City 17
Section 3.5 Other Vesting Laws Inapplicable 18
Section 3.6 Commencement and Phasing of Development 18
Section 3.7 Building Permits; Non-Market Rate Units 19
Section 3.8 Installation of Public Improvements 19
Section 3.9 Property for Public Improvements; Offsite Improvements 20
Section 3.10 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed 21
Section 3.11 Subsequent Discretionary Approvals 23
Section 3.12 Review of Agreement 24
Section 3.13 Compliance with Government Code § 66006 24
Section 3.14 Subdivision Maps 24
Section 3.15 Deferral of Impact Fees 24

Page

ARTICLE 4. DEVELOPMENT OBLIGATIONS 25

Section 4.1 Schools. 25
Section 4.2 Park Land and Fees 25
Section 4.3 Public Safety 26
Section 4.4 Intentionally Omitted 26
Section 4.5 Installation of Conduit 26
Section 4.6 Cooperative and Reimbursement Agreement 26
Section 4.7 Wastewater Treatment Plant Expansion 27
Section 4.8 Urban Water Management Plan 29
Section 4.9 Water Well 29
Section 4.10 Taylor Street Improvements 30

ARTICLE 5. DEFAULT; REMEDIES; TERMINATION 30

Section 5.1 Application of Article. 30
Section 5.3 City's Remedies 30
Section 5.4 Developer's Remedies 33

ARTICLE 6. HOLD HARMLESS AND INDEMNIFICATION 34

Section 6.1 Limitation of Legal Relationship 34
Section 6.2 No Liability for Acts of the Developer 35
Section 6.3 Duty to Defend Challenges to this Agreement 35

EXHIBITS

A Map of Callahan Property

B Legal Description of Callahan Property

C Callahan Estates Tentative Subdivision Map

D Conditions of Approval, Including Mitigation Measures

DRAFT—FOR DISCUSSION PURPOSES

AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF WINTERS AND TURNING POINT ACQUISITIONS V, LLC RELATING TO THE DEVELOPMENT OF THE PROPERTY COMMONLY KNOWN AS THE CALLAHAN PROPERTY

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT ("Agreement") is entered into between the CITY OF WINTERS, a municipal corporation (the "City"), and TURNING POINT ACQUISITIONS V, LLC, a California limited liability company (the "Developer"), under the authority of § 65864 *et seq*. of the Government Code of the State of California and Chapter 2 of Title 11 of the Winters Municipal Code. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County. The City and the Developer are sometimes referred to herein as the Parties.

FACTS AND CIRCUMSTANCES

This Agreement is entered into based on the following facts and circumstances, among others:

1. The City of Winters is a small city in Yolo County which, among other things, prides itself in being a clean, safe, and family-friendly place to live.

2. The Developer is in the business of developing residential communities in Northern California, including the development of property in a manner which promotes the goals envisioned by the City for its residents.

3. In order to meet the needs of the City and the Developer, the Parties agree that the best method of planning the residential development of the Property owned by the Developer, commonly known as the Callahan Property and further depicted in Exhibit A and described in Exhibit B to this Agreement, is through the

use of a Development Agreement as authorized by the Planning and Zoning Law, Division 1, Chapter 4, Article 2.5(commencing with California Government Code § 65864) [entitled "Development Agreements"] and Title 11, Chapter 2 of the Winters Municipal Code [entitled "Development Agreements"].

4. In order to meet these needs, the City and Developer entered into a Development Agreement approved by Ordinance No. _____ on _____, 2005 and recorded in the Official Records of Yolo County as Document No. 2005-0026332-00, which Development Agreement has been amended by a First Amendment to Development Agreement dated January __, 2009 and recorded in the Official Records of Yolo County as Document No. _____, and a Second Amendment to Development Agreement dated _____ 2013 and recorded in the Official Records of Yolo County as Document No. _____ (collectively, the "Original Development Agreement").

5. The City and Developer desire to enter into this Agreement to incorporate the previously approved amendments into a single document and make additional amendments to extend the term of the Original Development Agreement and to further update the term and conditions to reflect the current needs and objectives of the Parties.

6. It is the intent of the Parties in entering into this Agreement supersede and replace the Original Development Agreement in its entirety, and further to provide a mechanism by which the City's General Plan may be implemented in a manner which provides the Developer certain rights to develop the Callahan Property in exchange for planning and financial commitments by the Developer which will mitigate the impact of new development on the City's infrastructure and its ability to provide municipal services, while providing the City with sufficient

discretionary control and police power authority to protect the health, safety, and general welfare.

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions.

The following words or phrases used in this Agreement shall have the meanings set forth in this Article. All words not specifically defined shall be deemed to have their common meaning and/or the meaning generally given to such words in the parlance of the planning and development of real property in the State of California.

1. "Agreement" means this Development Agreement.

2. "Application fees" means the amount paid by the Developer for the processing of any Land Use Entitlement or for an amendment to this Agreement.

3. "Building Permit" means the ministerial permit issued for the construction of a residential housing unit or other structure upon the payment of all applicable fees.

4. "Callahan Estates Tentative Subdivision Map" means the tentative map, and the Conditions of Approval, approved for the Property in accordance with the Subdivision Map Act and the City's Subdivision Ordinance. A copy of the Callahan Estates Tentative Subdivision Map is attached as Exhibit C.

5. "Callahan Estates" means the single family residential development created by the Callahan Estates Tentative Subdivision Map.

6. "City" means the legal entity known as the City of Winters, a municipal corporation of the State of California. It includes the officers, agents, employees, bodies, and agencies of the City as the context may indicate. It also includes each person duly appointed to carry out a specific function as required in this Agreement. (e.g., the term "City Engineer" includes the person holding that title or any other person designated by the City to perform the functions set forth in the Agreement to be performed by the City Engineer.)

7. "City of Winters" means the physical boundaries of the City of Winters.

8. "City Public Works Improvement Standards and Construction Specifications" means the City of Winters Public Works Improvement Standards and Construction Specifications, dated September, 2003, and as amended from time to time.

9. "Condition of Approval" means a requirement placed on a land use entitlement which must be satisfied in order for the entitlement to be effective. Example: a condition that a road be built at the expense of the Developer and dedicated to the City as a public thoroughfare.

10. "Conditions of Approval" means the conditions placed on the approval of the Callahan Estates Tentative Subdivision Map. A copy of the Conditions of Approval is attached as Exhibit D.

11. "Developer" means TURNING POINT ACQUISITIONS V LLC, a California limited liability company, and/or its successor(s) in interest.

12. "Discretionary Approval" means an action which requires the exercise of judgment, deliberation, or discretion on the part of the City in approving or disapproving a particular activity.

13. "Final Subdivision Map" or "Final Map" means the map submitted to the City which, once approved under the City's Subdivision Ordinance and the Subdivision Map Act, is recorded in the Official Records of Yolo County and legally creates the residential lots, streets, and other land use features shown on it.

14. "Impact Fee" means the amount paid by the Developer to mitigate the impacts of development of the Property and used to pay for public facilities attributable to the development project.

15. "Land Use Entitlement" means either a Discretionary Approval or Ministerial Approval issued by the City for the development of the Property under its ordinances, resolutions, or other rules and regulations, or under applicable State and/or federal law.

16. "Ministerial Approval" means an action by the City given where there has been compliance with applicable regulations and which does not require the exercise of discretion.

17. "Mitigation Measures" means the requirements placed on the development of the Property to cure or lessen the environmental impact of a particular physical activity as identified as part of the analysis done for the Property under the California Environmental Quality Act (CEQA). The Mitigation Measures are a part of Exhibit D, Conditions of Approval.

18. "Nexus Study" means a study used as the basis for imposing an Impact Fee on new development in accordance with California Government Code section 66000, *et seq*.

19. "Off-site improvement" means a public improvement constructed outside the physical boundaries of the Property.

20. "On-site improvement" means a public improvement constructed within the physical boundaries of the Property.

21. "Party" means either the City or the Developer, or their successors, as the context may indicate. "Parties" means both the City and the Developer, or their successors.

22. "Phase" means a portion of the Callahan Estates Tentative Subdivision Map that is reduced to a final subdivision map.

23. "Property" means the property commonly known as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22, and is more specifically shown and described in Exhibits A and B.

24. "Public Improvements" or "Infrastructure" means facilities constructed or to be constructed for use in accommodating residential use on the Property, including but not limited to roads, sewer and water lines and traffic signals.

25. "Vesting law" means any State or federal law that gives the owner of real property the right to develop such property in a specified manner, which right cannot be limited or abrogated by the City.

ARTICLE 2
GENERAL PROVISIONS

Section 2.1 All Exhibits Deemed Incorporated By Reference.

Unless specifically stated to the contrary, the reference to an exhibit by a designated letter or number shall mean that the exhibit is made a part of this Agreement.

Section 2.2 Property to be Developed.

The Property to be developed under this Agreement is the property commonly known in the City of Winters as the Callahan Property, Yolo County Assessor's Parcel No. 030-220-22. A map showing the location and boundaries of the Property is attached as Exhibit A and a legal description describing the Property is attached as Exhibit B. In this Agreement the Callahan Property will, in most instances, be referred to simply as the "Property."

Section 2.3 Agreement to be Recorded; Effective Date; Term.

a. When fully executed, this Agreement will be recorded in the Official Records of Yolo County, pursuant to Government Code section 65868.5. This Agreement is effective on the date it is recorded in the Office of the County Recorder of Yolo County, and upon recordation of this Agreement, it shall replace and supersede the Original Development Agreement in its entirety, and the Original Development Agreement shall be of no further force and effect.

b. The term of this Agreement shall expire on December 31, 2021, unless otherwise extended in accordance with State law and City ordinances.

Section 2.4 Equitable Servitudes and Covenants Running With the Land.

Any successors in interest to the City and the Developer shall be subject to the provisions set forth in Government Code sections 65865.4 and 65868.5. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do, or refrain from doing, some act with regard to the development of the Property: (a) is for the benefit of and is a burden upon the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof. Nothing herein shall waive or limit the provisions of Section 2.5, and no successor owner of the Property, any portion of it, or any interest in it shall have any rights except those assigned to the successor by the Developer in writing pursuant to Section 2.5. In no event shall an owner or tenant of an individually completed residential unit within the Callahan Estates Subdivision have any rights under this Agreement.

Section 2.5 Right to Assign; Non-Severable Obligations.

a. The Developer shall have the right to sell, encumber, convey, assign or otherwise transfer (collectively "assign"), in whole or in part, its rights, interests and obligations under this Agreement to a third party during the term of this Agreement.

b. No assignment shall be effective until the City approves the assignment, which shall not be unreasonably withheld provided:

1. The assignee has the financial ability to meet the obligations proposed to be assigned and to undertake and complete the obligations of this Agreement affected by the assignment; and

2. The proposed assignee has adequate experience with residential or non-residential developments of comparable scope and complexity to the portion of the Project that is the subject of the assignment.

c. The provisions of subsection b do not apply to the sale of five (5) or fewer finished lots to individual buyers or builders.

d. Notwithstanding subsection b above, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, the development and construction of improvements on the Property and other necessary and related expenses. The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

Section 2.6 Amendment of the Agreement.

This Agreement may be amended from time to time with the mutual written consent of both Parties as provided by Government Code section 65868 and Section 15.72.210 (Amendment or Cancellation by Mutual Consent) of the Winters Municipal Code. The cost by the City in processing a proposed amendment shall be paid by the Developer. The Developer shall pay normal Application fees.

Section 2.7 Whole Agreement; Conflict with Municipal Code.

a. This Agreement, together with any subsequent addenda, amendments, or modifications, shall constitute the entire agreement of the Parties as to the development of the Property. All prior agreements of the Parties, whether written or oral, are of no further force or effect.

b. The provisions of Title 15, Chapter 15.72 of the Winters Municipal Code entitled "Development Agreements" are incorporated by this reference into this Agreement. However, if there is a conflict between a specific provision of the Winters Municipal Code and a specific provision of this Agreement, this Agreement shall prevail.

Section 2.8 Choice of Law; Venue; Attorneys' Fees; Dispute Resolution.

a. This Agreement shall be interpreted according to the laws of the State of California. The venue for any litigation concerning its meaning shall be the Superior Court of Yolo County. The prevailing Party in such litigation, as determined by the court, shall be awarded reasonable attorneys' fees in addition to statutory costs.

b. Nothing herein shall preclude the Parties from entering into a separate agreement to resolve any matter concerning this Agreement by a method other than litigation in court, including binding arbitration.

Section 2.9 Notices.

a. Formal written notices, demands, correspondence, and communications between the City and the Developer shall be given if sent to the City and the Developer by any one of the following methods:

1. Via certified U.S. Mail, return receipt requested.

2. Via an overnight mail service of the type normally used by the business community, such as Federal Express or UPS Overnight.

b. The written notices, demands, correspondence, and communications may be directed in the same manner to such other persons and addresses as either Party may from time to time designate. Notices to the City shall be given as follows:

City of Winters
318 First Street
Winters, CA 95694
Attn: City Manager
Telephone (530) 795-4910

c. Notices to the Developer shall be given as follows:

Turning Point Acquisitions V LLC
3314 Freeman Road
Walnut Creek, CA 94595
Attn: Jim Hildenbrand
Telephone (925) 639-4204

Section 2.10 Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 2.11 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. This Agreement shall insure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 2.12 Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case either Party may terminate this Agreement by providing written notice thereof to the other. In the event of such termination, the provisions of Section 5.2 relating to termination of the Agreement by mutual written consent of the Parties shall apply. Without limiting the generality of the foregoing, no judgment determining that a portion of this Agreement is unenforceable or invalid shall release Developer from its obligations to indemnify the City under this Agreement.

Section 2.13 Unapproved Transfers Void.

Any assignment or attempted Assignment that is inconsistent with Article 2 shall be unenforceable and void and shall not release Developer from any rights or obligations hereunder.

Section 2.14 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.

The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property, or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Agreement, but, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the holder of any such mortgage or deed of trust or any owner of the Property, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Provided, however, notwithstanding anything to the contrary above, the holder of a mortgage or deed of trust, or the successors or assigns of such holder or owner through foreclosure, shall not be obligated to pay any fees or construct or complete the construction of any improvements, unless the holder or owner desires to continue development of the Property consistent with this Agreement and the Land Use Entitlements, in which case the holder shall assume the obligations of Developer hereunder in a form acceptable to the City.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

Section 3.1 Land Use Entitlements.

a. The Property shall be developed in accordance with the Conditions of Approval and the following ordinances, policies and Land Use Entitlements, all of which have been adopted or approved by the City Council:

1. This Amended and Restated Development Agreement (Ordinance No. 2016-__ adopted _____, 20__ and effective on _____, (the "Enacting Ordinance")).

2. An exclusion for the Property from the West Central Master Plan.

3. A rezoning to add a Planned Development (PD) overlay zone to allow for a subdivision in which the average lot size does not meet the minimum requirement of the zone (7,000 square feet) and to allow for one lot (Lot 1) which does not meet the width requirement (60 feet).

4. The approval of a Planned Development Permit for an unlimited term pursuant to the requirements of Section 17.48.050.A.1 and .2 of the Zoning Ordinance and Conditions of Approval.

5. An amendment to the Circulation Master Plan (May 19, 1992) and Standard Cross-Sections (adopted October 2, 2011) to remove the requirement for on-street Class II bike lanes on West Main Street and replace with off-street Class I bike path.

6. An amendment to the Bikeway System Master Plan (January 2013) text and Figure 3 to identify a Class I bike path along West Main Street and Class II bike lanes along Anderson Avenue.

7. Approval of Callahan Estates Tentative Subdivision Map, together with the Conditions of Approval, dividing 26.4 acres into 109 single-family lots; Parcels E, F, and G (Open Space Lots); and Parcel X (detention pond/sewer force main). The 109 single-family lots will be market rate units, of which 10 must be made available to local builders as defined by the City's land use regulations.

8. A lot line adjustment on the south property line to exchange Parcel A for Parcel B from the adjoining Ogando/Hudson property.

9. Subsequent discretionary approvals (such as design review) pursuant to the City's generally applicable land use regulations.

b. The Developer may apply for an receive one final subdivision map for Callahan Estates, or the Developer may choose to file separate final maps for various phases of Callahan Estates. If the Developer chooses to file final maps by phase, the number of phases and the size of each shall be at the discretion of the Developer, subject to the requirement for adequate infrastructure as provided in Section 3.8.

c. Under the provisions of Government Code section 66452.6(a), the term of the Callahan Estates Subdivision Tentative Map is hereby extended to be co-terminus with the term of this Agreement.

Section 3.2 Consistency with General Plan.

The City finds that the provisions of this Agreement and the development of the Property are consistent with and conform to the General Plan of the City of Winters, as amended.

Section 3.3 Vested Rights of Developer.

a. The Developer shall, solely with respect to the Property, have the right to the following land use entitlements regardless of subsequent amendments to the General Plan, the Zoning Ordinance, the Subdivision Ordinance, or any other ordinance, rule, or regulation adopted by the City.

1. The right to the number of single family residential lots, dwelling units, and the density of development (dwelling units per acre) of those units, as shown on the Callahan Estates Tentative Subdivision Map.

2. Exclusion from:

a) the West Central Master Plan; and

b) subsequently enacted building moratoria.

3. The right to connect each dwelling unit to sewer and water services, provided all improvements regarding such services are made and all applicable fees are paid.

4. The cross-section of streets (including sidewalks, trails, and other thoroughfares) as established in the Conditions of Approval for the Callahan Estates Tentative Subdivision Map.

5. The Mitigation Measures.

b. Subdivision a. does not apply to changes effecting development of the Property as mandated by State and/or federal laws effective after the date this Agreement is recorded. In the event of such changes, the City will permit the

development of the Property as originally permitted by this Agreement to the greatest extent reasonably feasible taking into consideration the changes in the law.

Section 3.4 Rights Retained by the City.

a. Except as specifically provided in section 3.3, all regulations of the City as expressly provided by State law, federal law, and/or local ordinance, resolution, or rule shall pertain to the development of The Property. Such regulations include, but are not limited to:

1. Discretionary approvals. (The only discretionary approval contemplated at this time is design review pursuant to the Zoning Code.)

2. Subdivision standards in effect when a final subdivision map is approved.

3. The Uniform Codes (including Building, Mechanical, Plumbing, Electrical and Fire) in effect at the time a building permit for a specific dwelling unit is issued.

4. Fees (including, but not limited to, fees commonly referred to as "impact fees") and charges, including, but not limited to, fees and charges for building permits, traffic signalization, sewer infrastructure, water infrastructure, traffic and pedestrian circulation, library services, and police and fire buildings and equipment, which are in effect and collected at the time of the approval of a final subdivision map or the issuance of a building permit, as provided in this Agreement or as generally applicable throughout the City of Winters.

b. The City may make and enforce ordinances, resolutions, and other rules and regulations pertaining to the Property under its general police power,

provided they are of general applicability to all developments of a similar nature in the City of Winters.

Section 3.5 Other Vesting Laws Inapplicable.

a. It is the intent of the Parties that the provisions of this Agreement shall supersede any provision of State or federal law pertaining to the vested rights of the Developer to develop the Property, whether those laws are currently in force or become effective after this Agreement is recorded. The laws in effect as referenced in the preceding sentence include, but are not limited to, provisions of the Government Code pertaining to Development Agreements (section 65864 *et seq.*) and Development Rights [vesting tentative maps] (section 66498 *et seq.*).

b. Notwithstanding subsection a., however, to the extent that a State and/or federal law becomes effective after this Agreement is recorded and it is specifically applicable to the vested rights of landowners generally in the development of their properties, such State and/or federal law shall prevail.

c. The Developer shall not make any application to develop the Property, in whole or in part, under any vesting law, unless the right to do so is specifically granted by State and/or federal law which becomes effective after the date of the recording of this Agreement.

