



City of Covina/Successor Agency to the
Covina Redevelopment Agency/
Covina Public Finance Authority/
Covina Housing Authority

Mayor Kevin Stapleton – Mayor Pro Tem Walt Allen, III
Council Members Peggy Delach – John King – Bob Low

REGULAR MEETING AGENDA
125 E. College Street, Covina, California
Council Chamber of City Hall
Tuesday, January 15, 2013
6:30 p.m.

- As a courtesy to Council/Agency/Authority Members, staff and attendees, everyone is asked to silence all pagers, cellular telephones and any other communication devices.
- Any member of the public may address the Council/Agency/Authority during both the public comment period and on any scheduled item on the agenda. Comments are limited to a maximum of five minutes per speaker unless, for good cause, the Mayor/Chairperson amends the time limit. Anyone wishing to speak is requested to submit a yellow Speaker Request Card to the City Clerk; cards are located near the agendas or at the City Clerk's desk.
- Please provide 10 copies of any information intended for use at the Council/Agency/Authority meeting to the City Clerk prior to the meeting.
- MEETING ASSISTANCE INFORMATION: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (626) 384-5430. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.
- DOCUMENT AVAILABILITY: Any writings or documents provided to a majority of the Council/Agency/Authority regarding any item on this agenda will be made available for public inspection at the City Clerk's Office counter at City Hall located at 125 E. College Street and the reference desk at the Covina Library located at 234 North Second Avenue during normal business hours. In addition, such writings and documents are available in the City Clerk's Office and posted on the City's website at www.covinaca.gov.
- Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Covina Housing Authority unless listed on agenda, which has been posted not less than 72 hours prior to meeting.
- If you challenge in court any discussion or action taken concerning an item on this Agenda, you may be limited to raising only those issues you or someone else raised during the meeting or in written correspondence delivered to the City at or prior to the City's consideration of the item at the meeting.
- The Sr. Deputy City Clerk of the Covina City Council hereby declares that the agenda for the **January 15, 2013** meeting was posted on **January 10, 2013** near the front entrance of the City Hall, 125 East College Street, Covina, in accordance with Section 54954.2(a) of the California Government Code.

January 15, 2013

**CITY COUNCIL/SUCCESSOR AGENCY TO THE
COVINA REDEVELOPMENT AGENCY/
COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY
JOINT MEETING—CLOSED SESSION
6:30 p.m.**

CALL TO ORDER

ROLL CALL

Council/Agency/Authority Members Delach, King, Low, Mayor Pro Tem/Vice Chairperson Allen and Mayor/Chairperson Stapleton

PUBLIC COMMENTS

The Public is invited to make comment on Closed Session items only at this time. To address the Council/Agency/Authority please complete a yellow speaker request card located at the entrance and give it to the City Clerk. Your name will be called when it is your turn to speak. Individual speakers are limited to five minutes each.

The City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority will adjourn to Closed Session for the following:

CLOSED SESSION

- A. G.C. §54957.6 – CONFERENCE WITH LABOR NEGOTIATORS
Agency representative: Anthony Arroyo, Human Resources Director
Employee Organizations: A.F.S.C.M.E. – American Federation of State, County & Municipal Employees
P.A.C. – Police Association of Covina
P.M.G. – Police Management Group
Executive Group
Unaffiliated Employees
- B. G.C. §54956.9(a) – CONFERENCE WITH LEGAL COUNCIL – Existing Litigation
Name of case: Anthony Encinas v. City of Covina
Case No. KC064837

RECESS

**CITY COUNCIL/SUCCESSOR AGENCY TO THE
COVINA REDEVELOPMENT AGENCY/
COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY
JOINT MEETING—OPEN SESSION
7:30 p.m.**

RECONVENE/CALL TO ORDER

ROLL CALL

Council/Agency/Authority Members Delach, King, Low, Mayor Pro Tem/Vice Chairperson Allen and Mayor/Chairperson Stapleton

PLEDGE OF ALLEGIANCE

Led by Mayor Stapleton

INVOCATION

Led by Covina Police Chaplain David Truax

PRESENTATIONS

Recognition: Covina Vikings Junior Pee Wee Football

Recognition: Master Wan Ko Yee International Cultural Institute

Presentation: Engagement Award and Energy Leader Model Achievement Recognition

PUBLIC COMMENTS

To address the Council/Agency/Authority please complete a yellow speaker request card located at the entrance and give it to the City Clerk/Agency/Authority Secretary. Your name will be called when it is your turn to speak. Those wishing to speak on a LISTED AGENDA ITEM will be heard when that item is addressed. Those wishing to speak on an item NOT ON THE AGENDA will be heard at this time. State Law prohibits the Council/Agency/Authority Members from taking action on any item not on the agenda. Individual speakers are limited to five minutes each.

COUNCIL/AGENCY/AUTHORITY COMMENTS

Council/Agency/Authority Members wishing to make any announcements of public interest or to request that specific items be added to future City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority Agendas may do so at this time.

CITY MANAGER COMMENTS

CONSENT CALENDAR

All matters listed under consent calendar are considered routine, and will be enacted by one motion. There will be no separate discussion on these items prior to the time the Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority votes on them, unless a member of the Council/Agency/Authority requests a specific item be removed from the consent calendar for discussion.