Section 3.6 Commencement and Phasing of Development.

a. The Developer shall have sole discretion to determine when the final map for the Callahan Estates Subdivision, or first phase thereof, and accompanying subdivision improvement plans, are submitted for City review and approval.

Section 3.7 Building Permits; Non-Market Rate Units.

a. City and Developer agree that Developer shall satisfy the City's affordable housing requirements as follows:

1. The Developer shall pay to City the amount of One Hundred Ten Thousand Dollars ($110,000.00) upon the recordation of the Final Map for the Project, or in the event that Developer files more than one Final Map, upon the recordation of the first Final Map.

Section 3.8 Installation of Public Improvements.

a. Public improvements (infrastructure) in the nature of roads, sidewalks, trails, sewers, water service, third party utilities, and similar items will be constructed both on-site and off-site during the development of the Callahan Estates Subdivision. When the Final Map for all of the Callahan Estates Subdivision (or a phase, as the case may be), is approved, the Developer shall enter into a separate written agreement ("Subdivision Improvement Agreement") with the City by which it commits to build and dedicate to the City or applicable public agency, the public improvements required either in all of Callahan Estates, or in that particular phase, as the case may be. Security for the construction of the improvements shall be provided as required by State law and City law.

b. If the Developer proceeds by filing final maps for various phases of Callahan Estates, then, in some instances, the City Engineer may determine that public improvements outside the boundaries of a particular phase (both on-site and off-site of the entirety of Callahan Estates) must be constructed before the next phase to insure the orderly development of infrastructure within the City of Winters. In such an instance, the additional infrastructure required outside a

particular phase will be built by the Developer during the construction of the phase for which a final map is approved, and the agreement to construct the public improvements for that phase shall include an obligation to build the additional infrastructure outside the boundaries of that phase.

Section 3.9 Property for Public Improvements; Offsite Improvements.

a. The Developer shall, in a timely manner as determined by the City, and consistent with the requirements of the Callahan Estates Tentative Subdivision Map, acquire the property rights necessary to construct or otherwise provide the public improvements required by this Agreement.

b. In any instance where the Developer is required to construct any public improvement on land in which neither the Developer nor City has sufficient title or interest, the Developer shall, at its sole cost and expense, obtain the real property interests necessary for the construction of such public improvements. The Developer shall exercise all reasonable efforts, as determined by the City, to acquire the real property interests necessary for the construction of such public improvements by the time the applicable Final Subdivision Map for the Callahan Estates Subdivision is filed with the City.

c. In the event the Developer is unable to acquire the necessary property interest or interests, the City shall either a) negotiate the purchase of the necessary property interests to allow Developer to construct the public improvements as required by this Agreement, or b) if necessary, in accordance with the procedures established by State law, use its power of eminent domain to acquire the property interests. Any such acquisition by City shall be subject to City's discretion, which is expressly reserved by City, to make the necessary findings, including a finding thereby of public necessity, to acquire such interest.

Prior to commencing negotiations, the City may require the Developer to enter into a separate agreement to provide the funding necessary to acquire the property interests and/or to pay for the cost of any eminent domain action. Such costs include, but are not limited to, the price of the property acquired, the City's attorneys' fees, expert witness fees, jury fees, and related matters, and litigation expenses awarded by the court to the property owner against the City.

Section 3.10 Reimbursement for Oversizing of Public Improvements; Advanced Funding of Certain Improvements; Credit for Improvements Installed.

a. In some instances, the Developer, through the process commonly referred to as "oversizing," will be required to install public improvements to a size and/or capacity greater than that which is required to serve only the residents of Callahan Estates. These improvements will benefit other properties. In such an instance, the Developer shall be entitled to reimbursement for such oversizing from fees paid by other properties.

b. There are two sources from which the Developer may be reimbursed for oversizing:

1. By way of a separate agreement between the City and the Developer which will provide that when a particular property benefiting from the oversizing is developed, the City will require the benefiting property owner to reimburse the Developer its *pro rata* share of the cost of the oversizing. A written agreement under this subsection b. shall have a term of no longer than fifteen (15) years.

2. By way of payment to the Developer from impact fees for a particular type of infrastructure (e.g., sewers) collected by the City from other properties developed in the City.

c. In any instance in which oversizing of improvements is required, the City Engineer shall identify the method of reimbursement the Developer will receive.

1. Where reimbursement involves a benefiting property to reimburse the Developer for oversizing, the City Engineer will determine the total cost of the improvement installed by the Developer, deduct the *pro rata* share to be borne by the Property, and determine what share of the remainder is to be reimbursed by the benefiting property.

2. When the Developer will receive reimbursement from mitigation fees paid by developing properties, the City Engineer shall provide to the Developer a statement of the amount the Developer will receive and the approximate time when that amount will be paid.

d. The Developer understands and agrees that reimbursement for a particular oversized improvement will come only from other developing properties or from mitigation fees as described in subsection b.

1. When reimbursement is from impact fees, such fees shall come only from the fund into which fees for that type of improvement are made. (Example: If an oversized sewer main is reimbursed through mitigation fees, only those fees collected for sewer improvements, and not fees from any other fund, including, but not limited to, the City's General Fund, will be used.)

2. If mitigation fees paid by others are insufficient to repay the Developer for the full cost of oversizing a particular improvement, the Developer shall have no recourse against the City.

3. If a benefiting property fails to reimburse the Developer for oversizing, the Developer shall have no recourse against the City. However, the Developer retains all rights against the benefiting property and its owners.

e. In some instances, the Developer will have agreed, under the provisions of Article 4, to pay, in advance of the time otherwise payable, certain fees which would normally be collected by the City at the time a Building Permit is issued. When the Developer pays such fees in advance, the Developer will be given credit against such advance each time a Building Permit is issued. The amount of credit will be the amount which was paid in advance and which would have otherwise been payable at the time of issuance of the Building Permit.

f. In the event the Developer installs an improvement for which a fee is normally collected at the time of the issuance of a building permit, the Developer shall be deemed to have paid that fee for the number of building permits which is equal to the cost of the installed improvement as determined by the City Engineer. (Example: If a fee of $1,000 is normally collected at the time a building permit is issued for improvement X, and the Developer installs improvement X at a cost of $20,000, then the Developer will be credited with having paid that fee for 20 building permits.).

Section 3.11 Subsequent Discretionary Approvals.

a. To the extent any Discretionary Approvals are required to develop the Property after this Agreement is recorded, the Developer shall apply for those

Discretionary Approvals in the same manner as any other person applying for such Discretionary Approvals from the City. All Application fees then applicable for the type of Discretionary Approvals shall apply. The City will review these applications in good faith within a reasonable time to insure that the Developer may proceed to develop the Property in the manner contemplated by this Agreement.

b. The only remaining Discretionary Approval which is contemplated at this time is design review under the Zoning Ordinance.

Section 3.12 Review of Agreement.

Review by the City of compliance by the Developer of the terms of this Agreement shall be done as provided in Section 15.72.230 (Periodic Review) of the Winters Municipal Code.

Section 3.13 Compliance with Government Code Section 66006.

As required by Government Code section 65865(e) for development agreements adopted after January 1, 2004, the City will comply with the requirements of Government Code section 66006 pertaining to the payment of fees for the development of the Property.

Section 3.14 Subdivision Maps.

A subdivision, as defined in Government Code section 66473.7, shall not be approved unless any tentative map for the subdivision complies with the provisions of said Section 66473.7. This provision is included in this Agreement to comply with Section 65867.5 of the Government Code.

Section 3.15 Deferral of Impact Fees.

In order to encourage the Developer to proceed with construction of new market rate housing within the City of Winters, except as provided for herein, the City hereby agrees to defer all development impact fees imposed by the City on building permits issued until the earlier of (1) issuance of a Certificate of Occupancy; or (2) six (6) months after the issuance of a building permit. The Rancho Arroyo Drainage District Fees shall be paid in accordance with City of Winters Ordinance 96-02 and any applicable Conditions of Approval. This provision is not intended to restrict, limit, or waive any rights which Developer may acquire pursuant to subsequently enacted state legislation.

ARTICLE 4
DEVELOPMENT OBLIGATIONS

Section 4.1 Schools.

The Developer acknowledges and agrees that the mitigation of the impact of Callahan Estates on schools within the Winters Joint Unified School District is of paramount importance to the City and its residents. As a consequence, the Developer states that it has entered into an Agreement (Restated Mutual Benefit Agreement for the Mitigation of Development Impacts Upon the School Facilities of the Winters Joint Unified School District) to mitigate the impact on schools recorded October 24, 2013 as Instrument No. 2013-0034136 of Official Records County of Yolo.

Section 4.2 Park Land and Fees.

The Developer shall satisfy its 2.7 acre park obligation as follows: Developer shall pay a park fee, in the aggregate totaling Eight Hundred Fifty

Thousand Two Hundred Eighty-six Dollars ($850,286.00) as follows: Developer shall pay the sum of $6,024 in equal installments at the time of issuance of a ~~building permit~~ certificate of occupancy for each residential structure. Developer shall fund and construct the parks on Parcels E, F, and G (equal to 0.6149 acres). Developer shall be further credited against park improvement fees for the provision of infrastructure improvements, planning, developing, and equipping the park on Parcels E, F, and G, not to exceed One Hundred Ninety-three Thousand Six Hundred Forty-four Dollars ($193,644.00). This credit shall be applied on a pro rata basis against the anticipated development of 109 lots. The amount of the Parcels E, F, and G park credit is based on the pro rata cost per acre obligation established for the 2.73 acre park. The cost per acre is $850,286/2.73 acres = $314,921. Parcels E, F, and G are equal to 0.6149 acres. Therefore, Parcels E, F, and G park credit is $314,921 x 0.6149 = $193,644.

Section 4.3 Public Safety Facility.

The Developer shall pay the City's Public Safety Facility fee.

Section 4.4 Intentionally Omitted.

Section 4.5 Installation of Conduit.

Developer shall provide design and construction for conduit and boxes suitable for broadband internet service to each residential unit, within the joint trench for the Winters Highlands Subdivision. The conduit shall be coordinated with all other utilities and shown on the joint trench composite plans. The conduit and boxes are to be constructed with the joint trench and completed before certificate of occupancy is issued. The utility company providing broadband internet service will install the wire necessary to provide the service; the timing of

which will not delay the issuance of a certificate of occupancy.

Section 4.6 Cooperative and Reimbursement Agreement.

The developers of Callahan Estates and Winters Highlands, referred to in this section as "Owners," intend to subdivide their respective properties into residential lots which will be served by public streets and improvements, easements and rights-of-way. Each Owner will require access to portions of the Other's property for purposes of installation of streets, utilities conduit, storm drains, sewer and other improvements for future use and/or dedication for the benefit of their respective residential project, as well as for the benefit of all the Owners. Public streets and improvements, easements and rights-of-way that are reasonably expected to benefit all of Owners are defined herein as "Joint Improvements." Joint Improvements may include, but are not limited to, streets, curbs, gutters, street lighting, sidewalks, joint trench, storm drains, storm water pumping station, sewer and water collection systems, sewer pump station, utilities, and other public improvements.

For the purpose of constructing the Joint Improvements as may be necessary and appropriate to serve the Owners and as may be required by Development Conditions affecting each Owner's Property, the Owners shall use best efforts to enter into a "Joint Cooperative Development and Reimbursement Agreement." The Joint Cooperative Development and Reimbursements Agreement shall be prepared and executed among the Owners prior to the City's approval of the first final map associated with any of the Owner's properties. The City shall not approve a final map for any of the Owner's two respective projects until the Owners submit to City the Joint Cooperative Development and Reimbursement Agreement executed by all the Owners, or the Owner applying for

a final map can show to the reasonable satisfaction of the City Manager that it has used best efforts to enter into said agreement but has been unable to agree to terms with the other Owners.

Section 4.7 Wastewater Treatment Plant Expansion.

a. Wastewater (sewage) from Callahan Estates will be treated in the City's Wastewater Treatment Plant ("WTP"), which may be expanded in the future. The WTP Master Plan was updated in 2015, which updated the available capacity of the WTP and determined what the next phase of WTP expansion should be, when that phase will be triggered by development, and what the associated tasks and costs are for the expansion. The expansion will be built by the City using sewer impact fees collected from the developers of property within the City of Winters. The Developer shall be required to pay sewer impact fees in effect at the time of the first Final Map.

b. Wastewater from Callahan Estates will eventually flow to the WTP through conveyance facilities to be constructed to the north of The Property across adjacent property commonly referred to as Winters Highlands.

c. Winters Highlands is expected to construct the conveyance improvements north to the WTP prior to the Callahan Estates moving forward. However, if the facilities through Winters Highlands, are not completed by the time the first residential unit of Callahan Estates requires sewer treatment then the Developer shall install all wastewater conveyance facilities north of the Property to the WTP as determined by the City Engineer to be necessary to serve Callahan Estates, subject to a *pro rata reimbursement from others as provided in Section 3.10.* The City Engineer shall determine the *pro rata* share to be borne by each participating developer and shall allocate each share accordingly. Such facilities

include, but are not limited to, the installation of the West Main SS Pump Station "A" and the sewer force mains.

Section 4.8 Urban Water Management Plan.

No later than the issuance of the 50th building permit for the Callahan Estates Subdivision the Developer shall pay to the City its *pro rata* share of ninety thousand dollars ($90,000) for the cost of a City Urban Water Master Plan.

Section 4.9 Water Well.

a. Water Well No. 7 was constructed in order to provide water service to the Hudson-Ogando Subdivision, Callahan Subdivision, and other developing properties.

b. Conditions of Approval No. 121 and 40- (Mitigation Measure 21), in part, required Developer to advance the costs for the design and construction of a water well, subject to pro rata reimbursement in accordance with the provisions of section 3.11.

c. The City funded a portion of the construction of Well No. 7 from sources other than water development impact fees. The City shall be reimbursed from water development impact fee funds, when available, and prior to the reimbursement of any costs incurred by Developer.

d. City acknowledges that Developer has advanced funding for partial construction of Well No. 7 in the amount of $615,313.03 (reduced to $361,676.03 as a result of credits being transferred to Winters Ranch), which amount shall entitle Developer to receive fee credits. Notwithstanding section 3.11(f) of the Development Agreement, Developer shall be entitled to apply credits against any

water facility fee then due, without reduction for any sums that might otherwise be owed to the City.

e. The amount and timing of reimbursement for funds advanced by Developer and related to the construction of Well No. 7 shall be set forth in a separate Credit and Reimbursement Agreement in accordance with section 4.10 (d) above and shall include the same annual inflationary adjustment used to calculate the City's impact fees on any outstanding amount still owed to Developer.

Section 4.10 Taylor Street Improvements.

Taylor "A" Street knuckle to the west of the Tentative Map boundary through the Ogando property, to the Callahan property, is no longer applicable, and a realignment of Taylor Street was approved by the City and incorporated into the Hudson-Ogando plans. The revised alignment is included on a revised Tentative Map dated August 17, 2015 and shall be constructed as part of the Callahan Estates Development with the same cross section dimensions with the ped/bike landscape corridor on the west side and the sidewalk on the east side.

ARTICLE 5

DEFAULT, REMEDIES, AND DISPUTE RESOLUTION

Section 5.1 Application of Article.

The Parties agree that the following provisions shall govern the availability of remedies should either Party breach its obligations under this Agreement.

Section 5.2 City's Remedies.

a. The City's remedies under this Agreement are as follows:

1. Termination of the Agreement after giving the Developer the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of Callahan Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. Specific performance as provided in subsection c.

4. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

5. A action for damages as provided in subsection d.

b. Default by the Developer.

1. Notice of Default. With respect to a default by the Developer under this Agreement, the City shall first submit to the Developer a written notice of default identifying with specificity those obligations of the Developer which have not been performed. Upon receipt of the notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default. The Developer shall complete the cure of the default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy the default(s), provided Developer has continuously and diligently pursued such remedy at all times until such default(s) is cured.

2. Procedure After Failure to Cure Default. If, after the cure period has elapsed, the City finds and determines that the Developer remains in

default and the City wishes to terminate or modify this Agreement, the City Manager shall make a report to that effect to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code section 65868 and Section 11-2.802 of the Winters Municipal Code.

3. Modification or Termination of Agreement. If, after the public hearing, the City Council determines Developer has failed to timely cure a material breach of the obligations under this Agreement, City shall have the right to modify or terminate this Agreement.

c. Specific Performance. The City may seek specific performance to compel the Developer to do any, or all, of the following:

1. To complete or demolish any uncompleted improvements which are located on public property or property which has been offered for dedication to the public, with the choice of whether to demolish or complete such improvements and the method of such demolition or completion of such improvements to be selected by the City in its sole discretion.

2. To dedicate and properly complete any public improvements which are required by this Agreement.

3. To complete, demolish or make safe and secure any uncompleted private improvements located on The Property with the choice of whether to demolish, complete or secure such private improvements and the method of such demolition, completion and securing such private improvements to be selected by the Developer in its sole discretion.

d. The City may institute an action for damages for the amount of any money owed to it under Article 4, or the cost of performing any act required of the Developer under Article 4, or the cost to complete any public improvements required to be installed under the final map (or any phase, if applicable) for Callahan Estates.

Section 5.3 Developer's Remedies.

a. The Developer's remedies under this agreement are as follows:

1. An action for specific performance of an obligation of the City after giving the City the opportunity to cure a default, as provided in subsection b.

2. An action for injunctive relief to preserve the physical or legal status quo of the development of Callahan Estates pending a judicial determination of the rights of the Parties in the event of a dispute between the Parties as to their rights and obligations under this Agreement.

3. An action for declaratory relief to determine the rights and obligations of the Parties under this Agreement.

b. Default and Notice of Default. With respect to a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default identifying with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City

has continuously and diligently pursued such remedy at all times until such default(s) is cured.

c. Waiver of Damage Remedy. The Developer understands and agrees that the City would not be willing to enter into this Agreement if it created any monetary exposure for damages (whether actual, compensatory, consequential, punitive or otherwise) in the event of a breach by City. For the above reasons, the Parties agree that the remedies listed in subsection a. are the only remedies available to the Developer in the event of the City's failure to carry out its obligations hereunder. The Developer specifically acknowledges that it may not seek monetary damages of any kind in the event of a default by the City under this Agreement, and the Developer hereby waives, relinquishes and surrenders any right to any monetary remedy. The Developer covenants not to sue for, or claim any monetary remedy for, the breach by the City of any provision of this Agreement, except for attorneys' fees for actions under a., above, and hereby agrees to indemnify, defend and hold the City harmless from any cost, loss, liability, expense or claim (including attorneys' fees) arising from or related to any claim brought by the Developer inconsistent with the foregoing waiver

ARTICLE 6

HOLD HARMLESS AND INDEMNIFICATION

Section 6.1 Limitation of Legal Relationship.

a. The Parties represent and declare that this Agreement creates no partnership, joint venture, or other legal entity between them.

b. In entering into this Agreement, the City is acting under the statutory and/or police powers which it holds as a municipal corporation of the

State of California and which authorize it to regulate the development of land within its boundaries and to provide for the general health, safety and welfare.

c. In entering into this Agreement, the Developer is acting in a purely private capacity as an owner of real property within the City of Winters, which property is subject to the jurisdiction of the City acting in the capacity set forth in subsection b.

Section 6.2 No Liability for Acts of the Developer.

a. It is expressly understood that the development of the Callahan Estates Subdivision is an undertaking that may create for the Developer liability to third parties, including, but not limited to, assignees of all or part of this Agreement, buyers and lessees of residential units, building contractors and sub-contractors, and suppliers. The Developer understands and agrees that the City would not execute this Agreement if, in so doing, it created for the City any liability to any third party.

b. Consequently, the Developer, its successors, heirs, and assigns agrees to defend, indemnify, and hold harmless the City, and all its officers, agents, and employees from any claim of injury to person or property arising out of or relating to this Agreement or the operations of the Developer in the development of Callahan Estates Subdivision under the terms of this Agreement.

c. Notwithstanding anything in Article 5 to the contrary, the City shall have any remedy available to it at law and/or equity to enforce the provisions of, or to collect damages for, any breach of this Section 6.2.

Section 6.3 Duty to Defend Challenges to this Agreement.

a. The Parties recognize that there may be third party challenges to this Agreement, relative to the procedure used to adopt it or the contents of it.

b. The Parties agree to cooperate jointly to defend any action or proceeding brought to challenge this Agreement or the ordinance adopting it.

c. In the event of any such challenge, each Party shall bear its own attorneys' fees and other litigation expenses, unless the City elects to tender the defense to the Developer pursuant to subsection e. below.

d. Should the court, in any action challenging this Agreement or the ordinance adopting it, award attorneys' fees, costs and any other litigation expenses against the City, the Developer shall be responsible for the payment of those fees, costs, and expenses, and shall hold the City harmless from any claim thereto.

e. Notwithstanding subsection b., the City may, at its sole discretion, tender the defense of any action or proceeding brought to challenge this Agreement or the ordinance adopting it to the Developer, in which event the Developer shall have the sole responsibility to defend, on behalf of itself and the City, the matter.

SIGNATURE PAGE TO FOLLOW

"DEVELOPER"
TURNING POINT ACQUISITIONS V, LLC, a California limited liability company

By:_____

Its:_____

Dated:_____

"CITY"

CITY OF WINTERS, a municipal corporation

By:_____
Mayor

Dated:_____

Attest:_____
City Clerk

Approved as to form:

_____
Ethan Walsh, City Attorney

. . . . . .

LIST OF EXHIBITS

A	Map of Callahan Property
B	Legal Description of Callahan Property
C	Callahan Estates Tentative Subdivision Map
D	Conditions of Approval, Including Mitigation Measures

Summary report: **Litéra® Change-Pro 7.5.0.135 Document comparison done on 2/18/2016 9:59:24 AM**	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS:iw://iManage/iManage/5374677/3	
Modified DMS: iw://iManage/iManage/24471502/1	
Changes:	
Add	479
~~Delete~~	416
~~Move From~~	14
Move To	14
Table Insert	1
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	924

CITY OF
WINTERS
california
Est. 1875

PLANNING COMMISSION
STAFF REPORT

TO: Chairman and Planning Commissioners

DATE: April 26, 2016

FROM: David Dowswell, Community Development Director

SUBJECT: Study Session - Consideration of various amendments to Chapter 8.20, Noise Control, and Section 17.68, Performance Standards, of the Winters Municipal Code.

RECOMMENDATION: That the Planning Commission review the proposed amendments in response to the comments from the July 22, 2014 study session, take comments from the public and give staff direction.

GENERAL PLAN DESIGNATION, EXISTING ZONING, AND LAND USE: The proposed amendments to the Noise Control Ordinance will affect all lands designated agricultural, residential, commercial, industrial, public/quasi-public and zoned A-1, R-R, R-1, R-2, R-3, R-4, C-1, C-2, C-H, D-A, D-B, O-F, B-P, M-1, M-2, P-R and PQP.

BACKGROUND: For some time now staff has been aware of problems interpreting, and potentially enforcing the City's Noise Control Ordinance. The ordinance is overly descriptive; for example, there is a long list of prohibited noise generating uses, many of which are unlikely to ever occur, such as repairing an aircraft (Section 8.20.110F) or are preempted from being regulated, like the use of emergency signals by police and fire. The ordinance also states it is unlawful to sound a car horn except as a warning signal (Section 8.20.110C). There is language about developing a plan for land uses placed in proximity to local airports; there is likely never going to be an airport in Winters. There is a whole section (Section 8.20.040) devoted to the authority and duties of the noise control officer, which includes coordinating the enforcement with other city departments, county and city agencies. There is another somewhat duplicative section (Section 8.20.050) devoted to departmental cooperation and the maximum allowable noise levels are more restrictive than permitted by the General Plan (Attachment A). Due to the complexities and restrictiveness of the ordinance staff was directed to study how it could be simplified.

On July 22, 2014 the Planning Commission held a study session where the status of the updating of the Noise Control Ordinance in Chapter 8.20 and the Performance Standards

in Chapter 17.68 of the Municipal Code was discussed. At the conclusion of the discussion staff indicated that we would be returning in the future with a draft ordinance.

ANALYSIS:

In preparing the draft ordinance (Attachment B) staff reviewed ordinances from a number of other cities (Davis, Woodland, West Sacramento, Vacaville, Fairfield, Walnut Creek, Benicia and Emeryville). The City of Davis ordinance is the only one that has a different set of noise standards for their downtown core area. Of the ordinances staff reviewed, the City of Emeryville's was most similar to Winters in that they too have noise performance standards in their Zoning Ordinance and a separate chapter regulating noise in their Municipal Code.

When reviewing the other ordinances staff noted many cities have a lengthy set of regulations for the use of sound-amplifying equipment. Some cities require the person using sound-amplifying equipment go through a very rigorous registration process, pay a fee, and severely limit where such equipment can be used. Staff is recommending any outdoor use of sound-amplifying equipment must be approved by the city manager. Staff believes having requiring approval from the city manager (see Section 8.20.070B2.) to use this type of equipment allows the City to impose restrictions helping to avoid this use from becoming a problem.

All of the other cities staff reviewed regulate specific uses that generate noise, such as auto repair, playing drums, use of explosives or firearms, leaf blowers, hawkers and peddlers. Staff does not believe it is necessary to list every noise generating use that potentially could become a problem. Staff assumed that all uses, no matter what the type, need to comply with the noise limits listed in the amended ordinance unless specifically exempted by the ordinance or by state or federal laws. For example, some cities, including Winters, mention that emergency vehicles are exempted from their noise regulations. Staff believes including this language is unnecessary since these uses are assumed to be exempt and are also regulated by the state. Many of the other city ordinances also include language prohibiting excessive noise from animals. Winters adopted the County animal ordinance by reference. The County's ordinance Section 6-1.403 states, "No owner shall permit his animal, except a domestic cat, habitually to make a loud noise or act in such a manner as to constitute a public nuisance."

The proposed ordinance (Attachment C) simplifies the City's existing noise regulations and mirrors ordinances from many other cities. The revised ordinance is not intended to be all encompassing, but rather designed to address the most common sources of noise complaints. The allowable daytime noise levels in parks and recreation/public quasi-public and residential zones have been slightly increased to be more consistent with what is allowed by other cities while still complying with the General Plan. The exterior noise level standards in Chapter 17.68 Performance Standards are being amended to match the changes to the allowable levels in the Noise Control Ordinance.

METHODOLOGY: Two actions will be required to process the requested project:

1. Confirmation of CEQA exemption finding – Updating of the Noise Ordinance is Categorically Exempt, Section 15308 Actions by Regulatory Agencies for Protection of Natural Resources
2. Recommendation that the City Council adopt the ordinance amendments;

APPLICABLE REGULATIONS: The planning application is subject to several regulations:

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

RECOMMENDATION: Staff recommends the Planning Commission review the proposed amendments in response to the comments from the July 22, 2014 study session, take comments from the public and give staff direction.

ATTACHMENTS:

A. General Plan Noise regulations.
B. Draft Noise Control Ordinance (edited)
C. Draft Noise Control Ordinance (clean)

Goal VII.D: To ensure that City emergency response procedures are adequate in the event of natural or man-made disasters.

Policies:

VII.D.1. The City shall adopt, maintain, periodically update, and test the effectiveness of its *Emergency Response Plan.* As part of the periodic update, the City shall review county and state emergency response plans and procedures to ensure coordination with the City's plan.

VII.D.2. The City shall identify emergency access routes and shall ensure that they are kept free of traffic impediments.

VII.D.3. Critical emergency response facilities such as fire, police, emergency service facilities, and utilities shall be sited to minimize their exposure to flooding, seismic effects, fire, or explosion.

VII.D.4. The City shall maintain mutual aid agreements and communications links with surrounding jurisdictions for assistance during times of emergency.

Goal VII.E: To protect city residents from the harmful and undesirable effects of excessive noise.

Policies:

VII.E.1. The City shall evaluate the compatibility of various land uses with nearby noise sources based on the standards in Table II-3.

VII.E.2. The City shall require new residential development to comply with applicable provisions of the *California State Noise Insulation Standards (California Code of Regulations, Title 24, Part 2, Appendix, Chapter 35)* and the *Uniform Building Code (Appendix Chapter 35)*, and updates thereof. These provisions include, but are not limited to, the following standards:

a) Ldn values due to exterior noise sources shall not exceed 45 dBA inside habitable rooms of new multi-family dwellings (apartments, condominiums, hotels, motels, etc.).

b) Assemblies dividing units within multi-family dwellings shall have laboratory certified STC ratings of 50 or more (NIC 45 or more if field tested). In addition, floor/ceiling assemblies shall have laboratory certified IIC ratings of 50 or more (45 if field tested).

VII.E.3. Ldn values above 45 dBA due to exterior noise sources shall be prohibited inside habitable rooms of all new dwellings.

VII.E.4. Non-transportation noise sources which are potentially intrusive shall be evaluated in terms of the noise level limits in Tables II-4 and II-5. In applying these limits, the corrections in Table II-6 shall be added to account for the nature of the noise.

VII.E.5. The City shall require preparation of a noise study for all residential projects proposed in areas where Ldn values exceed 60 dBA according to the contour locations set out in Table IX-4 and shown in Figure IX-8 in Chapter IX of the *General Plan Background Report*.

VII.E.6. Any project that would cause existing traffic-related noise levels in existing residential areas to increase more than 3dB shall be required to evaluate the feasibility of noise mitigation measures.

VII.E.7. The City may also require preparation of a noise study when Ldn standards are met or inapplicable, but 1) a potentially intrusive noise source is proposed near a noise sensitive area, or 2) a noise sensitive land use is proposed near a potentially intrusive noise source.

VII.E.8. Required noise studies shall be the responsibility of the project applicant, and shall be consistent with the state guidelines for noise study reports. Such studies shall be performed by a qualified consultant and shall include the following:

a) A summary of noise data collected, and/or descriptions of the methodologies used to determine existing and expected noise levels and noise descriptors such as Leq or Ldn.

b) Figures or maps showing the locations of noise sources and noise sensitive areas.

c) A description of the impacts of existing and future (20 years hence) noise levels on the project and/or impacts due to the project on the surrounding area. The standards in this section of the *General Plan Policy Document* shall form the basis for impact assessment.

d) Specifications of any noise mitigation measures recommended to ensure compliance with the standards in this *General Plan Policy Document*.

e) Description of the expected effects of the mitigation measures.

VII.E.9. The City shall encourage county, state, and federal agencies to actively enforce regulations dealing with noise.

VII.E.10. Vehicles and other equipment operated by or on behalf of the City shall comply with all applicable noise performance standards. Noise emission shall be a consideration in the purchase of any new equipment or vehicles.

VII.E.11. The City shall encourage development designers to minimize noise levels through such measures as the following:

a) Locating outdoor activity spaces such as yards, patios, and decks in areas where noise levels are low.

b) Locating and orienting buildings to place noise sensitive indoor spaces such as living rooms and bedrooms in areas with low noise levels.

c) Locating relatively non-noise sensitive structures such as commercial buildings to shield noise sensitive areas such as residences and care facilities from noise sources.

d) Using berms, walls, and setbacks to shield noise sensitive areas from noise sources. Walls shall only be used as a last resort.

e) Provide appropriate muffling devices or enclosures for new noise sources located near noise sensitive areas.

VII.E.12. Deviations from City noise standards may be approved only in extreme and/or unusual circumstances. Deviations from the *California State Noise Insulation Standards* shall not be permitted.

TABLE II-3

LAND USE COMPATIBILITY STANDARDS

Land Use Category	Exterior Ldn (dBA) 60 or Less	60-65	65-70	70-75
Residential	+	o	-	--
Single and multiple family dwellings, including mobile homes, duplexes, apartments, condominiums, hotels, and motels				
Outdoor Public Facilities	+	o	-	--
Neighborhood parks, playgrounds (including school playgrounds), picnic areas, amphitheaters, golf courses, riding stables and trails, water recreation, cemeteries				
Public Buildings	++	+	o	-
School buildings, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, sports arenas				
Commercial	++	+	o	-
Office buildings, retail, business and professional facilities				
Industrial	++	++	+	o
Manufacturing, utilities, and agriculture facilities				

Symbols

++ Clearly Acceptable - The activities associated with the specified uses can be carried out with virtually no interference from noise.

\+ Normally Acceptable - Little interference with outdoor activities is expected. Conventional structures will insure that interior Ldn values are compatible with indoor activities.

o Conditionally Acceptable - The indicated noise levels will cause moderate interference with outdoor activities, and with indoor activities when windows are open. New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made. Noise reduction features should be included in the project design which upgrade the environment to the "Normally Acceptable" category over a substantial portion of the project site.

\- Normally Unacceptable - Noise will create substantial interference with both outdoor and indoor activities. Noise intrusion on indoor activities can be mitigated with special noise insulating construction. New construction or development should be generally discouraged. If construction or development does proceed, noise mitigation measures should be required to upgrade the acoustic environment to approach the "Normally Acceptable" category with respect to exterior noise, and to insure that interior noise levels comply with the state noise insulation standards.

-- Clearly Unacceptable - Unacceptable noise intrusion upon land use activities will occur. Adequate structural noise insulation may not be practical in many cases, or may involve high noise barriers visually incompatible with a suburban area. New construction or development should generally not be undertaken.

TABLE II-4

EXTERIOR NOISE LEVEL LIMITS

Use Zone	Exterior Limit in dBA Daytime 7 a.m. - 10 p.m.	Exterior Limit in dBA Nighttime 10 p.m. - 7 a.m.
Rural (OS)	50	40
Residential (R-1, R-2, R-3, R-4)	50	45
Parks & Recreation (P-R)	50	45
Commercial (C-1, C-2, NC, CH, CS)	63	45
Manufacturing/Industrial (M-1, M-2, PI)	73	70

These limits on intrusive noise are to be applied at any point within the boundaries of a property zoned as indicated.

Each limit is the noise level which is not to be exceeded continuously during any five minute period. If the noise level varies above and below the limit, the limit shall not be exceeded during more than one time interval in any five minute period. Noise levels higher than the applicable limit plus 15 dBA are prohibited at all times.

TABLE II-5

INTERIOR NOISE LEVEL LIMITS

Use Zone	Interior Limit in dBA Daytime 7 a.m. - 10 p.m.	Interior Limit in dBA Nighttime 10 p.m. - 7 a.m.
Residential (R-1, R-2, R-3, R-4)	45	35

These levels of intrusive noise are not to be exceeded at any point within a dwelling.

Each limit is the noise level which is not be to exceeded continuously during any five minute period. If the noise level varies above and below the limit, the limit shall not be exceeded during more than one time interval in any five minute period. Noise levels higher than the applicable limit plus 15 dBA are prohibited at all times.

TABLE II-6

CORRECTIONS TO NOISE LEVELS DUE TO POTENTIALLY INTRUSIVE NON-TRANSPORTATION NOISE SOURCES

Type of Correction	Circumstances Under Which The Correction is Applicable	Correction to be added to The Measured or Predicted Noise Level Due to a Potentially Intrusive Noise Source (dBA)
Seasonal Corrections	Summer (or year-round operation)	0
	Winter only (or windows always closed	-5
Corrections for Character of Noise	No tonal, impulsive, or information content	0
	Tonal components present	+5
	Impulsive noise	+5
	Information content (e.g., speech, song lyrics)	+5
Correction for Previous Exposure and Community Attitudes	No prior experience with the subject noise	+5
	Some previous exposure to subject noise, but little effort made to control noise.	0
	No previous exposure, but community is aware that serious noise control efforts are being made.	0
	Considerable previous exposure to subject noise, and noise maker has good relations with community.	-5
	Community is aware that the subject noise source is very necessary, and will not operate indefinitely.	-10

These corrections are to be used in conjunction with the standards specified in Policy VII.E.4.

attachment B

CITY COUNCIL

ORDINANCE NO. 2015 - 05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING VARIOUS SECTIONS OF CHAPTER 8.20 (NOISE CONTROL) AND AMENDING SECTION 17.68.030 (GENERAL STANDARDS) OF THE WINTERS MUNICIPAL CODE

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

1. Purpose. The purpose of this ordinance is to amend various sections of Chapter 8.20 Noise Control and Section 16.68.030 Performance Standards which regulate noise.

2. Authority. The City of Winters has authority to adopt this ordinance pursuant to the general police power granted to cities by Article 11, Section 7 of the California Constitution.

3. Amendment to Chapter 8.20. Chapter 8.20 of the Municipal Code is hereby amended to read as follows:

Chapter 8.20
NOISE CONTROL

Sections:

8.20.010 Declaration of policy.
~~8.20.020 Liberal construction.~~
8.20.0~~3~~20 Definitions.
8.20.0~~4~~30 Authority ~~and duties of noise control office~~.
~~8.20.050 Departmental cooperation.~~
8.20.0~~6~~40 General noise regulations and factors.
8.20.0~~7~~50 Noise measurement procedure.
8.20.0~~8~~60 ~~Exterior n~~Noise limits.
~~8.20.090 Interior noise limits.~~
8.20.~~1~~070 Prohibited actions.
8.20.08~~11~~0 Motor vehicle noise limits.
8.20.~~10~~290 Exemptions.
~~8.20.130 Pre-existing industrial or commercial noise sources transition period.~~
8.20.1~~4~~00 Variance procedure.
~~8.20.150 Hearing board.~~
~~8.20.160 Appeals.~~
8.20.1~~7~~10 Regulations not exclusive.
8.20.1~~8~~20 Enforcement.

8.20.010 Declaration of policy.

In order to control unnecessary, excessive and annoying noise and vibration in the city, it is declared to be the policy of the city to prohibit such noise and vibration generated from or by all sources as specified in this chapter. It shall be the policy of the city to maintain quiet in those areas which exhibit low noise levels ~~to~~ and to implement programs aimed at reducing noise in those areas within the city where noise levels are above acceptable values.

It is determined that certain noise levels and vibrations are detrimental to the public health, welfare and safety, and are contrary to public interest. The provisions of this chapter and the remedies contained herein shall be cumulative and are not intended to replace any otherwise available remedies for public, private, or mixed nuisances, nor any other civil or criminal remedies otherwise available. ~~(Ord. 89-04 (part): prior code § 6-7.01)~~

~~**8.20.020 Liberal construction.**~~

~~This chapter shall be liberally construed so as to effectuate its purposes. (Ord. 89-04 (part): prior code § 6-7.02)~~

8.20.0~~3~~20 Definitions.

All terminology used in this chapter, not defined below, shall be in conformance with applicable publications of the American National Standards institute (ANSI) or its successor body.

"A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Comment [D1]: Term not used in this chapter.

~~"Agricultural property" means a parcel of property used primarily, in whole or in part, for agriculture purposes.~~

"Agricultural operation" means the use of a parcel of real property for the cultivation, planting, growing and harvesting of crops grown on the parcel and the feeding, pasturing and maintenance of livestock and poultry raised on the parcel. The term "agricultural operation" shall not include the use of a parcel of real property for processing farm crops, livestock, and poultry not grown or raised on the parcel.

"Ambient noise level" means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location excluding any alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

~~"Commercial area" means any commercial zoned area as defined in the city zoning ordinance, Title 17 of the Winters Municipal Code, as amended from time to time. Current commercial area designations are as shown on the zoning map, as amended.~~

~~"Construction" means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities or similar property.~~

Comment [D2]: Defined in California Building Code

~~"Cumulative period" means an additive period of time composed of individual time segments which may be continuous or interrupted.~~

Comment [DD3]: This term is not used anywhere in the existing ordinance.

"Decibel" means a unit for measuring the amplitude of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals.

~~"Demolition" means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.~~

Comment [D4]: Defined in the California Building Code.

"Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

~~"Fixed noise source" means a stationary device which creates sounds while fixed or motionless including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.~~

Comment [D5]: Revised name and inserted after "noise disturbance".