- CC 1. City Council to approve the minutes from the December 18, 2012 regular meeting of the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority.
- CC 2. City Council to Award a Bid for electrical service and panel replacement for Forestdale Reservoir Site, Project No. W-1201.
- CC 3. City Council to receive and file the Public Works Department Monthly Activity Report.
- CC 4. City Council to approve a salary adjustment for Building Maintenance Worker.
- CC 5. City Council to authorize the City Manager and the City Attorney to negotiate a Professional Services Contract with Municipal Auditing Services for business license audits and adopt **Resolution No. 13-7127**, authorizing consultant to access data in State Board of Equalization.
- CC 6. City Council to approve an amended and restated employment agreement for city manager services.

PUBLIC HEARING

- PH 1. City Council to hold public hearing, consider public testimony, review and approve the Fiscal Year 2013-2014 Community Development Block Grant (CDBG) program budget.

Staff Recommendation:

- 1) City Council to open the hearing and consider public testimony; and
- 2) City Council to approve the fiscal year 2013-2014 Community Development Block Grant (CDBG) program budget as recommended selecting Column C of the Table on Exhibit A with the provision that allocations be adjusted based on the final allocation as determined by the Community Development Commission with a maximum of 15% of funding allocated for public service programs; and
- 3) Authorize the City Manager or his designee to execute documents related to the fiscal year 2013-2014 Community Development Block Grant.

CONTINUED BUSINESS

- CB 1. City Council to hold second reading and adopt an Ordinance to adopt revised administrative citation regulations by repealing Chapter 1.26 and adopting a new Chapter 1.26 of the Covina Municipal Code.

Staff Recommendation:

- 1) That the City Council hold second reading and adopt **Ordinance No. 12-2015**, adopting revised administrative citation regulations by repealing Chapter 1.26 (“Community Improvement and Administrative Citations”) and adopting a New Chapter 1.26 (“Administrative Citations”) in Title 1 (“General Provisions”) of the Covina Municipal Code.

CB 2. City Council to hold second reading and adopt an Ordinance to adopt revised and new regulations for Chapter 1.28 of Title 1 of the Covina Municipal Code.

Staff Recommendation:

1) That the City Council hold second reading and adopt **Ordinance No. 12-2016**, adopting revised and new regulations for Chapter 1.28 (“Enforcement”) of Title 1 (“General Provisions”) of the Covina Municipal Code.

CB 3. City Council to hold second reading and adopt an Ordinance to modify and enhance regulations related to public nuisances by repealing Chapter 8.40 and adopting a new Chapter 8.40 of the Covina Municipal Code.

Staff Recommendation:

1) That the City Council hold second reading and adopt **Ordinance No. 12-2017**, modifying and enhancing regulations relating to public nuisances by repealing Chapter 8.40 (“Abatement of Real Property Nuisances”) and adopting a new Chapter 8.40 (“Public Nuisances”) in Title 8 (“Health and Safety”) of the Covina Municipal Code.

NEW BUSINESS

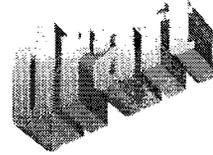
NB 1. City Council to provide direction to staff in the event of a tie vote during the March 5, 2013 General Municipal Election.

Staff Recommendation:

- 1) City Council to consider first option - candidates who have received tie votes appear before City Council at a designated time and place to determine the tie vote By Lot; or
- 2) City Council to consider second option – a special runoff election shall be held only if Council adopts a City Resolution providing for a special election.

ADJOURNMENT

The Covina City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority will adjourn to its next regular meeting, **Tuesday, February 5, 2013** at 6:30 p.m. for closed session and at 7:30 p.m. for open session in the Council Chamber located inside of City Hall, 125 East College Street, Covina, California, 91723.



MINUTES OF DECEMBER 18, 2012 REGULAR MEETING OF THE COVINA CITY COUNCIL/SUCCESSOR AGENCY TO THE COVINA REDEVELOPMENT AGENCY /COVINA PUBLIC FINANCE AUTHORITY/COVINA HOUSING AUTHORITY HELD IN THE COUNCIL CHAMBER OF CITY HALL, 125 EAST COLLEGE STREET, COVINA, CALIFORNIA

CALL TO ORDER

Mayor Stapleton called the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority meeting to order at 6:32 p.m. City Attorney Marco Martinez announced the closed session items listed on the regular meeting agenda. There was no public comment. Mayor Stapleton left closed session at 6:35 p.m.

ROLL CALL

Council Members Present: ALLEN, DELACH, KING, LOW, STAPLETON

Council Members Absent: NONE

Elected Members Present: MANNING

Staff Members Present: City Manager, City Attorney, Police Chief, Assistant Fire Chief, Human Resources Director, Finance Director, Parks and Recreation/Library Director, Interim Director of Public Works, Assistant Public Works Director, Assistant to the City Manager, Police Captain, Finance Manager, City Planner, Sr. Human Resources Analyst, Administrative Technician, Executive Assistant and Sr. Deputy City Clerk

AGENDA POSTING DECLARATION

The Sr. Deputy City Clerk of the City of Covina hereby declared that the agenda for the December 18, 2012 City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority meeting was posted on December 13, 2012 near the front entrance of City Hall, 125 East College Street, Covina, in accordance with §54954.2(a) of the California Government Code.

CLOSED SESSION

- A. G.C. §54956.9(c) – CONFERENCE WITH LEGAL COUNCIL/HOUSING AUTHORITY – Anticipated Litigation
 Number of potential cases: 1 (one)
 Name of case: Housing Authority v California Department of Finance
- B. G.C. §54956.9(c) – CONFERENCE WITH LEGAL COUNCIL/SUCCESSOR AUTHORITY – Anticipated Litigation
 Number of potential cases: 1 (one)
 Name of case: Successor Agency to the Redevelopment Agency v California Department of Finance

- C. G.C. §54956.9(a) – CONFERENCE WITH LEGAL COUNCIL – Existing Litigation
Name of case: City of Covina v. Hassen Imports Partnership
Case No. KC062804
- D. G.C. §54957.6 – CONFERENCE WITH LABOR NEGOTIATOR
Agency representative: Marco A. Martinez, City Attorney
Unrepresented Employee Title: City Manager

RECONVENE THE MEETING

The City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority meeting reconvened at 7:30 p.m., with all members present.

City Attorney Marco Martinez reported that the City Council/Agency/Authority met in closed session to discuss the items listed on the regular meeting agenda. There is no reportable action related to items A, B, C. and D.

PLEDGE OF ALLEGIANCE

Council Member King led the pledge of allegiance.

INVOCATION

Covina Police Chaplain David Truax gave the invocation.

PRESENTATIONS

Choir Director Rebecca Schmalzbeck led the Charter Oak High School Choir in singing Christmas Carols.

Mayor Stapleton recognized 154B Crew Members from Fire Station #154 for saving the life of a 5-year old boy that was pulled from a residential swimming pool.

Mayor Stapleton invited Robert Gillespie of the Covina Chamber of Commerce to the lectern. Mr. Gillespie spoke about the 42nd Annual Golf Tournament and about a portion of the proceeds going towards the Police Memorial Project. Mr. Gillespie presented an \$8,000 check to Chief Raney.

Mayor Stapleton presented a Proclamation to Police Chief Raney for his 35 years of dedicated service to the community.

PUBLIC COMMENTS

Eva Fitzhaugh, representing LPC Center Inc., presented written comments to City Council Members regarding *City of Covina v. LPC Center, Inc., et al.*

City Attorney Marco Martinez noted the written comments seem consistent and stated that the City has incurred over \$15,000 in attorney fees and \$10,000 in fines.

Amy Arnold, Event Chair of the Covina Relay for Life event, spoke regarding the upcoming Relay for Life event on May 4-5, 2013 at Northview High School. Ms. Arnold a showed PowerPoint Presentation from the 2012 event.

COUNCIL/AGENCY/AUTHORITY COMMENTS

Mayor Pro Tem Allen challenged City Departments to put together relay teams for the 2013 Relay for Life event. Mayor Pro Tem Allen spoke about the shooting tragedy in Newtown, Connecticut and requested to adjourn the meeting in honor of those that perished. Mayor Pro Tem Allen stated he attended the grand opening event at Master Wan Ko Yee International Cultural Institute, which is located at what used to be the Masonic Temple Building. Mayor Pro Tem Allen referenced the many community events, such as the Covina Woman's Club fundraiser and Covina Assembly of God Community Christmas Party and spoke about the cultural diversity in Covina.

Council Member Delach stated that she is excited about the Master Wan Ko Yee International Cultural Institute and the commitment the organization has shown to the community. Council Member Delach wished everyone happy holidays.

Council Member King stated he attended the Covina Assembly of God Community Christmas Party and spoke about the success of the event. Council Member King spoke about participating in the Covina Concert Band Christmas Concert at First Presbyterian Church of Covina

Council Member Low referenced the passing of United State Senator Daniel K. Inouye and requested to adjourn in memory of Senator Inouye. Council Member Low endorsed Mayor Pro Tem Allen's comments about the tragedy in Newtown, Connecticut.

Mayor Stapleton announced the following:

- Holiday moratorium for overnight on-street parking beginning 2:00 a.m., Monday, December 17, 2012 through 4:00 a.m. on Tuesday, January 1, 2013.
- City of Covina Holiday Furlough – City of Covina non-emergency offices are closed during a portion of the holiday season.
- City Yard would be open December 26-27, 2012, 7:00 a.m. to 12:00 p.m. for general business.
- Curbside Christmas tree collection begins on Wednesday, December 26, 2012 through Friday, January 11, 2013.

Mayor Stapleton thanked Covina Assembly of God for hosting their annual Community Christmas Party. Mayor Stapleton requested to recognize City Treasure Jack Fielding at a future meeting. Mayor Stapleton spoke about the tragedy in Newtown, Connecticut, sending condolences from one community to another. Mayor Stapleton reminded those out celebrating the holiday season not to drink and drive.

City Council inquired, and Police Chief Raney responded that Police Department personnel have reached out to private and public school superintendents/administration because of the Newton, Connecticut tragedy. Police Officers have been visiting various school campuses since Friday to provide a layer of security and comfort to the parents dropping off children.

CITY MANAGER COMMENTS

City Manager Daryl Parrish reported that the City is going to be highlighted on a cable television show called, "Today in America" hosted by Terry Bradshaw. City Manager Parrish stated that various representatives were interviewed and the episode is set to air late spring or early summer, 2013. City Manager Parrish wished everyone happy holidays.