~~"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.~~

~~"Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop force impacts, and the discharge of firearms.~~

Comment [D6]: Term not used in this chapter.

~~"Industrial area" means any industrial area as defined in the city zoning ordinance, Title 17 of the Winters Municipal Code, as amended from time to time. Current industrial area designations are as shown on the zoning map, as amended.~~

~~"Intrusive noise" means that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency and time of occurrence, and tonal or informational content as well as the prevailing ambient noise level.~~

~~"Licensed" means the possession of a formal license or a permit issued by the appropriate jurisdictional authority; or, where no permits or license are issued, the sanctioning of the activity by the jurisdiction as noted in the public record.~~

~~"Mobile noise source" means any noise source other than a fixed noise source.~~

Comment [D7]: Combined with Noise Disturbance. .

"Motor vehicle" includes any ~~and all self-propelled~~ motor vehicles as defined in the California Motor Vehicle Code, as amended from time to time, including all on-highway type motor

vehicles subject to registration under said Code, and all off-highway type motor vehicles subject to identification under said Code.

~~"Motor boat" means any vessel propelled by machinery whether or not such machinery is the principal source of propulsion but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto (Section 651(n), Harbors and Navigation Code).~~

Comment [D8]: Motor boat is licensed by state as a "motor vehicle".

~~"Muffler or sound dissipative device" means a device consisting of a series of chambers or baffle plates or other mechanical design, for the purpose of receiving exhaust gas from the internal combustion engine, and effective in reducing noise.~~

~~"Noise control office (NCO)" municipal agency or department having lead responsibility for this chapter shall be the office of the city manager or its duly authorized representative.~~

"Noise disturbance" means any sound which~~, as judged by the Noise Control Office:~~ (1) endangers or injures the safety or health of human beings, or animals, or (2) annoys or disturbs reasonable persons of normal sensitivities; or (3) endangers or injures personal or real property; or (~~d~~4) violates the factors set forth in Section 8.20.0~~6~~40. Compliance with the quantitative standards as listed herein shall constitute elimination of a noise disturbance.

" Noise source" means any device either fixed or mobile which creates sounds, including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, refrigeration equipment, and sound amplifying vehicle..

~~"Noise sensitive zone" means any area designated pursuant to Section 8.20.040 for the purpose of ensuring exceptional quiet.~~

~~"Noise zone" means any defined areas or regions of a generally consistent land use wherein the ambient noise levels are within a range of five db.~~

"Person" means any individual, firm, association, partnership, joint venture, corporation or other entity, public or private in nature, including an instrumentality of a state or any political subdivision of a state; person shall also include any officer, employee or agent of any of the foregoing.

~~" Powered model vehicle" means any self-propelled, airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to, a model airplane, boat, car, or rocket.~~

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

"Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

~~"Pure tone" means any sound which can be judged as audible as a single pitch or a set of single pitches by the noise control office.~~

"Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

~~"Residential area" means any residential zoned area as defined in the city zoning ordinance Title 17 of the Winters Municipal Code as amended from time to time.~~

"Sound amplifying equipment" means any machine or device for the amplification of the human voice, music, or any other sound, excluding standard automobile radios, tape decks, compact discs, mp3 players, etc., when used and heard only by the occupants of the vehicle in which radio, tape deck, compact disc, etc., is installed. "Sound amplifying equipment," as used in this chapter, shall not include warning devices on any vehicle used only for traffic safety purposes.

"Sound amplifying vehicle" means any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound amplifying equipment.

"Sound level meter" means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in American National Standards Institute specifications for sound level meter, S1.4-1971, or the most recent revision thereof.

~~"Sound amplifying truckvehicle" means any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound amplifying equipment.~~

~~"Vibration perception threshold" means the minimum ground or structure borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects. The perception threshold shall be presumed to be a motion velocity of 0.01 in/sec over the range of 1 to 100 Hz.~~

"Weekday" means any day, Monday through Friday, which is not a legal holiday. ~~(Ord. 2003-04 §§ 15, 16 (part); Ord. 89-04 (part): prior code § 6-7.04)~~

8.20.043~~0~~ Authority ~~and duties of noise control office.~~

~~A. Lead (Agency/Official).~~

The noise control program established by this chapter shall be administered by the office of the city manager or its duly appointed representative. The enforcing department shall be the Winters police department.

~~B. Powers.~~

~~In order to implement and enforce this chapter and for the general purpose of noise abatement and control, the NCO shall have, in addition to any other authority vested in it, the power to:~~

~~1. Studies. Conduct, or cause to be conducted, studies, research, and monitoring related to noise, including joint cooperative investigation with public or private agencies and the application for, and acceptance of, grants;~~

~~2. Education.~~

~~a. Conduct programs of public education regarding:~~

~~i. The cause and effects of noise and general methods of abatement and control of noise, and~~

~~ii. The actions prohibited by this ordinance and the procedures for reporting violations, and~~

~~b. Encourage the participation of public interest groups in related public information efforts;~~

~~c. Provide for training of field inspectors and other technical personnel concerned with noise abatement, in conformance with standards for technical qualifications as established by the State Office of Noise Control;~~

~~3. Coordination and cooperation.~~

~~a. Coordinate the noise control activities of all municipal departments,~~

~~b. Cooperate where practicable with all appropriate state and federal agencies,~~

~~c. Cooperate where practicable with appropriate county and municipal agencies,~~

~~d. Advise on the availability of low noise emission products for replacement or retrofit of existing or planned city owned or operated equipment;~~

~~4. Actions of other departments.~~

~~Request any other department or agency responsible for a proposed or final standard, regulation or similar action to consult on the advisability of revising the action, if there is reason to believe that action is not consistent with this chapter;~~

~~5. Public and private projects.~~

~~On all public and private projects which are likely to cause noise in violation of this chapter and which are subject to mandatory review or approval by any other departments:~~

~~a. All projects will be subject to the California Environmental Quality Act as amended;~~

~~b. Review for compliance with the intent and provision of this chapter;~~

~~c. Require sound analysis which identify existing and projected noise sources and associated noise levels;~~

~~d. Require usage of adequate measures to avoid violation of any provision of this chapter;~~

~~6. Inspections.~~

~~Upon presentation of proper credentials, enter and/or inspect any private property, place, report or records at any time when granted permission by owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, the NCO shall obtain the cooperation of the Winters police department who may obtain a search warrant from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this chapter may exist. Such inspection may include administration of any necessary tests;~~

~~7. Production performance standard recommendations.~~

~~Develop and recommend provisions regulating the use of operation of any product, including the description of maximum sound emission levels of such product, but not in such a manner as to conflict with federal and state new product regulations;~~

~~8. Noise sensitive zone recommendations.~~

~~Prepare recommendations to be reviewed by the Winters planning commission and approved by the Winters city council at public hearings for the designation of noise sensitive zones which contain noise sensitive activities;~~

~~9. Noise zone definition.~~

~~Prepare recommendations, based upon noise survey data and analytical studies, for the designation of zones of similar ambient; environmental noise within regions of generally consistent land use. These zones shall be identified in terms of their day and nighttime ambient noise levels and their land use classifications as given in Section 8.20.080, Table 7-1;~~

~~10. Zoning changes.~~

~~Prior to the approval of any zoning changes:~~

~~a. Review the noise impact of the zoning change by identifying existing and projected noise sources and the associated sound levels;~~

~~b. Require usage of adequate control measures on noise sources identified in subsection (B)(10)(a) which will be in violation of any provision of this chapter.~~

~~C. Duties of noise control office.~~

~~In order to effectively implement and enforce this chapter the NCO shall, within a reasonable time after the effective date of the ordinance codified in this chapter;~~

~~1. Measurement standards and enforcement procedures.~~

~~Develop measurement standards and procedures which will further the purposes of this chapter;~~

~~2. Investigate and pursue violations.~~

~~Under the provisions of this chapter, upon complaint, cause the Winters police department to investigate and pursue violations of this chapter;~~

~~3. Community noise element.~~

~~a. Assist in the preparation or revision thereof from time to time of the city noise element of the general plan as required by the Government Code, Section 65302 (f), as amended from time to time, following guidelines set forth by the State Office of Noise Control;~~

~~b. Assist in or review the total transportation planning of the community, including planning for new roads and highways, bus routes, airports, and other systems Of public transportation, to insure that proper consideration is taken with regard to the impact of sound levels and that the policies set forth in the noise element are adhered to;~~

~~c. Provide on-going assistance to local agencies in determining possible mitigation measures for current or forecast noise problems;~~

~~4. Airport noise exposure.~~

~~Assist the local airport land use commission (ALCJC) or equivalent commission in developing a plan for noise compatible land use in the vicinity of all local airports under their jurisdiction and maintain consistency with the provisions and policies of the general plan noise element and appear at any hearings or meetings regarding airport activities that would affect the noise environment of local residents in order to insure that the best interests of the community are served;~~

~~5. State and federal laws and regulations.~~

~~a. Prepare and publish a list of those products required to meet specified noise emission limits under federal, state or community law;~~

~~b. Make recommendations for modifications or amendments to this chapter to insure consistency with all state and federal laws and regulations;~~

~~6. Administer grants, funds and gifts.~~

~~Administer noise program grants, funds, and gifts from public and private sources, including the state and federal governments. (Ord. 89-04 (part): prior code § 6-7.05)~~

~~8.20.050 Departmental cooperation.~~

All departments shall, consistent with their authorities under other ordinances administered by them, carry out their programs in such a manner as to further the policies stated in Section 8.20.010.

~~F.~~

Comment [D9]: This section is unnecessary, it is redundant.

~~All departments shall cooperate with the noise control office in enforcing the noise regulations of this chapter.~~

~~B. Compliance with other laws.~~

~~All departments engaged in any activities which result or may result in the emission of noise, shall comply with federal and state laws and regulations, as well as the provisions of this chapter, respecting the control and abatement of noise to the same extent that any person is subject to such laws and regulations.~~

~~C. Project approval.~~

~~Each department, whose duty it is to review and approve new projects, or changes to existing projects which result, or may result in the emission of noise, shall consult with the noise control office prior to any such approval.~~

~~D. Right of review.~~

~~If at any time the noise control office has reason to believe that a standard, regulation, or action or proposed standard, regulation, or action of any department respecting noise does not conform to the intent of this chapter as set forth in Section 8.20.010, the noise control office may cause a review to be made so as to determine if such standards and/or regulations need to be changed.~~

~~E. Contracts.~~

~~Any written agreement, purchase order, or instrument whereby the city is committed to the expenditure of funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, shall not be entered into unless such agreement, purchase order, or instrument contains provisions requiring that any equipment or activities which are subject to the provisions of this code will be operated, constructed, conducted, or manufactured without causing violation of this code where technologically and economically feasible.~~

~~F. Low noise emission products.~~

~~Any product which has been certified by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 15 of the Noise Control Act of 1972 as a low noise emission product and which is determined to be suitable for use as a substitute, shall be used in preference to any other product where economically feasible. (Ord. 89-04 (part): prior code § 6-7.06)~~

8.20.0~~4~~60 General noise regulations and factors.

Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

The factors which shall be considered ~~by the noise control office~~ in determining whether a violation of the provisions of this chapter exists shall include, but not be limited to, the following:

A. The sound level of the objectionable noise;

B. The sound level of the ambient noise;

C. The proximity of the noise to residential ~~sleeping facilities;~~

D. The nature and zoning of the area within which the noise emanates, and the area affected by the noise;

~~E. The number of the persons affected by the noise source;~~

~~F~~E. The time of day or night the noise occurs;

~~G. The duration of the noise and its tonal, informational, or musical content;~~

~~H~~F. Whether the noise is continuous, recurrent, or intermittent. ~~(Ord. 89-04 (part): prior code § 6-7.07)~~

8.20.0~~7~~50 Noise measurement procedure.
~~The measurement procedure presented below assumes that personnel performing the noise measurements have been trained in the use of the instruments and in the interpretation of measured data.~~

Upon receipt of a complaint from a citizen, the enforcing department ~~noise control office~~ representative, equipped with sound level measurement equipment satisfying the requirements specified in 8.20.120.B, ~~6-7.04(ff),~~ may investigate the complaint. Any investigation shall consist of a measurement and the gathering of data to adequately define the noise problem (as indicated in Section 8.20.020 "Sound level meter"). ~~and shall include the following:~~

Comment [D10]: Not sure where these sections are located? Appears to be an old ordinance number.

~~A. Nonacoustic data.~~

~~1. Type of noise source;~~

~~2. Location and zoning of noise source relative to complainant's property;~~

~~3. Time period during which noise source is considered by complainant to be intrusive;~~

~~4. Total duration of noise produced by noise source;~~

~~5. Data and time of noise measurement survey.~~

~~B.~~

Utilizing the A-weighting scale of the sound level meter and the slow meter response ~~(use fast response for impulsive type sounds),~~ the noise level shall be measured at a position or positions at any point on the receiver's property.

In general, the ~~microphone shall be located four to five feet above the ground; ten (10) feet or more from the nearest reflective surface, where possible. However, in those cases where another elevation is deemed appropriate, the later shall be utilized. If the noise complaint is related to interior noise levels, interior noise measurements shall be made within the affected~~

~~residential unit. The~~ measurements shall be made at a point at least four (4) feet from the wall, ceiling, or floor nearest the noise source, with doors and windows closed. Calibration of the measurement equipment, utilizing acoustic calibrator, shall be performed immediately prior to recording any noise data. ~~(Ord. 89-04 (part): prior code § 6-7.08)~~

8.20.08~~6~~0 ~~Exterior n~~Noise limits.

A. Maximum permissible sound levels by receiving land use.

1. The ~~exterior~~ noise ~~standards~~limits for the various categories of land use identified by the ~~noise control office~~enforcement department representative as presented in Table 7-1 shall, unless otherwise specifically indicated, apply to all such property within a designated zone. No person shall allow creation of any noise which exceeds the standards.

2. If a measurement location is on a boundary between two different zones, the noise level applicable to the quieter noise zone, plus five (5) dbA shall apply.

B. Correction for character of sound.

In the event the alleged offensive noise, as judged by the ~~noise control officer~~enforcement department representative, contains a steady, audible tone such as whine, screech, or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech conveying informational content, the standard ~~exterior~~ noise limits set forth in Table 7-1 shall be reduced by five (5) dbA.

Table 7-1
~~EXTERIOR~~ NOISE LEVEL LIMITS

Noise level in dBA not to be exceeded continuously during any five (5)-minute period of, if the noise level varies above and below the limit, for more than one time interval during any five (5)-minute period.

Type of zone	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Rural Residential (R-R)/ Open Space (O-S)	50	40
Residential (R-1, R-2, R-3, R-4)	5~~0~~5	4~~5~~0
*Parks and recreation (P-R)	~~5~~60	45
Commercial (C-1, C-2, ~~NC,~~ D-A, D-B O-F, C-H, ~~CS~~)	63	45

Manufacturing/industrial (M-1, M-2, B-P~~I~~)	73	70

~~These noise levels are not to be exceeded at any point within the boundaries of a property zone as indicated. (Ord. 2003-04 § 16 (part); Ord. 89-04 (part): prior code § 6-7.09)~~

~~8.20.090 Interior noise limits.~~

~~A. Maximum permissible dwelling interior sound levels.~~

~~The interior noise standards for residential dwellings as presented in Table 10-1 shall apply, unless otherwise specifically indicated, within all such dwellings, with doors and windows closed. No person shall allow creation of any noise which exceeds the standards.~~

~~Table 10-1~~
~~INTERIOR NOISE LEVEL LIMITS.~~

~~Noise level in dBA not to be exceeded continuously during any five minute period or, if the noise level varies above and below the limit for more than one time interval during any five-minute period.~~

~~Type of Zone~~	~~Time interval~~	~~Allowable InteriorNoise Level (dBA)~~
~~Any residential zone~~	~~7 a.m.—7 p.m.~~	~~45~~
	~~7 p.m.-10 p.m.~~	~~45~~
	~~10 p.m.-7 a.m.~~	~~35~~

Formatted: Font: 11 pt

Formatted: Font: 11 pt

* Park and recreation noise limits are based on six (6) a.m. to ten (10) p.m. consistent with Chapter 12.12.

~~B. Correction for character of sound.~~

~~In the event the alleged offensive noise, as judged by the noise control office, contains a steady, audible tone such as a whine, screech, or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech conveying informational content, the standard limits set forth in Table 10-1 shall be reduced by five dB. (Ord. 89-04 (part): prior code § 6-7.10)~~

Comment [D11]: Interior noise is regulated by Title 24 of the Building Code.

8.20.~~10~~70 Prohibited actions.

A. Noise Disturbances Prohibited.

No person shall unnecessarily make, continue, or cause to be made or continued upon any public property, public right-of-way or private property, any noise disturbance.

B. Specific Prohibitions.

~~The following acts, and the causing or permitting thereof, are declared to he in violation of this chapter.~~

~~1. Radios, Tape Decks, Compact Disks, Television Sets, Musical Instruments and Similar Devices on or in Public Places.~~

1. Music

Operating, playing or permitting the operation or playing of any radio, tape decks, compact disks, mp3 player, television~~ sets~~, phonograph, ~~drum,~~ musical instrument, or similar device which produces or reproduces sound.~~:~~

~~I~~in such a manner as to exceed the level as set forth for public space in Table 7-1 (Section 8.20.0~~8~~60) measured at a distance of at least fifty (50) feet (fifteen (15) meters) from such device operating on a public right-of-way or public space;

2. Loudspeakers (~~Amplified~~ Sound-Amplifying Equipment).

Using or operating for any purpose any loudspeaker system, or similar device between the hours of ten (10) p.m. and seven (7) a.m. such that the sound therefrom ~~creates a noise disturbance across a residential real property line, or at any time~~ violates the provisions of Table 7-1 (Section 8.20.060) except for any noncommercial public speaking, public assembly or other activity for which a permit has been issued. Every user of sound-amplifying equipment shall obtain written approval from the city manager or his/her designee at least fifteen (15) days prior to the date the equipment will be used;

~~or a variance has been granted by the planning commission;~~

~~3. Street Sales.~~

~~Offering for sale, selling anything, or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the city except by a permit or a variance granted by the planning commission. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, and beverages at licensed public entertainment events;~~

Comment [DD12]: Unlikely to happen. Person doing so would need a business license.

4. Animals~~ and Fowl~~.

No person shall keep or maintain, or permit the keeping of, upon any premises owned, occupied or controlled by such person, any animal or fowl otherwise permitted to be kept which violates Chapter 6.04, ~~by any sound, cry or behavior shall cause annoyance or discomfort to a reasonable person of normal sensitivity in any residential neighborhood. The barking of a dog, or comparable emission of sounds by other animals, for more than three out of five minutes~~

between the hours of ten p.m. and seven a.m. the following day, or for more than ten (10) out of fifteen (15) minutes between the hours of seven a.m. and ten p.m., which sounds are audible within or across the real property boundaries on property other than that owned, occupied or controlled by such person, or inside any dwelling unit on the same property, but not occupied or controlled by such person, with doors and windows closed, shall constitute a prima facie violation of the provisions of this section. This provision shall not apply to public school agricultural site facilities;

Comment [D13]: There is language in the County Code, which Winters adopted by reference, which regulates animal noise.

53. Loading and Unloading.

Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of ten (10) p.m. and seven (7) a.m. in such a manner as to cause a noise disturbance across a residential real property line or, at anytime to violate the provisions of Section 8.20.0640;

643. Construction/Demolition.

a. Operating or causing the operation of any power tools or equipment used in construction, drilling, repair, alteration, or demolition work, property maintenance between weekday and Saturday hours of seven (7) p.m. and seven (7) a.m. or at any time on Sundays, weekends, or holidays, such that the sound therefrom creates a noise disturbance across a residential or commercial real property line. , except for emergency work of public service utilities or by variance granted by the planning commission.Domestic power tools or equipment may be operated to ten (10) p.m. provided the maximum noise level across the residential property line shall not exceed seventyeighty (870 dbA.; (This subsection shall not apply to the use of domestic power tools as specified in Section subsection (B)(12).

b. Noise Restrictions at Affected Properties.