CONSENT CALENDAR

On a motion made by Council Member Low, seconded by Mayor Pro Tem Allen, the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority approved Consent Calendar items CC1, CC2, CC3, CC4, CC5, CC6 and CC7. **Motion carried 5-0.**

- CC 1.** City Council approved the minutes from the December 4, 2012, regular meeting of the City Council/Successor Agency to the Covina Redevelopment Agency/Public Finance Authority/Housing Authority.
- CC 2.** City Council approved the payment of demands in the amount of \$5,934,932.54.
- CC 3.** Successor Agency to the Covina Redevelopment Agency approved the payment of demands in the amount of \$115,896.24.
- CC 4.** City Council received and filed the Public Works Department monthly activity report.
- CC 5.** City Council received and filed the Strategic Plan Update.
- CC 6.** City Council approved the use of funds from the Community Development Block Grant (CDBG) 2012-2013 funding allocation through the Special Economic Development Program for Yaya's Café & Bakery, Inc., dba Yaya's Café & Bakery, located at 230 N. Citrus Avenue, Covina.
- CC 7.** City Council authorized the City Manager to enter into a professional services agreement with SirsiDynix's Symphony Integrated Library System (ILS) for software services and support, subject to the final negotiations of terms by the city attorney.

CONTINUED BUSINESS

- CB 1.** City Council and Successor Agency to the Covina Redevelopment Agency to receive and file the audit report for fiscal year ended June 30, 2012.

City Manager Daryl Parrish and Finance Director Dilu De Alwis gave a brief overview of the item for consideration by Council.

On a motion made by Council Member King, seconded by Council Member Low, the City Council and Successor Agency to the Covina Redevelopment Agency received and filed the Audit Report and the Annual Financial and Compliance Report (CAFR) for fiscal year ended June 30, 2012. **Motion carried 5-0.**

NEW BUSINESS

- NB 1.** City Council to introduce, hold first reading of an Ordinance to adopt revised administrative citation regulations by repealing Chapter 1.26 and adopting a new Chapter 1.26 of the Covina Municipal Code.

City Manager Parrish gave a brief report of the item for consideration.

On a motion made by Council Member King, seconded by Mayor Pro Tem Allen, the City Council introduced, read by title only and waived further reading of **Ordinance No. 12-2015**, adopting revised administrative citation regulations by repealing Chapter 1.26 (“Community Improvement and Administrative Citations”) and adopting a New Chapter 1.26 (“Administrative Citations”) in Title 1 (“General Provisions”) of the Covina Municipal Code. **Motion carried 5-0.**

- NB 2.** City Council to introduce, hold first reading of an Ordinance to adopt revised and new regulations for Chapter 1.28 of Title 1 of the Covina Municipal Code.

City Manager Parrish gave a brief report of the item for consideration.

On a motion made by Mayor Pro Tem Allen, seconded by Council Member King, the City Council introduced, read by title only and waived further reading of **Ordinance No. 12-2016**, adopting revised and new regulations for Chapter 1.28 (“Enforcement”) of Title 1 (“General Provisions”) of the Covina Municipal Code. **Motion carried 5-0.**

- NB 3.** City Council to introduce, hold first reading of an Ordinance to modify and enhance regulations related to public nuisances by repealing Chapter 8.40 and adopting a new Chapter 8.40 of the Covina Municipal Code.

City Manager Parrish gave a brief report of the item for consideration.

On a motion made by Council Member Delach, seconded by Council Member King, the City Council introduced, read by title only and waived further reading **Ordinance No. 12-2017**, modifying and enhancing regulations relating to public nuisances by repealing Chapter 8.40 (“Abatement of Real Property Nuisances”) and adopting a new Chapter 8.40 (“Public Nuisances”) in Title 8 (“Health and Safety”) of the Covina Municipal Code. **Motion carried 5-0.**

ADJOURNMENT

At 8:29 p.m., Mayor Stapleton adjourned the meeting in memory of United State Senator Daniel K. Inouye and in honor of those that perished in the Newton, Connecticut school shooting to its next regular meeting of the Covina City Council/Successor Agency to the Covina Redevelopment Agency/Covina Public Finance Authority/Covina Housing Authority to be held on **Tuesday, February 5, 2013** at 6:30 p.m. for closed session and 7:30 p.m. for open session in the Council Chamber located inside of City Hall, 125 East College Street, Covina, California, 91723.

Respectfully Submitted:

Catherine M. LaCroix, CMC
Senior Deputy City Clerk

Approved this 15th day of January, 2013.

Mayor/Chairperson Stapleton

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CC 2

STAFF SOURCE: Kalieh Honish, Interim Director of Public Works
Alex Gonzalez, Assistant Director of Public Works
Paul Hertz, Public Works Superintendent

ITEM TITLE: Award Bid for Electrical Service and Panel Replacement for Forestdale Reservoir Site Project No. W-1201

STAFF RECOMMENDATION:

Award the bid for Electrical Service and Panel Replacement for Forestdale Reservoir Site Project No. W-1201 to A and B Electric as the lowest responsive and responsible bidder in the amount of \$165,200.00.

FISCAL IMPACT:

This project will be funded with \$165,200 of Water Capital Revenue bonds contained within the current fiscal year budget under Account No. 6011-5060-00-55420, as part of the ongoing Water Utility reservoir upgrade projects. Accordingly, this bid award will have no additional impact on the City's budget.

BACKGROUND:

Project No. W-1201 is compromised of the design, permitting and installation of an 800 amp 277/480 volt Southern California Edison (SCE) service, 800 amp transfer switch, Motor Control Centers (MCC) for the existing booster pumps needs, and electrical distribution for other site requirements and modifications.

The project was duly noticed and advertised, and bids for the project were received, opened, and recorded in the City Clerk's office on December 17, 2012. As shown on the attached summary of bids, A and B Electric submitted the lowest responsive bid in the amount of \$165,200.00. The highest bid was \$210,398.00 by AToM Engineering Construction, Inc. The Engineer's estimate for the project is \$175,000.00. The low bid for the project is \$9,800 below the Engineer's Estimate.

The completion of this project removes antiquated electrical connections and allows for the installation of a much needed brand new Southern California Edison electrical service panel, as well as up-to-date electrical equipment that is compliant with current standards. The Forestdale Reservoir is one of the two critical sites which directly connects to our main water supply from Covina Irrigating Company. This project will also allow a more reliable connection for a portable

generator to be transported to this utility site, enabling temporary power for water pumping in the event of an emergency.

RELEVANCE TO THE STRATEGIC PLAN:

While not directly responsive to any specific objective in the Strategic Plan, this updated electrical service will meet the following three goals: 1) enhance customer service; 2) foster innovation and efficiency; and 3) enhance the safety and quality of life in Covina.

EXHIBITS:

A. Project Bid Results Summary Sheet

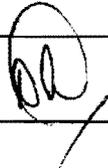
REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

Exhibit A: Forestdale Reservoir Electrical Service Replacement

DESCRIPTION	QUANTITY	AToM ENG	A & B ELECTRIC
1. 800 amp 277/480v SCE Service	1	\$71,500.00	\$61,600.00
2. 800 amp transfer switch	1	\$31,500.00	\$11,300.00
3. Motor Control Centers for pumps	1	\$78,900.00	\$50,700.00
4. Electrical distro for SCADA, lights, etc.	LS	\$13,698.00	\$39,000.00
5. Short circuit coordination study	LS	\$7,400.00	\$1,200.00
6. Arc flash analysis for new equipment	LS	\$7,400.00	\$1,400.00
7. Payment for SCE fees (Not To Be Added To Total)	LS	\$4,500.00	\$25,000.00

TOTALS:

\$210,398.00

\$165,200.00

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CC3

STAFF SOURCE: Kalieh Honish, Interim Director of Public Works *KH*
Alex Gonzalez, Assistant Director of Public Works
Paul Hertz, Public Works Superintendent

ITEM TITLE: Public Works Department Monthly Activity Report

STAFF RECOMMENDATION:

Receive and file the Public Works Department Monthly Activity Report

FISCAL IMPACT:

This report is informational only and has no budgetary impact.

BACKGROUND:

Attached for the City Council's review and information are the Public Works Department's Monthly Activity Report for December.

In conjunction with the implementation of a revised Zone Maintenance Program in 2007, the Department implemented a renewed focus on Key Performance Indexing (KPI). KPI is a useful tool for developing a measurement system of organizational effectiveness by identifying activities important to the community and tracking their output over time.

During December, the following trends were noted:

- The Water Division experienced a tremendous drop in both meter replacements and consumer responses from last month. This was due to Global Water's crews being dispatched to replace faulty water meters where City crews were previously handling in the months before. With the meters in replacement phase, the result in consumer responses also drastically decreased with less calls from customers and the need for City staff to be dispatched.
- With the shortened amount of work days for the month due to the holiday furlough, the Equipment Maintenance Division numbers were slightly below their averages. This was also generally the case with the rest of the department's divisions and sections KPI's.
- There was an approximate 15% decrease in Covina Transit data across the board due to holiday's and less work commuting. All other parking data stayed the same.

RELEVANCE TO THE STRATEGIC PLAN:

The Public Works Department consists of the Water Division, Streets and Sewer Division, Central Equipment Division, Building Maintenance, and Development Services which includes Engineering, Environmental Services, Building and Safety, as well as Code Enforcement. The combined activities of each of the divisions continually strives to enhance the safety, development and infrastructure needs of the community in the most cost effective and responsive way possible. In this way, while not directly responsive to any of the currently identified objectives of the Strategic Plan the activities which are reported on herein support several of the specific Strategic Plan's Goals, as follows: Improve and promote customer service; Enhance financial stability; Become an environmentally sustainable community; and Provide efficient, visible and responsive public safety.

EXHIBITS:

A. Public Works Department Monthly Activity Report – December 2012

REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

**CITY OF COVINA
PUBLIC WORKS DEPARTMENT MONTHLY ACTIVITY REPORT
DECEMBER 2012**

DIVISION	ACTIVITY	QUANTITY
Water Utility	Meter replacements	0
	Consumer responses	177
	Backflow tests	5
	Flushed blow-offs	1
	Service line repair/replace	5
	Main line repair/replace	3
	Fire hydrants maintained	0
	Isolation valves exercised	7
	Dig alert responses	18
	Emergency call outs	6
Equipment Maintenance	Preventative Maintenance service	29
	Safety inspections	34
	Daily demand repairs	88
	Tire repairs	6
	Major repairs over \$1000	6
	Emergency call outs	20
Street Maintenance	Traffic sign remove/replace/install	19
	Potholes repaired	296
	Grind sidewalk	124
	Ramp sidewalk	10
	Curb painted (LF)	0
	Illegally dumped items picked up (LBS.)	6,000
	Utility cuts repaired	0
	Trees trimmed	21
	Trees removed	8
Emergency call outs	7	
Environmental Services	Used oil containers distributed	0
	Compost bins distributed	0
	NPDES violations investigated	3
	NPDES Permit Inspections	0
	Waste management consumer contacts	0
	Industrial Waste Permit Inspections	52
	Plans checked for environmental compliance	7
	Environmental legislation & regulations reviewed	2
	Special Waste collection events promoted	1
Engineering	Permits issued	20
	Inspections conducted	37
	Complaint responses	2
	Jobsite meetings	4
	Plan checks conducted	6
	Document research requests	14
	Value of plans prepared	0
Building Maintenance	Service requests completed	18
	Facility heat/air conditioning repairs	1
	Facility lighting/electrical repairs	0
	Emergency call outs	0