Where technologically and economically feasible, construction and demolition activities shall be conducted in such a manner that the maximum noise levels at affected properties shall not exceed ninety (90) db a measured at a distance of a least fifty (50) feet (fifteen (15) meters) from any single machine or vehicle between the hours of seven a.m. and seven p.m. weekdays. Sundays and holidays shall be subject to the exterior noise level standards as set forth in Table 7-1 (Section 8.20.080);

754. Vibration.

Operating or permitting the operation of any device that creates a vibration which is above the vibration perception threshold of an individual at or beyond the real property boundary of the source if on private property or at one hundred fifty (150) feet (forty-six (46) meters) form the source if on a public space or public right-of-way;

8. Powered model vehicles5.

Comment [D14]: This type of noise would fall under mobile noise source.

Operating or permitting the operation of powered model vehicles:

a. Between the hours of seven p.m. and seven a.m. so as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of Section 8.20.060.

b. In such a manner as to exceed the levels set forth for public space land use Table 7-1 (Section 8.20.080), measured at a distance not less than on hundred (100) feet (thirty (30) meters) from any point on the path of a vehicle operating on public space or public right-of-way;

9. Stationary Nonemergency Signaling Devices.

a. Sounding or permitting the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place, for more than ten (10) seconds in any hourly period,

b. Houses of religious worship shall be exempt from the operation of this provision,

c. Sound sources covered by this provision and not exempted under subsection (B)(9)(b) shall be permitted only if a variance is issued has been issued by the planning commission;

10. Emergency Signaling Devices.

a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection herein below:

b. i. Testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds.

ii. Testing of the complete emergency signaling system, including the functioning of the signaling device, and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before seven a.m. or after ten p.m. The time limit specified in subsection (B)(10)(b)(i) shall not apply to such complete system testing.

iii. Sounding or permitting the sounding of any exterior burglar or the alarm or any motor vehicle burglar alarm unless such alarm is terminated within fifteen (15) minutes of activation;

11. Noise Sensitive Zones.

a. Creating or causing the creation of any sound within any noise sensitive zone, so as to exceed the specified land use noise standards set forth in Section 8.20.060, provided that conspicuous signs are displayed indicating the presence of the zone, or

b. Creating or causing the creation of any sound within or adjacent to any noise sensitive zone, containing a hospital, nursing home, school, court or other designated area, so as to interfere with the functions of such activity or annoy the occupants in the activity, provided that conspicuous signs are displayed indicating the presence of the zone;

12. Domestic Power Tools and Machinery.

a. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool between ten p.m. and seven a.m., so as to create a noise disturbance across a residential or commercial real property line.

b. Between the hours of seven a.m. and 10 p.m. domestic power tools may be operated provided that any such operation shall be conducted in such a manner that the maximum noise levels at affected properties shall not exceed eighty (80) dba measured across a residential or commercial real property line.

c. Any motor, machinery, pump, such as swimming pool equipment, etc., shall be sufficiently enclosed or muffled and maintained so as not to create a noise disturbance across a residential or commercial real property line;

Comment [D15]: Combined with Section 8.20.100B.6.

136. Residential Air-Conditioning or Air-Handling Equipment.

Operating or permitting the operation of any air-conditioning or air-handling equipment in such a manner as to exceed by five (5) dbA the noise level limits in Table 7-1any of the following sound levels.:

Measurement Location	Units	Units Installed After 1-1-

Formatted: Font: 11 pt

	Installed Before 1-1-80 dB(A)	80 dB(A)
Any point on neighboring property line, 5 feet above grade level, no closer than 3 feet from any wall.	60	55
Center of neighboring patio, 5 feet above grade level, no closer than 3 feet from any wall.	55	50
Outside the neighboring living area window nearest the equipment location, not more than 3 feet from the window opening, but at least 3 feet from any other surface.	55	50

Formatted: Font: 11 pt

Formatted: Right: -0.02"

Formatted: Font: 11 pt

Formatted: Font: 11 pt

14~~7~~6. Places of Public Entertainment.

Operating ~~or permitting the operation~~ or playing of any loudspeaker, musical instrument, ~~motorized racing vehicle,~~ or other source of sound in any place of public entertainment that exceeds ninety-five (95) dBA as read on the slow response of a sound level meter;

~~at any point normally occupied by a customer, without conspicuous and legible signs stating: "WARNING! SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT";~~

~~15. Tampering.~~

~~The following acts or the causing thereof are prohibited:~~

~~a. The removal or rendering inoperative, other than for purposes of maintenance, repair, or replacement of any noise control device or element thereof, of any produce identified under Section 8.20.040 (C)(5),~~

~~b. The removal of any noise label from any product identified under Section 8.20.040 (C)(5).~~

~~c. The use of a product identified under Section 8.20.040 (C)(5) which has had a noise control device or element thereof or noise label removed or rendered inoperative. (Ord. 89-04(part): prior code § 6-7.11)~~

8.20.~~11~~080 Motor vehicle noise limits.

~~A. Motor vehicles operating on public right-of-way:~~

~~Motor vehicle noise limits on a public right-of-way are regulated as set forth in the California Motor Vehicle Code, as amended from time to time, Sections 23130 and 23130.5. Equipment violations which create noise problems are covered under Sections 27150 and 27151. Any~~

~~peace officer of any jurisdiction in California may enforce these provisions. Therefore, it shall be the policy of the city to enforce these sections of the California Motor Vehicle Code.~~

~~B. Refuse Collection Vehicles/Street Sweeping.~~

~~1. No person shall collect refuse with a refuse collection vehicle between the hours of seven p.m. and six a.m. within or adjacent to a residential areas of noise sensitive zone.~~

~~2. No person authorized to engage in waste disposal service or garbage collection shall operate any truck-mounted waste or garbage loading and/or compacting equipment or similar device in any manner so as to create any noise exceeding the following levels, measured at a distance of fifty (50) feet from the equipment in an open area:~~

~~a. New equipment purchased or leased on or after a date six months from the effective date of the ordinance codified in this chapter: eighty (80) dBA.~~

~~b. New equipment purchased or leased on or after thirty-six (36) months from the effective date of this chapter: seventy-five (75) dBA.~~

~~c. Existing equipment on or after five years from the effective date of said ordinance: eighty (80) dBA.~~

~~C. Motor Vehicle Horns.~~

~~It is unlawful for any person to sound a vehicular horn except as a warning signal (Motor Vehicle Code, Section 27001).~~

~~D~~BA. Motor~~ized Recreation~~ Vehicle~~s Operating Off Public Right-of-Way~~.

No person shall operate or cause to be operated any motorized ~~recreational~~ vehicle ~~off a public right-of-way~~ in such a manner that the sound levels emitted therefrom violate the provisions of Section 8.20.0~~6~~40. This section shall apply to all motorized ~~recreational~~ vehicles, ~~whether or not duly licensed and registered~~ including, but not limited to, personal vehicles, commercial vehicles, ~~commercial or noncommercial~~ ~~racing vehicles,~~ motorcycles, go-carts~~, amphibious craft, campers, snowmobiles and dune buggies~~, ~~but not including motorboats.~~

~~E. Motorboats.~~

~~Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to cause a noise disturbance across a residential commercial real property line or at any time to violate the provisions of Section B8.20.060.~~

~~F~~C. Vehicle~~, Motorboat or Aircraft~~ Repair and Testing.

1. Repairing, rebuilding, modifying, or testing any motor vehicle, motorboat, or aircraft in such a manner as to create a noise disturbance across a residential real property boundaryline, or at any time to violate the provisions of Section 8.20.0640.

2. Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin, or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable federal laws or regulations.

G. Standing Motor Vehicles.

No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such a vehicle, for a period longer than ten (10) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way or public space within one hundred fifty (150) feet (forty-six (46) meters) of a residential area or designated noise sensitive zone. (Ord. 89-04 (part): prior code § 6-7.12)

8.20.12090 Exemptions.

A. Emergency exemption.

The provisions of this chapter shall not apply to: (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; or (2) the emission of sound in the performance of emergency work.

Comment [DD16]: The operation of an emergency vehicle cannot or should not be included in this type of ordinance.

B. Warning Devices.

Warning devices necessary for the protection of public safety, as for ample, police, fire and ambulance sirens, and train horns, shall be exempted from the provisions of this chapter.

CA. Outdoor Activities.

The provisions of this chapter shall not apply to occasional outdoor gatherings, public dances, shows, sporting and entertainment events, school bands, parades and carnivals, provided such events are conducted pursuant to a permit or license issued by the city, if required, relative to the staging of such events.

D. Exemptions from Exterior Noise Standards.

The provisions of Section 8.20.060 shall not apply to activities covered by the following specific sections:

1. 8.20.100(B)(3) Street sales;

2. 8.20.100(B)(6) Construction/Demolition;

3. 8.20.100(B)(9) Stationary Nonemergency Signaling Devices;

4. 8.20.100(B)(10) Emergency Signaling Devices;

5. 8.20.100(B)(12) Domestic Power Tools and Machinery;

6. 8.20.100(B)(13) Residential Air-Conditioning or Air-Handling Equipment;

7. 8.20.110(A) Motor Vehicles Operating on Public Right-of-Way;

8. 8.20.110(B) Refuse Collection Vehicles/Street SweepingD.

Comment [D17]: Conflicts with Section 8.20.080 B.

BE. Existing Industrial/Commercial Operations.

1. Noise sources associated with existing food processing, agricultural packing, dairy or other industrial or commercial operations, provided that noise levels generated by such operations do not exceed current levels, and provided, further, that such operations do not exceed the exterior noise level limits set out in Table 7-1 (Section 8.20.0860). For purposes of this exemption, the restriction set out in Section 8.20.0840(A)(2) shall not apply. Any new construction or expansion (but not repair or replacement of existing equipment) of said operation shall not exceed the exterior noise level standardslimits set out in Section 8.20.0840(A)(2) shall apply;

2. Noise sources associated with agricultural operations provided such operations take place between the hours of six (6) a.m. and eight (8) p.m. .; provided, however, that the operating of an internal combustion engine shall not be exempt pursuant to this subsection if such engine is not equipped with suitable mufflers and air intake silencers which are in good working order.

Comment [DD18]: Not sure if this can be enforced under the "right to farm" law.

Comment [DD19]: Redundant. Already governed by Section 18.20.080A.

3. Any mechanical device, apparatus or equipment which are utilized for the protection or salvage of agricultural crops during periods of adverse weather conditions or when the use of noise sources is necessary for pest control; provided, however, that the operating of an internal combustion engine shall not be exempt pursuant to this subsection if such engine is not equipped with suitable muffler and air intake silencers which are in good working order.

C. Air Conditioners and Similar Equipment.

1. Air conditioners, pool pumps and similar equipment provided they are in good working order.

D. Public Health and Safety Operations.

1. Work performed by city, city franchises, persons/companies under contract to the city for repairs or maintenance of roads, wells, sewers, trees, landscaping, street sweeping, garbage removal, and other similar activities.

E. Emergencies.

1. Equipment used in emergencies, including those needed to operate equipment used in an emergency.

~~F. Noise Sources Associated with Maintenance of Trees.~~

~~1. Noise sources associated with maintenance including tree removal pursuant to a city permit, of street and residential trees provided said activities take place between the hours of seven am, and seven pm.;~~

~~2. Tree and park maintenance activities including tree removal, conducted by the city recreation and parks department between the hours of seven a.m. and seven p.m.~~

Comment [D20]: Redundant. Already discussed under Section 18.20.100B6.

~~G. Federal of State Preempted Activities.~~

~~Any other activity to the extent regulation thereof has been preempted by state or federal law. (Ord. 89-04 (part): prior code § 6-7.13)~~

~~**8.20.130 Pre-existing industrial or commercial noise sources transition period.**~~
~~A. Any industrial or commercial facility in existence prior to the effective date of this chapter shall be allowed a one-year period commencing on said date within which to comply with this chapter.~~

~~B. During the one-year a period evaluation and planning by the owner of the pre-existing source shall be in place. During the grace period, the city will require that noise levels remain at or below existing levels. At the end of the grace period, the owner will be asked to provide a proposal to the city specifying what reduced noise levels are considered feasible and how those levels can be reduced. The city may grant an ordinance variance on the basis that the specified reduced noise levels will be achieved within a specified period of time as identified in the ordinance variance procedure.~~

~~C. If any facility which is not in compliance by the end of the one-year period applies for a variance pursuant to Section 8.20.140 in deciding whether to grant a variance the hearing board shall take into account the extent to which the applicant has endeavored to reduce noise during one-year period to meet the standards specified in this chapter.~~

~~D. This section applies only to a commercial or industrial facility already in existence or for which the work of improvement had commenced prior to the effective date of this chapter.~~

~~E. As used in this section, "industrial facility" means any building, structure, factory, plant, premise or portion thereof used for manufacturing or industrial purposes and "commercial facility" means any building, structure, premise or portion thereof used for wholesale or retail commercial purposes. (Ord. 89-04 (part): prior code § 6-7.14)~~

8.20.1~~14~~00 Variance procedure.

~~A.~~ The owner or operator of a noise source which violates any of the provisions of this chapter may file an application with the community development department ~~noise control office~~ for a variance from the provisions hereof as per Chapter 17.24 (Variances). ~~The application shall set forth all actions taken to comply with this chapter, the reasons why immediate compliance cannot be achieved, a proposed method for achieving compliance and a proposed time schedule for its accomplishment. If the applicant determines that compliance cannot be feasibly achieved at all, the applicant shall also set forth the reasons for such determination, the actions which have been taken to comply with this chapter, a proposed method for complying as nearly as is feasible and a proposed time schedule for its accomplishments. The application shall be accompanied by a fee payment or payments in the amount established by resolution of the city council. A separate application shall be filed for each noise source provided, however, that several mobile sources under common ownership or several fixed sources on a single property may be combined into one application. Upon receipt of the application and fee(s), the noise control office shall refer the application with its recommendation thereon within fifteen (15) days to the hearing board.~~

~~B. Upon receipt of an application for a variance, the hearing board shall schedule and notice by publication and mailing to all property owners within three hundred (300) feet of the applicant's property based on the latest available assessor's roll of record owners. The public hearing is to be conducted within thirty (30) days of receipt of the application. During the public hearing the applicant and the noise control office representative may submit oral and documentary evidence relative to their respective contentions.~~

~~C. The hearing board may deny the application for a variance or may grant a variance. The board may grant a variance to permit a condition which violates this chapter to exist. A variance may be granted for a limited period and not to exceed three hundred sixty-five (365) days, and may be subject to any other terms, conditions and requirements as the hearing board may deem reasonable to achieve maximum compliance with the provisions of this chapter. Such terms, conditions and requirements may include, but shall not he limited to, limitations on noise levels and operating hours.~~

~~D. Each variance shall set forth the approved method of achieving maximum compliance and a time schedule for its accomplishment. In its determinations, the hearing board shall consider the magnitude of nuisance caused by the offensive noise, the zoning and uses of property within area of impingement by the noise, the time factors related to study, design, financing and~~

~~construction of remedial work, the economic factors related to age and useful life of equipment and the general public interest and welfare.~~

~~E. In deciding whether to grant a variance, the hearing board shall consider all facts relating to whether strict compliance with the requirement of this chapter will cause practical difficulties, unnecessary hardship or unreasonable expense and any other relevant considerations, including but not limited to, the fact that a commercial or industrial facility as defined in Section 8.20.130 commenced development prior to the existence of a residence affected by noise from such facility.~~

~~F. The hearing board shall render a decision within thirty (30) days of completion of the hearing. The decision of the hearing board shall be transmitted to the applicant and to the noise control office.~~

~~G. Application for extension of time limits specified in variances or for modifications of other substantial conditions shall be treated as an application for an initial variance. (Ord. 89-04 (part): prior code § 6-7.15)~~

~~8.20.150 Hearing board.~~

~~The Winters planning commission is designated as the hearing board for variance requests. (Ord. 89-04 (part): prior code § 6-7.16)~~

~~8.20.160 Appeals.~~

~~Any person aggrieved with the decision of the hearing board may appeal to the city council for a de novo review by filing a written notice of appeal accompanied by a fee payment in the established by resolution of the city council, from time to time. (Ord. 89-04 (part): prior code § 6-7.17)~~

8.20.1~~7~~10 Regulations not exclusive.

It is the purpose of this chapter to provide maximum noise level limitations for otherwise lawful activities. Nothing contained in this chapter shall be deemed to authorize any otherwise prohibited activity nor to supersede otherwise existing noise limitations. In the event of a conflict between the standards contained in this chapter and any other provision of law, the more restrictive shall govern. ~~(Ord. 89-04 (part): prior code § 6-7.18)~~

8.20.1~~8~~20 Enforcement.

A. Prima Facie Violation.

Any noise exceeding the noise level limits for a designated noise zone as specified in Section 8.20.0~~6~~40 and 8.20.0~~7~~~~5~~60 or the prohibited actions as specified in Section 8.20.070 of this chapter, shall be deemed to be prima facie evidence of a violation of the provisions of this chapter.

B. Violations.

Upon the receipt of a complaint from any person, the enforcing department representative shall investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter. If such officers have reason to believe that any provision(s) of this chapter has been violated, they shall cause verbal or written notice of violation to be served upon the alleged violators Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection and shall include an order that corrective action be taken within a specified time. If corrective action is not taken within such specified time the City may take action to abate under the provisions in Chapter 19.04 (Code Enforcement Generally).

~~(b) of the California Government Code, or successor legislation. Each day such violation is committed or permitted constitutes a separate offense and shall be punishable as such. Any repetition or continuation of any violation, reasonably capable of immediate correction after receipt of written or verbal notice shall constitute a separate offense and shall be punishable as such.~~

~~2. Any such person violating or permitting violation of any of the provisions of this chapter for a third time within a one-year period is guilty of a misdemeanor, and shall be punished by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00), by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.~~

C. Additional Remedies.

~~1.~~ As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter which operation or maintenance causes or creates sound levels or vibration exceeding the allowable limits as specified in this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement under the provisions in Chapter 19.08 (Nuisance Abatement). ~~summarily by a restraining order or injunction issued by a court of competent jurisdiction. Additionally, no provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.~~

~~2. Notwithstanding the fact that violations of the provisions of this chapter are deemed to be public nuisances affecting at the same time entire neighborhoods, or considerable numbers of persons, the city council further finds and declares that by reason of their proximity and continued exposure to, and violation of the provisions of this chapter, any person owning or lawfully occupying or using any property or structure upon or within which any noise generated in violation of any provision of this chapter can be heard at such level or in such manner as to cause discomfort or annoyance to reasonable persons of normal sensitivity, or to endanger the~~

~~comfort, repose, health or peace of such person, shall be deemed specially injured and the provisions of this chapter shall be deemed to be specifically for the benefit of and may be enforced by such persons. Any such person may bring civil action in private nuisance for abatement of such violations of the provisions of this chapter or for damages if such violations persist in any such action brought pursuant to the provisions of this section seeking an award of damages, the maximum award for each violation shall be fifteen hundred dollars ($1,500.00). In establishing the amount of award, the court shall consider all relevant factors, including any actual damage, injury, or hardship to plaintiff and prior violations by defendant. No action shall be filed pursuant to this section by any private person unless that person shall have first given not less than ten (10) days prior notice of intent to file such action to the proposed defendant in such lawsuit in order to afford the proposed defendant an opportunity to correct any violation of provisions of this chapter. In the case of separate but repealed acts constituting a course of conduct, such notice need be given only once. (Ord. 89-04 (part): prior code § 6-7.19)~~

4. Amendment to Section 17.68.030 Section 17.68.030 of the Municipal Code is hereby amended to read as follows:

17.68.030 General standards.

A. Noise Levels. (Refer to Chapter 8.20 for complete provisions.)

Noise shall be controlled so as not to exceed the noise level standards set forth below, and consistent with the general plan noise element:

EXTERIOR NOISE LEVEL STANDARD, dBA		
TYPE OF ZONE/LAND USE	**DAYTIME 7 A.M. TO 10 P.M.**	**NIGHTTIME 10 P.M. TO 7 A.M.**
Rural Residential/Open Space	50	40
Residential	5~~0~~5	4~~5~~0
Parks & Recreation/Public Quasi-Public	~~55~~60	45
Commercial/Office	63	45
Industrial	73	70

NOTE: Each of the noise level standards specified above shall be reduced by five dba for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.