**CITY OF COVINA
PUBLIC WORKS DEPARTMENT MONTHLY ACTIVITY REPORT
DECEMBER 2012**

DIVISION	ACTIVITY	QUANTITY
Transportation	Bus passes sold	26
	Covina Transit total passengers	1,865
	Covina Transit on time performance	99.41%
	Covina Transit passengers per rev hr	2.95
	Metrolink monthly permits sold	868
	Metrolink machine revenue	\$3,417.00
	Municipal Lots monthly permits sold	\$55
Code Enforcement	Number of Inspections	109
	Number of signs pulled from public right-of-way	6
	Number of resolved cases	51
	Number of open cases	184
	Industrial waste cases open	16
	Total homes in foreclosure	108
	Trash Can violations	2
Building & Safety	Pre/Post permit counter visits	125
	Pre/Post Activity (hours)	18.75
	Permits issued	55
	Inspections conducted	485
	Plan checks conducted	17
	Permit valuation	\$1,128,651
Sewer Maintenance	Manholes inspected	89
	Linear feet of main cleaned	48,562
	Hot-spot locations cleaned	33
	Sewer overflow responses	0
	Manholes treated for vermin infestation	51
	Manholes treated for rodent infestation	8
	Routine pump station checks	31
Special Activities of Note	Water Division fire flow tests	2
	Asphalt skin patch (linear feet)	4,480
	Downed tree limbs picked up	5
	PW staff hours worked for X-Mas parade event	165

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CC 4

STAFF SOURCE: Anthony Arroyo, Human Resources Director *AAA*
Kalieh Honish, Interim Director of Public Works
Guadalupe Marquez, Senior Human Resources Analyst
Paul Hertz, Public Works Superintendent
Alex Gonzalez, Assistant Director of Public Works

ITEM TITLE: Approval of Salary Adjustment for Building Maintenance Worker

STAFF RECOMMENDATION

Approve salary adjustment for the position of Building Maintenance Worker

FISCAL IMPACT

This position is currently budgeted in Account 1010-2900. The increase of approximately \$4,346 per year will be absorbed in this year's budget from additional work duties completed for the Energy Efficiency Community Block Grant, Account 2450-5530.

BACKGROUND

The current Building Maintenance Worker staff consists of one full-time and two part-time workers. The full-time Building Maintenance Worker Position has been providing direction and limited supervision to the part-time workers and in addition supports specialized energy efficiency grant programs for environmental services.

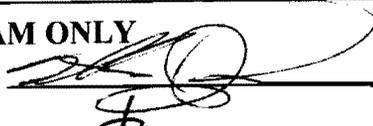
The Human Resources Department conducted a salary survey on the position in November 2012 and found that the position range was more than 15% below median in comparison to the following cities: Azusa, Colton, Monrovia, Monterey Park, Pomona, Rancho Cucamonga, San Gabriel and West Covina. The average salary range in the survey was \$3,671 to \$4,511 per month. Staff recommends that the current salary range of \$3,128 - \$3,896 per month is changed to \$3,362 - \$4,189 per month.

RELEVANCE TO THE STRATEGIC PLAN

None

EXHIBITS

None

REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CC 5

STAFF SOURCE: Dilu de Alwis, Finance Director 

ITEM TITLE: Authorize the City Manager and City Attorney to Negotiate a Professional Services Contract with Municipal Auditing Services for Business License Audits and Approve **Resolution 13-7127** Authorizing Consultant to Access Data at State Board of Equalization.

STAFF RECOMMENDATION:

- a. Authorize the City Manager and City Attorney to negotiate a professional services contract with Municipal Auditing Services for the purpose of auditing businesses that are non-compliant with Covina Municipal Code, Chapter 5.04
- b. Approve **Resolution No.13-7127** authorizing Municipal Auditing Services as the designated representative to examine all of the sales and use tax records collected by the Board of Equalization on behalf of the City of Covina.

FISCAL IMPACT:

There is no negative fiscal impact as a result of the agreement. It is unknown at this time the extent of businesses that are non-compliant with Covina Municipal Code, Chapter 5.04. The recovery of taxes and other fees will have a positive impact on the General Fund. Municipal Auditing Services fee for discovery of unpaid taxes and fees is 40% of amount collected. This amount is a one-time fee for each business license they collect on and subsequent renewals by the business will result in the City retaining 100% of the said revenue.

BACKGROUND:

The Business License function for the City is currently handled by 1.5 full-time equivalent personnel. The staff manages approximately 3800 in-town (including in-home) business license renewals and approximately 1100 out-of-town business license applications. Additionally in-town businesses that do not renew their licenses get a site visit from staff to bring them into compliance and current with the renewal of their licenses.

It is very likely that there are many out-of-town businesses that come into the City to conduct business that do not acquire a business license placing the in-town businesses at a disadvantage. We do not have available staffing to pursue these businesses as it requires gathering information from various sources and conducting follow-up calls, audits etc. The best use of staff time is to provide assistance at the counter for businesses coming to City Hall to inquire/acquire business licenses as well as conducting the site visits of in-town businesses.

Municipal Auditing Services works with many local agencies and has a very successful model for bringing business into compliance of the City's Municipal Code. Their primary focus will be the monitoring of out-of-town businesses which we are unable to do with the existing staff.

Staff and consultant presented the benefits of this program to the Finance Committee at their meeting of November 7, 2012 which was supported unanimously and the Committee recommended presenting this to the City Council for consideration.

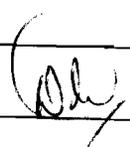
RELEVANCE TO STRATEGIC PLAN:

Any revenue generated from this contract will add to the financial wellbeing of the City and the General Fund in particular which provides critical services to the community.

EXHIBITS:

A. Draft Professional Services Contract

B. Resolutions 13-7127

REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

AGREEMENT FOR PROFESSIONAL SERVICES

Field Code Changed

THIS AGREEMENT is entered into this 15th day of January, 2013, by and between the CITY OF COVINA, a California municipal corporation, hereinafter referred to as "CITY" and Municipal Auditing Services LLC, a California Limited Liability Company, hereinafter referred to as "CONSULTANT".

The parties do agree as follows:

SECTION 1-RECITALS:

This Agreement is made and entered into with respect to the following facts:

- (a) CITY has considered the proposal, from CONSULTANT for professional services including but not limited to, providing the services as described below in Section 6 of this Agreement.
- (b) CITY desires to have a highly qualified company to perform such services.
- (c) CONSULTANT represents and warrants that it is qualified to perform such services and has agreed to do so pursuant to this Agreement; and
- (d) CITY desires to contract with CONSULTANT on the basis of the following terms and conditions.

SECTION 2-EMPLOYMENT:

CITY hereby employs CONSULTANT and CONSULTANT hereby accepts such employment, to perform those services under this Agreement.

SECTION 3-INDEPENDENT CONTRACTOR:

The parties hereby acknowledge that CONSULTANT is an independent contractor and shall not be considered to be an employee of CITY.

SECTION 4-PRINCIPAL REPRESENTATIVE:

Dilu DeAlwis, CITY'S Finance Director, shall be the principal representative of CITY for purposes of this Agreement. Kevin Weigant (President), shall be the principal representative of CONSULTANT for purposes of this Agreement.

SECTION 5-CONSULTANT NOT AGENT OF CITY:

A. CONSULTANT shall have no authority, expressed or implied, to act on behalf of CITY in any capacity whatsoever as an agent.

B. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind CITY to any obligation whatsoever.

SECTION 6-SCOPE OF SERVICES:

CONSULTANT will diligently perform the tasks, in a good and workmanlike manner, which are more specifically identified in the Scope of Services, attached hereto and incorporated herein by reference as Attachment A, unless otherwise instructed by City.

SECTION 7-STANDARD OF PERFORMANCE:

CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in

which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his or her profession.

SECTION 8-TIME:

A. CONSULTANT shall devote such time to the performance of services pursuant to the Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement.

B. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

SECTION 9-QUALIFICATIONS:

A. CONSULTANT represents and warrants to CITY that it has all necessary professional licenses and/or certificates to legally perform the services under this Agreement.

B. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at his sole cost and expense, keep in effect or obtain at all times during the term of this Agreement all necessary licenses and certificates required of CONSULTANT to perform the services.

SECTION 10-TERM:

The term of this Agreement shall be the period commencing from the effective date of this Agreement, as first shown above, for an initial period of three years with two, two year automatic renewals.

SECTION 11-COMPENSATION:

A. CONSULTANT will perform those tasks and deliver the services described in this Agreement, in accordance with the terms and provisions of this Agreement for a commission of forty percent (40%) of all subject taxes, penalties, fees, interest (if any) successfully collected from debtors as allowed by Covina Municipal Code, Chapter 5.04, whether ultimately paid by a debtor directly to CITY or CONSULTANT ("Commission Fee"). CONSULTANT shall be entitled to no further compensation beyond the Commission Fee specified herein, except for extra work authorized by CITY pursuant to Section 12(B).

B. Authorized work shall be in strict compliance with the provisions of this Agreement. CONSULTANT shall provide all labor, materials and equipment, as necessary to perform the services under this Agreement without any additional charge or compensation.

SECTION 12-PAYMENT SCHEDULE:

A. CONSULTANT will, not later than 10 days following the end of each month, transmit to City an invoice including a report of completed taxpayer cases with taxpayer payment, in batches associated with an invoice. Provided the Services have been rendered satisfactorily to CITY and in accordance with this Agreement, CITY shall tender payment to CONSULTANT not later than ten (10) days following each invoice.

B. CITY shall make no payment for any extra, further, or additional services not expressly set forth in this Agreement unless such extra service and the price thereof is agreed to in writing and executed by the City Manager prior to the time that such extra service is rendered.