5. Severability. If any provision or clause of this ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are declared to be severable.

6. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Winters.

INTRODUCED at a regular meeting on the ____ day of _____, 2015 and **PASSED AND ADOPTED** at a regular meeting of the Winters City Council, County of Yolo, State of California, on the ____ day of _____, 2015 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Cecilia Aguiar-Curry, Mayor

ATTEST:

_____
Nanci G. Mills, City Clerk

attachment C

CITY COUNCIL

ORDINANCE NO. 2015 - 05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS
AMENDING VARIOUS SECTIONS OF CHAPTER 8.20 (NOISE CONTROL) AND AMENDING SECTION 17.68.030 (GENERAL STANDARDS) OF THE WINTERS MUNICIPAL CODE

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

1. Purpose. The purpose of this ordinance is to amend various sections of Chapter 8.20 Noise Control and Section 17.68.030 Performance Standards which regulate noise.

2. Authority. The City of Winters has authority to adopt this ordinance pursuant to the general police power granted to cities by Article 11, Section 7 of the California Constitution.

3. Amendment to Chapter 8.20. Chapter 8.20 Noise Control of the Municipal Code is hereby amended to read as follows:

Chapter 8.20
NOISE CONTROL

Sections:

8.20.010 Declaration of policy.
8.20.020 Definitions.
8.20.030 Authority .
8.20.040 General noise regulations and factors.
8.20.050 Noise measurement procedure.
8.20.060 Noise limits.
8.20.070 Prohibited actions.
8.20.080 Motor vehicle noise limits.
8.20.090 Exemptions.
8.20.100 Variance procedure.
8.20.110 Regulations not exclusive.
8.20.120 Enforcement.

8.20.010 Declaration of policy.

In order to control unnecessary, excessive and annoying noise and vibration in the city, it is declared to be the policy of the city to prohibit such noise and vibration generated from or by all sources as specified in this chapter. It shall be the policy of the city to maintain quiet in those areas which exhibit low noise levels and to implement programs aimed at reducing noise in those areas within the city where noise levels are above acceptable values.

It is determined that certain noise levels and vibrations are detrimental to the public health, welfare and safety, and are contrary to public interest. The provisions of this chapter and the remedies contained herein shall be cumulative and are not intended to replace any otherwise

available remedies for public, private, or mixed nuisances, nor any other civil or criminal remedies otherwise available.

8.20.020 Definitions.

All terminology used in this chapter, not defined below, shall be in conformance with applicable publications of the American National Standards institute (ANSI) or its successor body.

"A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

"Agricultural operation" means the use of a parcel of real property for the cultivation, planting, growing and harvesting of crops grown on the parcel and the feeding, pasturing and maintenance of livestock and poultry raised on the parcel. The term "agricultural operation" shall not include the use of a parcel of real property for processing farm crops, livestock, and poultry not grown or raised on the parcel.

"Ambient noise level" means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location excluding any alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

"Decibel" means a unit for measuring the amplitude of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals.

"Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

"Motor vehicle" includes any motor vehicle as defined in the California Motor Vehicle Code, as amended from time to time, including all on-highway type motor vehicles subject to registration under said Code, and all off-highway type motor vehicles subject to identification under said Code.

"Noise disturbance" means any sound which (1) endangers or injures the safety or health of human beings, or animals, or (2) annoys or disturbs reasonable persons of normal sensitivities; or (3) endangers or injures personal or real property; or (4) violates the factors set forth in Section 8.20.040. Compliance with the quantitative standards as listed herein shall constitute elimination of a noise disturbance.

"Noise source" means any device either fixed or mobile which creates sounds, including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, refrigeration equipment, and sound amplifying vehicle..

"Person" means any individual, firm, association, partnership, joint venture, corporation or other entity, public or private in nature, including an instrumentality of a state or any political

subdivision of a state; person shall also include any officer, employee or agent of any of the foregoing.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

"Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

"Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.

"Sound amplifying equipment" means any machine or device for the amplification of the human voice, music, or any other sound, excluding standard automobile radios, tape decks, compact discs, mp3 players, etc., when used and heard only by the occupants of the vehicle in which radio, tape deck, compact disc, etc., is installed. "Sound amplifying equipment," as used in this chapter, shall not include warning devices on any vehicle used only for traffic safety purposes.

"Sound amplifying vehicle" means any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound amplifying equipment.

"Sound level meter" means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in American National Standards Institute specifications for sound level meter, S1.4-1971, or the most recent revision thereof.

"Weekday" means any day, Monday through Friday, which is not a legal holiday.

8.20.030 Authority

The noise control program established by this chapter shall be administered by the office of the city manager or its duly appointed representative. The enforcing department shall be the Winters police department. All departments shall, consistent with their authorities under other ordinances administered by them, carry out their programs in such a manner as to further the policies stated in Section 8.20.010.

8.20.040 General noise regulations and factors.

Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

The factors which shall be considered in determining whether a violation of the provisions of this chapter exists shall include, but not be limited to, the following:

A. The sound level of the objectionable noise;

B. The sound level of the ambient noise;

C. The proximity of the noise to residential

D. The nature and zoning of the area within which the noise emanates, and the area affected by the noise;

E. The time of day or night the noise occurs;

F. Whether the noise is continuous, recurrent, or intermittent.

8.20.050 Noise measurement procedure.

Upon receipt of a complaint from a citizen, the enforcing department representative, equipped with sound level measurement equipment satisfying the requirements specified in 8.20.120.B, may investigate the complaint. Any investigation shall consist of a measurement and the gathering of data to adequately define the noise problem (as indicated in Section 8.20.020 "Sound level meter").

Utilizing the A-weighting scale of the sound level meter and the slow meter response the noise level shall be measured at a position or positions at any point on the receiver's property. In general, the measurements shall be made at a point at least four (4) feet from the wall, ceiling, or floor nearest the noise source, with doors and windows closed. Calibration of the measurement equipment, utilizing acoustic calibrator, shall be performed immediately prior to recording any noise data.

8.20.060 Noise limits.

A. Maximum permissible sound levels by receiving land use.

1. The noise limits for the various categories of land use identified by the enforcement department representative as presented in Table 7-1 shall, unless otherwise specifically indicated, apply to all such property within a designated zone. No person shall allow creation of any noise which exceeds the standards.

2. If a measurement location is on a boundary between two different zones, the noise level applicable to the quieter noise zone, plus five (5) dbA shall apply.

B. Correction for character of sound. In the event the alleged offensive noise, as judged by the enforcement department representative, contains a steady, audible tone such as whine, screech, or hum, or is a repetitive noise such as hammering or riveting, or contains music or

speech conveying informational content, the standard noise limits set forth in Table 7-1 shall be reduced by five (5) dbA.

Table 7-1
NOISE LEVEL LIMITS

Noise level in dBA not to be exceeded continuously during any five (5)-minute period of, if the noise level varies above and below the limit, for more than one time interval during any five (5)-minute period.

Type of zone	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Rural Residential (R-R)/ Open Space (O-S)	50	40
Residential (R-1, R-2, R-3, R-4)	55	50
*Parks and recreation (P-R)	60	45
Commercial (C-1, C-2, D-A, D-B O-F, C-H,)	63	45
Manufacturing/industrial (M-1, M-2, B-P)	73	70

* Park and recreation noise limits are based on six (6) a.m. to ten (10) p.m. consistent with Chapter 12.12.

8.20.070 Prohibited actions.

A. Noise Disturbances Prohibited.

No person shall unnecessarily make, continue, or cause to be made or continued upon any public property, public right-of-way or private property, any noise disturbance.

B. Specific Prohibitions.

1. Music

Operating, playing or permitting the operation or playing of any radio, tape decks, compact disks, mp3 player, television, phonograph, musical instrument, or similar device which produces or reproduces sound in such a manner as to exceed the level as set forth for public space in Table 7-1 (Section 8.20.060) measured at a distance of at least fifty (50) feet (fifteen (15) meters) from such device operating on a public right-of-way or public space;

2. Loudspeakers (Sound-Amplifying Equipment).

Using or operating for any purpose any loudspeaker system, or similar device between the hours of ten (10) p.m. and seven (7) a.m. such that the sound therefrom violates the provisions of Table 7-1 (Section 8.20.060) except for any noncommercial public speaking, public assembly or other activity for which a permit has been issued. Every user of sound-amplifying equipment shall obtain written approval from the city manager or his/her designee at least fifteen (15) days prior to the date the equipment will be used;

3. Animals.

No person shall keep or maintain, or permit the keeping of, upon any premises owned, occupied or controlled by such person, any animal or fowl otherwise permitted to be kept which violates Chapter 6.04;

3. Construction/Demolition.

Operating any power tools or equipment used in construction, drilling, repair, alteration, or demolition work, property maintenance on weekdays and Saturday between the hours of seven (7) p.m. and seven (7) a.m. or at any time on Sunday, or holidays, such that the sound therefrom creates a noise disturbance across a residential or commercial property line. Domestic power tools or equipment may be operated to ten (10) p.m. provided the maximum noise level across the residential property line shall not exceed seventy (70 dbA;

4. Vibration.

Operating or permitting the operation of any device that creates a vibration which is above the vibration perception threshold of an individual at or beyond the real property boundary of the source if on private property or at one hundred fifty (150) feet (forty-six (46) meters) form the source if on a public space or public right-of-way;

5. Residential Air-Conditioning or Air-Handling Equipment.

Operating or permitting the operation of any air-conditioning or air-handling equipment in such a manner as to exceed by five (5) dbA the noise level limits in Table 7-1;

6. Places of Public Entertainment.

Operating or playing of any loudspeaker, musical instrument, or other source of sound in any place of public entertainment that exceeds ninety-five (95) dBA as read on the slow response of a sound level meter;

8.20.080 Motor vehicle noise limits.

A. Motor Vehicle.

No person shall operate or cause to be operated any motorized vehicle in such a manner that the sound levels emitted therefrom violate the provisions of Section 8.20.040. This section shall apply to all motorized vehicles, including, but not limited to, personal vehicles, commercial vehicles, motorcycles, go-carts.

B. Vehicle Repair and Testing.

Repairing, rebuilding, modifying, or testing any motor vehicle, motorboat, in such a manner as to create a noise disturbance across a residential real property boundary, or at any time to violate the provisions of Section 8.20.040.

8.20.090 Exemptions.

The provisions of this chapter shall not apply to the following:

A. Outdoor Activities.

1. Occasional outdoor gatherings, public dances, shows, sporting and entertainment events, school bands, parades and carnivals, provided such events are conducted pursuant to a permit or license issued by the city, if required, relative to the staging of such events.

B. Existing Industrial/Commercial Operations.

1. Noise sources associated with existing food processing, agricultural packing, dairy or other industrial or commercial operations, provided that noise levels generated by such operations do not exceed current levels, and provided, further, that such operations do not exceed the noise level limits set out in Table 7-1 (Section 8.20.060).

2. Noise sources associated with agricultural operations provided such operations take place between the hours of six (6) a.m. and eight (8) p.m.

C. Air Conditioners and Similar Equipment.

1. Air conditioners, pool pumps and similar equipment provided they are in good working order.

D. Public Health and Safety Operations.

1. Work performed by city, city franchises, persons/companies under contract to the city for repairs or maintenance of roads, wells, sewers, trees, landscaping, street sweeping, garbage removal, and other similar activities.

E. Emergencies.

1. Equipment used in emergencies, including those needed to operate equipment used in an emergency.

8.20.100 Variance procedure.

The owner or operator of a noise source which violates any of the provisions of this chapter may file an application with the community development department for a variance from the provisions hereof as per Chapter 17.24 (Variances).

8.20.110 Regulations not exclusive.

It is the purpose of this chapter to provide maximum noise level limitations for otherwise lawful activities. Nothing contained in this chapter shall be deemed to authorize any otherwise prohibited activity nor to supersede otherwise existing noise limitations. In the event of a conflict between the standards contained in this chapter and any other provision of law, the more restrictive shall govern.

8.20.120 Enforcement.

A. Prima Facie Violation.

Any noise exceeding the noise level limits for a designated noise zone as specified in Section 8.20.040 and 8.20.060 or the prohibited actions as specified in Section 8.20.070 of this chapter, shall be deemed to be prima facie evidence of a violation of the provisions of this chapter.

B. Violations.

Upon the receipt of a complaint from any person, the enforcing department representative shall investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter. If such officers have reason to believe that any provision(s) of this chapter has been violated, they shall cause verbal or written notice of violation to be served upon the alleged violators Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection and shall include an order that corrective action be taken within a specified time. If corrective action is not taken within such specified time the City may take action to abate under the provisions in Chapter 19.04 (Code Enforcement Generally).

C. Additional Remedies.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter which operation or maintenance causes or creates sound levels or vibration exceeding the allowable limits as specified in this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement under the provisions in Chapter 19.08 (Nuisance Abatement).

4. Amendment to Section 17.68.030 Section 17.68.030 General Standards of the Municipal Code is hereby amended to read as follows:

17.68.030 General standards.

A. Noise Levels. (Refer to Chapter 8.20 for complete provisions.)

Noise shall be controlled so as not to exceed the noise level standards set forth below, and consistent with the general plan noise element:

EXTERIOR NOISE LEVEL STANDARD, dBA		
TYPE OF ZONE/LAND USE	**DAYTIME 7 A.M. TO 10 P.M.**	**NIGHTTIME 10 P.M. TO 7 A.M.**
Rural Residential/Open Space	50	40
Residential	55	50
Parks & Recreation/Public Quasi-Public	60	45
Commercial/Office	63	45
Industrial	73	70

NOTE: Each of the noise level standards specified above shall be reduced by five dba for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.

5. Severability. If any provision or clause of this ordinance or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are declared to be severable.

6. Effective Date and Notice. This ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Winters.

INTRODUCED at a regular meeting on the ____ day of _____, 2016 and **PASSED AND ADOPTED** at a regular meeting of the Winters City Council, County of Yolo, State of California, on the ____ day of _____, 2016 by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Cecilia Aguiar-Curry, Mayor

ATTEST:

_____
Nanci G. Mills, City Clerk

Formatted: Top: 0.9", Bottom: 0.9"

Chapter 8.20
NOISE CONTROL

Sections:

8.20.010 Declaration of policy.
~~8.20.020 Liberal construction.~~
8.20.0320 Definitions.
8.20.0430 Authority ~~and duties of noise control office~~.
~~8.20.050 Departmental cooperation.~~
8.20.0640 General noise regulations and factors.
8.20.0750 Noise measurement procedure.
8.20.0860 ~~Exterior n~~Noise limits.
~~8.20.090 Interior noise limits.~~
8.20.4070 Prohibited actions.
8.20.08110 Motor vehicle noise limits.
8.20.10290 Exemptions.
~~8.20.130 Pre-existing industrial or commercial noise sources transition period.~~
8.20.1400 Variance procedure.
~~8.20.150 Hearing board.~~
~~8.20.160 Appeals.~~
8.20.1710 Regulations not exclusive.
8.20.1820 Enforcement.

8.20.010 Declaration of policy.

In order to control unnecessary, excessive and annoying noise and vibration in the city, it is declared to be the policy of the city to prohibit such noise and vibration generated from or by all sources as specified in this chapter. It shall be the policy of the city to maintain quiet in those areas which exhibit low noise levels to and to implement programs aimed at reducing noise in those areas within the city where noise levels are above acceptable values.

It is determined that certain noise levels and vibrations are detrimental to the public health, welfare and safety, and are contrary to public interest. The provisions of this chapter and the remedies contained herein shall be cumulative and are not intended to replace any otherwise available remedies for public, private, or mixed nuisances, nor any other civil or criminal remedies otherwise available. (Ord. 89-04 (part): prior code § 6-7.01)

~~**8.20.020 Liberal construction.**~~

~~This chapter shall be liberally construed so as to effectuate its purposes. (Ord. 89-04 (part): prior code § 6-7.02)~~

8.20.0320 Definitions.

All terminology used in this chapter, not defined below, shall be in conformance with applicable publications of the American National Standards institute (ANSI) or its successor body.

"A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Comment [D1]: Term not used in this chapter.

~~"Agricultural property" means a parcel of property used primarily, in whole or in part, for agriculture purposes.~~

"Agricultural operation" means the use of a parcel of real property for the cultivation, planting, growing and harvesting of crops grown on the parcel and the feeding, pasturing and maintenance of livestock and poultry raised on the parcel. The term "agricultural operation" shall not include the use of a parcel of real property for processing farm crops, livestock, and poultry not grown or raised on the parcel.

"Ambient noise level" means the composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location excluding any alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

~~"Commercial area" means any commercial zoned area as defined in the city zoning ordinance, Title 17 of the Winters Municipal Code, as amended from time to time. Current commercial area designations are as shown on the zoning map, as amended.~~

~~"Construction" means any site preparation, assembly, erection, substantial repair, alteration, or similar action, for or of public or private rights-of-way, structures, utilities or similar property.~~

Comment [D2]: Defined in California Building Code

"Cumulative period" means an additive period of time composed of individual time segments which may be continuous or interrupted.

"Decibel" means a unit for measuring the amplitude of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals.

~~"Demolition" means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.~~

Comment [D3]: Defined in the California Building Code.

"Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

~~"Fixed noise source" means a stationary device which creates sounds while fixed or motionless including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, and refrigeration equipment.~~

Comment [D4]: Revised name and inserted after "noise disturbance".

~~"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating, which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.~~

~~"Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop force impacts, and the discharge of firearms.~~

Comment [D5]: Term not used in this chapter.

~~"Industrial area" means any industrial area as defined in the city zoning ordinance, Title 17 of the Winters Municipal Code, as amended from time to time. Current industrial area designations are as shown on the zoning map, as amended.~~

"Intrusive noise" means that noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency and time of occurrence, and tonal or informational content as well as the prevailing ambient noise level.

~~"Licensed" means the possession of a formal license or a permit issued by the appropriate jurisdictional authority; or, where no permits or license are issued, the sanctioning of the activity by the jurisdiction as noted in the public record.~~

Comment [D6]: Addressed in the California Vehicle Code.

~~" Mobile noise source" means any noise source other than a fixed noise source.~~

Comment [D7]: Combined with Noise Disturbance.

"Motor vehicle" includes any ~~and all self-propelled~~ motor vehicles as defined in the California Motor Vehicle Code, as amended from time to time, including all on-highway type motor vehicles subject to registration under said Code, and all off-highway type motor vehicles subject to identification under said Code.

~~"Motor boat" means any vessel propelled by machinery whether or not such machinery is the principal source of propulsion but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto (Section 651(n), Harbors and Navigation Code).~~

Comment [D8]: Motor boat is licensed by state as a "motor vehicle".

~~"Muffler or sound dissipative device" means a device consisting of a series of chambers or baffle plates or other mechanical design, for the purpose of receiving exhaust gas from the internal combustion engine, and effective in reducing noise.~~

~~"Noise control office (NCO)" municipal agency or department having lead responsibility for this chapter shall be the office of the city manager or its duly authorized representative.~~

"Noise disturbance" means any sound which~~, as judged by the Noise Control Office:~~ (1) endangers or injures the safety or health of human beings, or animals, or (2) annoys or disturbs reasonable persons of normal sensitivities; or (3) endangers or injures personal or real property; or (~~d~~4) violates the factors set forth in Section 8.20.0~~6~~40. Compliance with the quantitative standards as listed herein shall constitute elimination of a noise disturbance.

" Noise source" means any device either fixed or mobile which creates sounds, including, but not limited to, residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners, refrigeration equipment, and sound amplifying vehicle..

~~"Noise sensitive zone" means any area designated pursuant to Section 8.20.040 for the purpose of ensuring exceptional quiet.~~

~~"Noise zone" means any defined areas or regions of a generally consistent land use wherein the ambient noise levels are within a range of five db.~~

"Person" means any individual, firm, association, partnership, joint venture, corporation or other entity, public or private in nature, including an instrumentality of a state or any political subdivision of a state; person shall also include any officer, employee or agent of any of the foregoing.

~~" Powered model vehicle" means any self-propelled, airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designed to carry persons, including but not limited to, a model airplane, boat, car, or rocket.~~

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk or alley or similar place which is owned or controlled by a governmental entity.

"Public space" means any real property or structures thereon which are owned or controlled by a governmental entity.

~~"Pure tone" means any sound which can be judged as audible as a single pitch or a set of single pitches by the noise control office.~~

"Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

~~"Residential area" means any residential zoned area as defined in the city zoning ordinance Title 17 of the Winters Municipal Code as amended from time to time.~~

"Sound amplifying equipment" means any machine or device for the amplification of the human voice, music, or any other sound, excluding standard automobile radios, tape decks, compact discs, mp3 players, etc., when used and heard only by the occupants of the vehicle in which radio, tape deck, compact disc, etc., is installed. "Sound amplifying equipment," as used in this chapter, shall not include warning devices on any vehicle used only for traffic safety purposes.

"Sound level meter" means an instrument, including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for type S2A meters in American National Standards Institute specifications for sound level meter, S1.4-1971, or the most recent revision thereof.

"Sound amplifying ~~truck~~vehicle" means any motor vehicle, or any other vehicle, regardless of motive power, whether in motion or stationary, having mounted thereon, or attached thereto, any sound amplifying equipment.

~~"Vibration perception threshold" means the minimum ground or structure borne vibrational motion necessary to cause a normal person to be aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects. The perception threshold shall be presumed to be a motion velocity of 0.01 in/sec over the range of 1 to 100 Hz.~~

"Weekday" means any day, Monday through Friday, which is not a legal holiday. (Ord. 2003-04 §§ 15, 16 (part); Ord. 89-04 (part): prior code § 6-7.04)

8.20.04~~3~~0 Authority ~~and duties of noise control office.~~

~~A. Lead (Agency/Official).~~

The noise control program established by this chapter shall be administered by the office of the city manager or its duly appointed representative. The enforcing department shall be the Winters police department.

~~B. Powers.~~

~~In order to implement and enforce this chapter and for the general purpose of noise abatement and control, the NCO shall have, in addition to any other authority vested in it, the power to:~~

~~1. Studies. Conduct, or cause to be conducted, studies, research, and monitoring related to noise, including joint cooperative investigation with public or private agencies and the application for, and acceptance of, grants;~~

~~2. Education.~~

~~a. Conduct programs of public education regarding:~~

~~i. The cause and effects of noise and general methods of abatement and control of noise, and~~

~~ii. The actions prohibited by this ordinance and the procedures for reporting violations, and~~

~~b. Encourage the participation of public interest groups in related public information efforts;~~

~~c. Provide for training of field inspectors and other technical personnel concerned with noise abatement, in conformance with standards for technical qualifications as established by the State Office of Noise Control;~~

~~3. Coordination and cooperation.~~

~~a. Coordinate the noise control activities of all municipal departments,~~

~~b. Cooperate where practicable with all appropriate state and federal agencies;~~

~~c. Cooperate where practicable with appropriate county and municipal agencies;~~

~~d. Advise on the availability of low noise emission products for replacement or retrofit of existing or planned city owned or operated equipment;~~

~~4. Actions of other departments.~~

~~Request any other department or agency responsible for a proposed or final standard, regulation or similar action to consult on the advisability of revising the action, if there is reason to believe that action is not consistent with this chapter;~~

~~5. Public and private projects.~~

~~On all public and private projects which are likely to cause noise in violation of this chapter and which are subject to mandatory review or approval by any other departments:~~

~~a. All projects will be subject to the California Environmental Quality Act as amended;~~

~~b. Review for compliance with the intent and provision of this chapter;~~

~~c. Require sound analysis which identify existing and projected noise sources and associated noise levels;~~

~~d. Require usage of adequate measures to avoid violation of any provision of this chapter;~~

~~6. Inspections.~~

~~Upon presentation of proper credentials, enter and/or inspect any private property, place, report or records at any time when granted permission by owner, or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, the NCO shall obtain the cooperation of the Winters police department who may obtain a search warrant from a court of competent jurisdiction upon showing of probable cause to believe that a violation of this chapter may exist. Such inspection may include administration of any necessary tests;~~

~~7. Production performance standard recommendations.~~

~~Develop and recommend provisions regulating the use of operation of any product, including the description of maximum sound emission levels of such product, but not in such a manner as to conflict with federal and state new product regulations;~~

~~8. Noise sensitive zone recommendations.~~

~~Prepare recommendations to be reviewed by the Winters planning commission and approved by the Winters city council at public hearings for the designation of noise sensitive zones which contain noise sensitive activities;~~

~~9. Noise zone definition.~~

~~Prepare recommendations, based upon noise survey data and analytical studies, for the designation of zones of similar ambient; environmental noise within regions of generally consistent land use. These zones shall be identified in terms of their day and nighttime ambient noise levels and their land use classifications as given in Section 8.20.080, Table 7-1;~~

~~10. Zoning changes.~~

~~Prior to the approval of any zoning changes:~~

~~a. Review the noise impact of the zoning change by identifying existing and projected noise sources and the associated sound levels;~~

~~b. Require usage of adequate control measures on noise sources identified in subsection (B)(10)(a) which will be in violation of any provision of this chapter.~~

~~C. Duties of noise control office.~~

~~In order to effectively implement and enforce this chapter the NCO shall, within a reasonable time after the effective date of the ordinance codified in this chapter;~~

~~1. Measurement standards and enforcement procedures.~~

~~Develop measurement standards and procedures which will further the purposes of this chapter;~~

~~2. Investigate and pursue violations.~~

~~Under the provisions of this chapter, upon complaint, cause the Winters police department to investigate and pursue violations of this chapter;~~

~~3. Community noise element.~~

~~a. Assist in the preparation or revision thereof from time to time of the city noise element of the general plan as required by the Government Code, Section 65302 (f), as amended from time to time, following guidelines set forth by the State Office of Noise Control;~~

~~b. Assist in or review the total transportation planning of the community, including planning for new roads and highways, bus routes, airports, and other systems Of public transportation, to insure that proper consideration is taken with regard to the impact of sound levels and that the policies set forth in the noise element are adhered to;~~

c. Provide on-going assistance to local agencies in determining possible mitigation measures for current or forecast noise problems;

4. Airport noise exposure.

Assist the local airport land use commission (ALCJC) or equivalent commission in developing a plan for noise compatible land use in the vicinity of all local airports under their jurisdiction and maintain consistency with the provisions and policies of the general plan noise element and appear at any hearings or meetings regarding airport activities that would affect the noise environment of local residents in order to insure that the best interests of the community are served;

5. State and federal laws and regulations.

a. Prepare and publish a list of those products required to meet specified noise emission limits under federal, state or community law;

b. Make recommendations for modifications or amendments to this chapter to insure consistency with all state and federal laws and regulations;

6. Administer grants, funds and gifts.

Administer noise program grants, funds, and gifts from public and private sources, including the state and federal governments. (Ord. 89-04 (part): prior code § 6-7.05)

8.20.050 Departmental cooperation.

All departments shall, consistent with their authorities under other ordinances administered by them, carry out their programs in such a manner as to further the policies stated in Section 8.20.010.

A. Department cooperation.

Comment [D9]: This section is unnecessary; it is redundant.

All departments shall cooperate with the noise control office in enforcing the noise regulations of this chapter.

B. Compliance with other laws.

All departments engaged in any activities which result or may result in the emission of noise, shall comply with federal and state laws and regulations, as well as the provisions of this chapter, respecting the control and abatement of noise to the same extent that any person is subject to such laws and regulations.

C. Project approval.

Each department, whose duty it is to review and approve new projects, or changes to existing projects which result, or may result in the emission of noise, shall consult with the noise control office prior to any such approval.

~~D. Right-of-review.~~

~~If at any time the noise control office has reason to believe that a standard, regulation, or action or proposed standard, regulation, or action of any department respecting noise does not conform to the intent of this chapter as set forth in Section 8.20.010, the noise control office may cause a review to be made so as to determine if such standards and/or regulations need to be changed.~~

~~E. Contracts.~~

~~Any written agreement, purchase order, or instrument whereby the city is committed to the expenditure of funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, shall not be entered into unless such agreement, purchase order, or instrument contains provisions requiring that any equipment or activities which are subject to the provisions of this code will be operated, constructed, conducted, or manufactured without causing violation of this code where technologically and economically feasible.~~

~~F. Low noise emission products.~~

~~Any product which has been certified by the Administrator of the U.S. Environmental Protection Agency pursuant to Section 15 of the Noise Control Act of 1972 as a low noise emission product and which is determined to be suitable for use as a substitute, shall be used in preference to any other product where economically feasible. (Ord. 89-04 (part): prior code § 6-7.06)~~

8.20.0~~4~~60 General noise regulations and factors.

Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to willfully or negligently make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

The factors which shall be considered ~~by the noise control office~~ in determining whether a violation of the provisions of this chapter exists shall include, but not be limited to, the following:

A. The sound level of the objectionable noise;

B. The sound level of the ambient noise;

C. The proximity of the noise to residential ~~sleeping facilities;~~

D. The nature and zoning of the area within which the noise emanates, and the area affected by the noise;

~~E. The number of the persons affected by the noise source;~~

~~F~~E. The time of day or night the noise occurs;

~~G. The duration of the noise and its tonal, informational, or musical content;~~

~~H~~F. Whether the noise is continuous, recurrent, or intermittent. (Ord. 89-04 (part): prior code § 6-7.07)

8.20.07~~5~~0 Noise measurement procedure.

~~The measurement procedure presented below assumes that personnel performing the noise measurements have been trained in the use of the instruments and in the interpretation of measured data.~~

Upon receipt of a complaint from a citizen, the enforcing department ~~noise control office~~ representative, equipped with sound level measurement equipment satisfying the requirements specified in 6-7.04(~~ff~~), may investigate the complaint. Any investigation shall consist of a measurement and the gathering of data to adequately define the noise problem (as indicated in Section 8.20.0~~3~~20 "Sound level meter"). ~~and shall include the following:~~

Comment [D10]: Not sure where these sections are located?

Comment [D11]: Where is this language. Appears to be old ordinance number.

~~A. Nonacoustic data.~~

~~1. Type of noise source;~~

~~2. Location and zoning of noise source relative to complainant's property;~~

~~3. Time period during which noise source is considered by complainant to be intrusive;~~

~~4. Total duration of noise produced by noise source;~~

~~5. Data and time of noise measurement survey.~~

~~B.~~

Utilizing the A-weighting scale of the sound level meter and the slow meter response ~~(use fast response for impulsive type sounds),~~ the noise level shall be measured at a position or positions at any point on the receiver's property.

In general, the ~~microphone shall be located four to five feet above the ground; ten (10) feet or more from the nearest reflective surface, where possible. However, in those cases where another elevation is deemed appropriate, the later shall be utilized. If the noise complaint is related to interior noise levels, interior noise measurements shall be made within the affected residential unit. The~~ measurements shall be made at a point at least four (4) feet from the wall, ceiling, or floor nearest the noise source, with doors and windows closed. Calibration of the measurement equipment, utilizing acoustic calibrator, shall be performed immediately prior to recording any noise data. (Ord. 89-04 (part): prior code § 6-7.08)

8.20.08~~6~~0 ~~Exterior n~~Noise limits.

A. Maximum permissible sound levels by receiving land use.

1. The ~~exterior~~ noise ~~standards~~limits for the various categories of land use identified by the ~~noise control office~~enforcement department representative as presented in Table 7-1 shall, unless otherwise specifically indicated, apply to all such property within a designated zone. No person shall allow creation of any noise which exceeds the standards.

2. If a measurement location is on a boundary between two different zones, the noise level applicable to the quieter noise zone, plus five (5) db shall apply.

B. Correction for character of sound.

Formatted: Indent: Left: 0"

In the event the alleged offensive noise, as judged by the ~~noise control officer~~enforcement department representative, contains a steady, audible tone such as whine, screech, or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech conveying informational content, the standard ~~exterior~~ noise limits set forth in Table 7-1 shall be reduced by five (5) db.

Table 7-1
~~EXTERIOR~~ NOISE LEVEL LIMITS

Noise level in dBA not to be exceeded continuously during any five (5)-minute period of, if the noise level varies above and below the limit, for more than one time interval during any five (5)-minute period.

Type of zone	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
Rural (OS)	50	40
Residential	5~~0~~5	45~~0~~
*Parks and recreation (P-R)	~~5~~60	45
Commercial (C-1, C-2, NC, CH, CS)	63	45
Manufacturing/industrial (M-1, M-2, PI)	73	70

~~These noise levels are not to be exceeded at any point within the boundaries of a property zone as indicated. (Ord. 2003-04 § 16 (part); Ord. 89-04 (part): prior code § 6-7.09)~~

Comment [D12]: This section seems to disagree with the language 8.20.070B

~~**8.20.090 Interior noise limits.**~~

~~A. Maximum permissible dwelling interior sound levels.~~

~~The interior noise standards for residential dwellings as presented in Table 10-1 shall apply, unless otherwise specifically indicated, within all such dwellings, with doors and windows closed. No person shall allow creation of any noise which exceeds the standards.~~

~~Table 10-1~~

~~INTERIOR NOISE LEVEL LIMITS.~~

~~Noise level in dBA not to be exceeded continuously during any five minute period or, if the noise level varies above and below the limit for more than one time interval during any five minute period.~~

~~Type of Zone~~	~~Time interval~~	~~Allowable InteriorNoise Level (dBA)~~
~~Any residential zone~~	~~7 a.m.—7 p.m.~~	~~45~~
	~~7 p.m.-10 p.m.~~	~~45~~
	~~10 p.m.-7 a.m.~~	~~35~~

* Park and recreation noise limits are based on six (6) a.m. to ten (10) p.m. consistent with Chapter 12.12.

~~B. Correction for character of sound.~~

~~In the event the alleged offensive noise, as judged by the noise control office, contains a steady, audible tone such as a whine, screech, or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech conveying informational content, the standard limits set forth in Table 10-1 shall be reduced by five dB. (Ord. 89-04 (part): prior code § 6-7.10)~~

Comment [D13]: I think interior noise is regulated by Title 24 of the CBC.

8.20.107~~0~~0 Prohibited actions.

A. Noise Disturbances Prohibited.

No person shall unnecessarily make, continue, or cause to be made or continued, any noise disturbance.

B. Specific Prohibitions.

~~The following acts, and the causing or permitting thereof, are declared to he in violation of this chapter.~~

~~1. Radios, Tape Decks, Compact Disks, Television Sets, Musical Instruments and Similar Devices on or in Public Places.~~

1. Music

Operating, playing or permitting the operation or playing of any radio, tape decks, compact disks, mp3 player, television ~~sets~~, phonograph, drum, musical instrument, or similar device which produces or reproduces sound ~~:~~

~~I~~in such a manner as to exceed the level as set forth for public space in Table 7-1 (Section 8.20.086~~0~~) measured at a distance of at least fifty (50) feet (fifteen (15) meters) from such device operating on a public right-of-way or public space;

2. Loudspeakers (Amplified Sound).

Using or operating for any purpose any loudspeaker system, or similar device between the hours of ten (10) p.m. and seven (7) a.m. such that the sound therefrom ~~creates a noise disturbance across a residential real property line, or at any time~~ violates the provisions of Table 7-1 (Section 8.20.0~~8~~60) except for any noncommercial public speaking, public assembly or other activity for which a permit has been issued.

~~or a variance has been granted by the planning commission;~~

~~3. Street Sales.~~

~~Offering for sale, selling anything, or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the city except by a permit or a variance granted by the planning commission. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, and beverages at licensed public entertainment events;~~

~~4. Animals and Fowl.~~

~~No person shall keep or maintain, or permit the keeping of, upon any premises owned, occupied or controlled by such person, any animal or fowl otherwise permitted to be kept which, by any sound, cry or behavior shall cause annoyance or discomfort to a reasonable person of normal sensitivity in any residential neighborhood. The barking of a dog, or comparable emission of sounds by other animals, for more than three out of five minutes between the hours of ten p.m. and seven a.m. the following day, or for more than ten (10) out of fifteen (15) minutes between the hours of seven a.m. and ten p.m., which sounds are audible within or across the real property boundaries on property other than that owned, occupied or controlled by such person, or inside any dwelling unit on the same property, but not occupied or controlled by such person, with doors and windows closed, shall constitute a prima facie violation of the provisions of this section. This provision shall not apply to public school agricultural site facilities;~~

Comment [D14]: Move this section to Title 6 Animals.

~~5~~3. Loading and Unloading.

Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects between the hours of ten (10) p.m. and seven (7) a.m. in such a manner as to cause a noise disturbance across a residential real property line or, at anytime to violate the provisions of Section 8.20.0~~6~~40;

~~6~~4. Construction/Demolition.

a. Operating or causing the operation of any power tools or equipment used in construction, drilling, repair, alteration, or demolition work, property maintenance between weekday and Saturday hours of seven (7) p.m. and seven (7) a.m. or at any time on Sundays, ~~weekends,~~ or holidays, such that the sound therefrom creates a noise disturbance across a residential or commercial real property line~~, except for emergency work of public service utilities or by variance granted by the planning commission.~~ domestic power tools or equipment may be operated to ten (10) p.m. provided the maximum noise

level across the residential property line shall not exceed eighty (80 dbA. ~~(This subsection shall not apply to the use of domestic power tools as specified in Section subsection (B)(12).~~

b. Noise Restrictions at Affected Properties.

~~Where technologically and economically feasible, construction and demolition activities shall be conducted in such a manner that the maximum noise levels at affected properties shall not exceed ninety (90) db a measured at a distance of a least fifty (50) feet (fifteen (15) meters) from any single machine or vehicle between the hours of seven a.m. and seven p.m. weekdays. Sundays and holidays shall be subject to the exterior noise level standards as set forth in Table 7-1 (Section 8.20.080);~~

~~7~~5. Vibration.

Operating or permitting the operation of any device that creates a vibration which is above the vibration perception threshold of an individual at or beyond the property boundary of the source if on private property or at one hundred fifty (150) feet (forty-six (46) meters) form the source if on a public space or public right-of-way;

~~8. Powered model vehicles.~~

Comment [D15]: This type of noise would fall under mobile noise source.

~~Operating or permitting the operation of powered model vehicles:~~

~~a. Between the hours of seven p.m. and seven a.m. so as to create a noise disturbance across a residential or commercial real property line or at any time to violate the provisions of Section 8.20.060.~~

~~b. In such a manner as to exceed the levels set forth for public space land use Table 7-1 (Section 8.20.080), measured at a distance not less than on hundred (100) feet (thirty (30) meters) from any point on the path of a vehicle operating on public space or public right-of-way;~~

~~9. Stationary Nonemergency Signaling Devices.~~

~~a. Sounding or permitting the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place, for more than ten (10) seconds in any hourly period.~~

Comment [D16]: This type of noise would fall under fixed noise source.

~~b. Houses of religious worship shall be exempt from the operation of this provision.~~

Comment [D17]: Move to Exemptions 8.20.120.

~~c. Sound sources covered by this provision and not exempted under subsection (B)(9)(b) shall be permitted only if a variance is issued has been issued by the planning commission;~~

~~10. Emergency Signaling Devices.~~

~~a. The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in subsection herein below:~~

~~b. i. Testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds.~~

~~ii. Testing of the complete emergency signaling system, including the functioning of the signaling device, and the personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before seven a.m. or after ten p.m. The time limit specified in subsection (B)(10)(b)(i) shall not apply to such complete system testing.~~

~~iii. Sounding or permitting the sounding of any exterior burglar or the alarm or any motor vehicle burglar alarm unless such alarm is terminated within fifteen (15) minutes of activation;~~

~~11. Noise Sensitive Zones.~~

~~a. Creating or causing the creation of any sound within any noise sensitive zone, so as to exceed the specified land use noise standards set forth in Section 8.20.060, provided that conspicuous signs are displayed indicating the presence of the zone, or~~

~~b. Creating or causing the creation of any sound within or adjacent to any noise sensitive zone, containing a hospital, nursing home, school, court or other designated area, so as to interfere with the functions of such activity or annoy the occupants in the activity, provided that conspicuous signs are displayed indicating the presence of the zone;~~

~~12. Domestic Power Tools and Machinery.~~

~~a. Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool between ten p.m. and seven a.m., so as to create a noise disturbance across a residential or commercial real property line.~~

~~b. Between the hours of seven a.m. and 10 p.m. domestic power tools may be operated provided that any such operation shall be conducted in such a manner that the maximum noise levels at affected properties shall not exceed eighty (80) dba measured across a residential or commercial real property line.~~

~~c. Any motor, machinery, pump, such as swimming pool equipment, etc., shall be sufficiently enclosed or muffled and maintained so as not to create a noise disturbance across a residential or commercial real property line;~~

~~13~~6. Residential Air-Conditioning or Air-Handling Equipment.

Operating or permitting the operation of any air-conditioning or air-handling equipment in such a manner as to exceed by five (5) db the noise level limits in Table 7-1~~any of the following sound levels~~.:

~~Measurement Location~~	~~Units Installed Before 1-1-80 dB(A)~~	~~Units Installed After 1-1-80 dB(A)~~
~~Any point on neighboring property line, 5 feet above grade level, no closer than 3 feet from any wall.~~	~~60~~	~~55~~
~~Center of neighboring patio, 5 feet above grade level, no closer than 3 feet from any wall.~~	~~55~~	~~50~~
~~Outside the neighboring living area window nearest the equipment location, not more than 3 feet from the window opening, but at least 3 feet from any other surface.~~	~~55~~	~~50~~

Formatted Table

Formatted: Font: 9 pt

Formatted: None, Right: -0.13", Space Before: 0 pt, Don't keep with next, Don't keep lines together

Formatted: Right: -0.02"

~~14~~7. Places of Public Entertainment.

Operating or permitting the operation or playing of any loudspeaker, musical instrument, motorized racing vehicle, or other source of sound in any place of public entertainment that exceeds ninety-five (95) dBA as read on the slow response of a sound level meter at any point normally occupied by a customer, without conspicuous and legible signs stating: "WARNING! SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT";

~~15. Tampering.~~

~~The following acts or the causing thereof are prohibited:~~

~~a. The removal or rendering inoperative, other than for purposes of maintenance, repair, or replacement of any noise control device or element thereof, of any produce identified under Section 8.20.040 (C)(5),~~

~~b. The removal of any noise label from any product identified under Section 8.20.040 (C)(5).~~

~~c. The use of a product identified under Section 8.20.040 (C)(5) which has had a noise control device or element thereof or noise label removed or rendered inoperative. (Ord. 89-04(part): prior code § 6-7.11)~~

8.20.~~11~~080 Motor vehicle noise limits.

A. Motor vehicles operating on public right-of-way:

Motor vehicle noise limits on a public right-of-way are regulated as set forth in the California Motor Vehicle Code, as amended from time to time~~, Sections 23130 and 23130.5. Equipment violations which create noise problems are covered under Sections 27150 and 27151.~~ Any peace officer of any jurisdiction in California may enforce these provisions. Therefore, it shall be the policy of the city to enforce these sections of the California Motor Vehicle Code.

~~B. Refuse Collection Vehicles/Street Sweeping.~~

~~1. No person shall collect refuse with a refuse collection vehicle between the hours of seven p.m. and six a.m. within or adjacent to a residential areas of noise sensitive zone.~~

~~2. No person authorized to engage in waste disposal service or garbage collection shall operate any truck-mounted waste or garbage loading and/or compacting equipment or similar device in any manner so as to create any noise exceeding the following levels, measured at a distance of fifty (50) feet from the equipment in an open area:~~

~~a. New equipment purchased or leased on or after a date six months from the effective date of the ordinance codified in this chapter: eighty (80) dBA.~~

~~b. New equipment purchased or leased on or after thirty-six (36) months from the effective date of this chapter: seventy-five (75) dBA.~~

~~c. Existing equipment on or after five years from the effective date of said ordinance: eighty (80) dBA.~~

~~C. Motor Vehicle Horns.~~

~~It is unlawful for any person to sound a vehicular horn except as a warning signal (Motor Vehicle Code, Section 27001).~~

~~D~~B. Motorized ~~Recreation~~ Vehicles Operating Off Public Right-of-Way.

No person shall operate or cause to be operated any motorized ~~recreational~~ vehicle off a public right-of-way in such a manner that the sound levels emitted therefrom violate the provisions of Section 8.20.0640. This section shall apply to all motorized ~~recreational~~ vehicles, ~~whether or not duly licensed and registered~~ including, but not limited to, personal vehicles, commercial vehicles, ~~commercial or noncommercial~~ racing vehicles, motorcycles, go-carts, amphibious craft, campers, snowmobiles and dune buggies.~~, but not including motorboats.~~

~~E. Motorboats.~~

~~Operating or permitting the operation of any motorboat in any lake, river, stream, or other waterway in such a manner as to cause a noise disturbance across a residential commercial real property line or at any time to violate the provisions of Section 8.20.060.~~

~~F~~C. Vehicle~~, Motorboat or Aircraft~~ Repair and Testing.

1. Repairing, rebuilding, modifying, or testing any motor vehicle, motorboat, or aircraft in such a manner as to create a noise disturbance across a residential real property line, or at any time to violate the provisions of Section 8.20.0640.

2. Nothing in this section shall be construed to prohibit, restrict, penalize, enjoin, or in any manner regulate the movement of aircraft which are in all respects conducted in accordance with, or pursuant to, applicable federal laws or regulations.

~~G. Standing Motor Vehicles.~~

~~No person shall operate or permit the operation of any motor vehicle with a gross vehicle weight rating (GVWR) in excess of ten thousand (10,000) pounds, or any auxiliary equipment attached to such a vehicle, for a period longer than ten (10) minutes in any hour while the vehicle is stationary, for reasons other than traffic congestion, on a public right-of-way or public space within one hundred fifty (150) feet (forty-six (46) meters) of a residential area or designated noise sensitive zone. (Ord. 89-04 (part): prior code § 6-7.12)~~

8.20.~~12~~090 Exemptions.

A. Emergency exemption.

The provisions of this chapter shall not apply to: (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; or (2) the emission of sound in the performance of emergency work.

B. Warning Devices.

Warning devices necessary for the protection of public safety, as for ample, police, fire and ambulance sirens, and train horns, shall be exempted from the provisions of this chapter.

C. Outdoor Activities.

The provisions of this chapter shall not apply to occasional outdoor gatherings, public dances, shows, sporting and entertainment events, school bands, parades and carnivals, provided such events are conducted pursuant to a permit or license issued by the city, if required, relative to the staging of such events.

~~D. Exemptions from Exterior Noise Standards.~~

~~The provisions of Section 8.20.060 shall not apply to activities covered by the following specific sections:~~

~~1. 8.20.100(B)(3) Street sales;~~

~~2. 8.20.100(B)(6) Construction/Demolition;~~

~~3. 8.20.100(B)(9) Stationary Nonemergency Signaling Devices;~~

~~4. 8.20.100(B)(10) Emergency Signaling Devices;~~

~~5. 8.20.100(B)(12) Domestic Power Tools and Machinery;~~

~~6. 8.20.100(B)(13) Residential Air-Conditioning or Air-Handling Equipment;~~

~~7. 8.20.110(A) Motor Vehicles Operating on Public Right-of-Way;~~

~~8. 8.20.110(B) Refuse Collection Vehicles/Street Sweeping~~D.

Comment [D19]: Redundant

~~E.~~ Existing Industrial/Commercial Operations.

1. Noise sources associated with existing food processing, agricultural packing, dairy or other industrial or commercial operations, provided that noise levels generated by such operations do not exceed current levels, and provided, further, that such operations do not exceed the ~~exterior~~ noise level limits set out in Table 7-1 (Section 8.20.0~~8~~60). For purposes of this exemption, the restriction set out in Section 8.20.0~~8~~40(A)(2) shall not apply. Any new construction or expansion (but not repair or replacement of existing equipment) of said operation shall not exceed the ~~exterior~~ noise level ~~standards~~limits set out in Section 8.20.0~~8~~40(A)(2) shall apply;

2. Noise sources associated with agricultural operations provided such operations take place between the hours of six (6) a.m. and eight (8) p.m.; provided, however, that the operating of an internal combustion engine shall not be exempt pursuant to this subsection if such engine is not equipped with suitable mufflers and air intake silencers which are in good working order.

~~3. Any mechanical device, apparatus or equipment which are utilized for the protection or salvage of agricultural crops during periods of adverse weather conditions or when the use of noise sources is necessary for pest control; provided, however, that the operating of an internal combustion engine shall not be exempt pursuant to this subsection if such engine is not equipped with suitable muffler and air intake silencers which are in good working order.~~

~~F. Noise Sources Associated with Maintenance of Trees.~~

~~1. Noise sources associated with maintenance including tree removal pursuant to a city permit, of street and residential trees provided said activities take place between the hours of seven am, and seven pm.;~~

~~2. Tree and park maintenance activities including tree removal, conducted by the city recreation and parks department between the hours of seven a.m. and seven p.m.~~

Comment [D20]: Already discussed under 18.20.100B6.

~~G. Federal of State Preempted Activities.~~

~~Any other activity to the extent regulation thereof has been preempted by state or federal law. (Ord. 89-04 (part): prior code § 6-7.13)~~

~~8.20.130 Pre-existing industrial or commercial noise sources transition period.~~

~~A. Any industrial or commercial facility in existence prior to the effective date of this chapter shall be allowed a one year period commencing on said date within which to comply with this chapter.~~

~~B. During the one year a period evaluation and planning by the owner of the pre-existing source shall be in place. During the grace period, the city will require that noise levels remain at or below existing levels. At the end of the grace period, the owner will be asked to provide a proposal to the city specifying what reduced noise levels are considered feasible and how those levels can be reduced. The city may grant an ordinance variance on the basis that the specified reduced noise levels will be achieved within a specified period of time as identified in the ordinance variance procedure.~~

~~C. If any facility which is not in compliance by the end of the one-year period applies for a variance pursuant to Section 8.20.140 in deciding whether to grant a variance the hearing board shall take into account the extent to which the applicant has endeavored to reduce noise during one-year period to meet the standards specified in this chapter.~~

~~D. This section applies only to a commercial or industrial facility already in existence or for which the work of improvement had commenced prior to the effective date of this chapter.~~

~~E. As used in this section, "industrial facility" means any building, structure, factory, plant, premise or portion thereof used for manufacturing or industrial purposes and "commercial facility" means any building, structure, premise or portion thereof used for wholesale or retail commercial purposes. (Ord. 89-04 (part): prior code § 6-7.14)~~

8.20.1~~14~~00 Variance procedure.

~~A.~~ The owner or operator of a noise source which violates any of the provisions of this chapter may file an application with the community development department ~~noise control office~~ for a variance from the provisions hereof as per Chapter 17.24 (Variances). ~~The application shall set forth all actions taken to comply with this chapter, the reasons why immediate compliance cannot be achieved, a proposed method for achieving compliance and a proposed time schedule for its accomplishment. If the applicant determines that compliance cannot be feasibly achieved at all, the applicant shall also set forth the reasons for such determination, the actions which have been taken to comply with this chapter, a proposed method for complying as nearly as is feasible and a proposed time schedule for its accomplishments. The application shall be accompanied by a fee payment or payments in the amount established by resolution of the city council. A separate application shall be filed for each noise source provided, however, that several mobile sources under common ownership or several fixed sources on a single property may be combined into one application. Upon receipt of the application and fee(s), the noise control office shall refer the application with its recommendation thereon within fifteen (15) days to the hearing board.~~

~~B. Upon receipt of an application for a variance, the hearing board shall schedule and notice by publication and mailing to all property owners within three hundred (300) feet of the applicant's property based on the latest available assessor's roll of record owners. The public hearing is to be conducted within thirty (30) days of receipt of the application. During the public hearing the applicant and the noise control office representative may submit oral and documentary evidence relative to their respective contentions.~~

~~C. The hearing board may deny the application for a variance or may grant a variance. The board may grant a variance to permit a condition which violates this chapter to exist. A variance may be granted for a limited period and not to exceed three hundred sixty-five (365) days, and may be subject to any other terms, conditions and requirements as the hearing board may deem reasonable to achieve maximum compliance with the provisions of this chapter. Such terms, conditions and requirements may include, but shall not he limited to, limitations on noise levels and operating hours.~~

~~D. Each variance shall set forth the approved method of achieving maximum compliance and a time schedule for its accomplishment. In its determinations, the hearing board shall consider the magnitude of nuisance caused by the offensive noise, the zoning and uses of property within area of impingement by the noise, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of equipment and the general public interest and welfare.~~

~~E. In deciding whether to grant a variance, the hearing board shall consider all facts relating to whether strict compliance with the requirement of this chapter will cause practical difficulties, unnecessary hardship or unreasonable expense and any other relevant considerations, including but not limited to, the fact that a commercial or industrial facility as defined in Section 8.20.130 commenced development prior to the existence of a residence affected by noise from such facility.~~

~~F. The hearing board shall render a decision within thirty (30) days of completion of the hearing. The decision of the hearing board shall be transmitted to the applicant and to the noise control office.~~

~~G. Application for extension of time limits specified in variances or for modifications of other substantial conditions shall be treated as an application for an initial variance. (Ord. 89-04 (part): prior code § 6-7.15)~~

~~8.20.150 Hearing board.~~

Formatted: None, Space Before: 0 pt, After: 12 pt

~~The Winters planning commission is designated as the hearing board for variance requests. (Ord. 89-04 (part): prior code § 6-7.16)~~

~~8.20.160 Appeals.~~

~~Any person aggrieved with the decision of the hearing board may appeal to the city council for a de novo review by filing a written notice of appeal accompanied by a fee payment in the established by resolution of the city council, from time to time. (Ord. 89-04 (part): prior code § 6-7.17)~~

8.20.1710 Regulations not exclusive.

It is the purpose of this chapter to provide maximum noise level limitations for otherwise lawful activities. Nothing contained in this chapter shall be deemed to authorize any otherwise prohibited activity nor to supersede otherwise existing noise limitations. In the event of a conflict between the standards contained in this chapter and any other provision of law, the more restrictive shall govern. (Ord. 89-04 (part): prior code § 6-7.18)

8.20.1820 Enforcement.

A. Prima Facie Violation.

Any noise exceeding the noise level limits for a designated noise zone as specified in Section 8.20.0640 and 8.20.0750 or the prohibited actions as specified in Section 8.20.0870 of this chapter, shall be deemed to be prima facie evidence of a violation of the provisions of this chapter.

B. Violations.

Upon the receipt of a complaint from any person, the chief of police, or duly authorized representatives shall investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter. If such officers have reason to believe that any provision(s) of this chapter has been violated, they shall cause verbal or written notice of violation to be served upon the alleged violators Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection and shall include an order that corrective action be taken within a specified time. If corrective action is not taken within such specified time:

1. Any such person violating or permitting violation of any of the provisions of this chapter is guilty of an infraction for each of the first two violations within a period of one year and, upon conviction thereof, shall be fined not less than the maximum fine prescribed in accordance with the provisions of Section 36900(b) of the California Government Code, or successor legislation. Each day such violation is committed or permitted constitutes a separate offense and shall be punishable as such. Any repetition or continuation of any violation, reasonably capable of immediate correction after receipt of written or verbal notice shall constitute a separate offense and shall be punishable as such.

2. Any such person violating or permitting violation of any of the provisions of this chapter for a third time within a one-year period is guilty of a misdemeanor, and shall be punished by a fine of not less than two hundred fifty dollars ($250.00) nor more than one thousand dollars ($1,000.00), by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

C. Additional Remedies.

1. As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter which operation or maintenance causes or

creates sound levels or vibration exceeding the allowable limits as specified in this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. Additionally, no provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.

2. Notwithstanding the fact that violations of the provisions of this chapter are deemed to be public nuisances affecting at the same time entire neighborhoods, or considerable numbers of persons, the city council further finds and declares that by reason of their proximity and continued exposure to, and violation of the provisions of this chapter, any person owning or lawfully occupying or using any property or structure upon or within which any noise generated in violation of any provision of this chapter can be heard at such level or in such manner as to cause discomfort or annoyance to reasonable persons of normal sensitivity, or to endanger the comfort, repose, health or peace of such person, shall be deemed specially injured and the provisions of this chapter shall be deemed to be specifically for the benefit of and may be enforced by such persons. Any such person may bring civil action in private nuisance for abatement of such violations of the provisions of this chapter or for damages if such violations persist in any such action brought pursuant to the provisions of this section seeking an award of damages, the maximum award for each violation shall be fifteen hundred dollars ($1,500.00). In establishing the amount of award, the court shall consider all relevant factors, including any actual damage, injury, or hardship to plaintiff and prior violations by defendant. No action shall be filed pursuant to this section by any private person unless that person shall have first given not less than ten (10) days prior notice of intent to file such action to the proposed defendant in such lawsuit in order to afford the proposed defendant an opportunity to correct any violation of provisions of this chapter. In the case of separate but repealed acts constituting a course of conduct, such notice need be given only once. (Ord. 89-04 (part): prior code § 6-7.19)

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Custom Color(RGB(102,153,255))

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Custom Color(RGB(102,153,255))

Formatted: Font: (Default) Times New Roman, 12 pt, Font color: Custom Color(RGB(102,153,255))

Chapter 17.68
PERFORMANCE STANDARDS

Sections:

17.68.010 Purpose and intent.
17.68.020 Applicability.
17.68.030 General standards.

17.68.010 Purpose and intent.

It is the purpose and intent of these standards to prevent any use which may create dangerous, injurious, noxious, or otherwise objectionable conditions. (Ord. 97-03 § 2 (part): prior code § 8-1.6002(A))

17.68.020 Applicability.

These performance standards shall apply to all uses and properties in the city including existing uses. The planning commission may approve extensions for compliance for existing uses with a contract and schedule for full compliance. The maximum time limit of an extension shall be five years and shall be based on the degree of expenditure needed to achieve full compliance compared to the total value of the improvements related to the use and the degree of hazard or impact to the adjoining properties and the community from the existing non-compliance with the standards. (Ord. 97-03 § 2 (part): prior code § 8-1.6002(B))

17.68.030 General standards.

A. Noise Levels. (Refer to Chapter 8.20 for complete provisions.)

Noise shall be controlled so as not to exceed the noise level standards set forth below, and consistent with the general plan noise element:

EXTERIOR NOISE LEVEL STANDARD, dBA		
TYPE OF ZONE/LAND USE	**DAYTIME 7 A.M. TO 10 P.M.**	**NIGHTTIME 10 P.M. TO 7 A.M.**
Rural Residential/Open Space	50	40
Residential	50~~5~~	45~~0~~
Parks & Recreation/Public Quasi-Public	~~55~~60	45
Commercial/Office	63	45
Industrial	73	70

NOTE: Each of the noise level standards specified above shall be reduced by five dba for simple tone noises, noises consisting primarily of speech or music, or for recurring impulsive noises.