SECTION 13-COMPENSATION WITHHELD:

A. When the CITY shall have reasonable grounds for believing that CONSULTANT will be unable to perform this Agreement fully and satisfactorily within the time fixed for performance; or a meritorious claim exists or will exist against CONSULTANT or CITY arising out of the negligence of CONSULTANT or CONSULTANT's breach of any provision of this Agreement, then the CITY may withhold payment of any amount otherwise due and payable to CONSULTANT under this Agreement.

B. Any amount so withheld may be retained by CITY for that period as it may deem advisable to protect CITY against any loss and may, after written notice to CONSULTANT, be applied in satisfaction of any claim described here.

C. This provision is intended solely for the benefit of CITY and no person shall have any right against the CITY or claim against CITY by reason of the CITY's failure or refusal to withhold monies.

D. No interest shall be payable by CITY on any amounts withheld under this provision.

E. This provision is not intended to limit or in any way prejudice any other right of CITY.

SECTION 14-RIGHT TO AUDIT AND INSPECT:

CITY shall have the right to audit and inspect all books and records kept by CONSULTANT in connection with the operation and services performed under this Agreement.

SECTION 15-RIGHT OF TERMINATION:

A. This Agreement may be terminated by either party with or without cause, upon sixty (60) days written notice to the other party.

B. CONSULTANT, upon termination, shall have the right to complete all work in progress, but shall not commence new work. CONSULTANT shall be paid for all work in progress that is satisfactorily completed after termination, in accordance with the rates set forth in Section 11(A).

SECTION 16-INDEMNITY:

CONSULTANT hereby agrees to and does indemnify, defend and hold harmless CITY, and any and all of their respective officers, employees and representatives from any and all claims, liability and expenses, including attorney fees and costs, that arise out of or are related to CONSULTANT's negligent performance of this Agreement.

CITY hereby agrees to and does indemnify, defend and hold harmless CONSULTANT, and any and all of their respective officers, employees and representatives from any and all claims, liability and expenses, including attorney fees and costs, that arise out of or are related to any matter which is not the CONSULTANT's negligent performance of this Agreement.

In the event that CONSULTANT or any employee, agent, or subcontractor of CONSULTANT providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of CITY, CONSULTANT shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONSULTANT or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would

otherwise be the responsibility of CITY.

SECTION 17-CONSULTANT'S LIABILITY FOR PUBLIC LIABILITY AND PROPERTY DAMAGE:

CONSULTANT shall assume all responsibility for damages to property or injuries to persons, including accidental death, which may be caused by CONSULTANT's negligent performance of this Agreement, whether such performance be by themselves, or their agents, or whether such damage shall accrue or be discovered before or after termination of this Agreement.

SECTION 18-LIABILITIES:

A. CONSULTANT shall not assert any claim arising out of any act or omission by any officer, agent, or employee of CITY in the execution or performance of this Agreement against that officer, agent or employee.

B. Nothing in this Agreement shall be construed to give any person other than CITY and CONSULTANT any legal or equitable rights, remedy or claim under this Agreement.

SECTION 19-CONFLICT OF INTEREST:

A. CONSULTANT covenants that neither it nor any officer of the corporation, or partnership, as the case may be, has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner with the performance of CONSULTANT's services under this Agreement.

B. CONSULTANT further agrees that in the performance of this Agreement, no person having an interest of the above nature shall be employed by him or her.

C. No person who contracts with CITY, either for the rendition of personal services shall make any contribution to a CITY official or candidate for CITY office.

SECTION 20-NOTICES:

A. Notices pursuant to this Agreement shall be given by personal service or by deposit of the same in the custody of the United States Postal Service, postage prepaid, addressed as follows:

TO CITY: City of Covina
125 E. College Street
Covina, CA 91723
Attn: Community Development Director

TO CONSULTANT: Municipal Auditing Services LLC
PO Box 3465
Pinedale, CA 93650-3465
Attn: Kevin Weigant, President

B. Notices shall be deemed to be given as of the date of personal service, or two (2) days following the deposit of the same by first class mail in the course of transmission of the United States Postal Service.

SECTION 21-BINDING EFFECT:

This Agreement shall be binding upon the parties hereto and their successors in interest.

SECTION 22-ASSIGNMENT:

A. CONSULTANT shall not assign, transfer, convey, pledge or otherwise dispose of its rights or obligations hereunder, except the payment of funds from CITY, without prior written consent of CITY.

B. The consent of CITY to an assignment shall not be unreasonably withheld, but prior to approving any assignment involving the performance of any obligations pursuant to this Agreement, CITY shall be satisfied by competent evidence that the assignee is financially able and technically qualified to perform those services proposed to be assigned.

C. In the event of such assignment, CITY may condition the same so as to ensure compliance with the provisions of this Agreement.

D. CITY'S consent to one assignment shall not be deemed to constitute consent to future assignments. CONSULTANT acknowledges that CITY'S written consent must be first obtained prior to each assignment, transfer, conveyance, pledge or other disposition.

SECTION 23-COMPLIANCE WITH LAWS:

CONSULTANT shall comply with all applicable laws in performing its obligations under this Agreement.

SECTION 24-INSURANCE:

A. CONSULTANT shall obtain and maintain at its expense, during the term of this Agreement, all necessary insurance for its employees engaged in the performance of this Agreement, including, but not limited to worker's compensation insurance.

B. CONSULTANT shall obtain and maintain at its expense, during the term of this Agreement, comprehensive general liability insurance with coverage of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence (and not "claims made") for bodily injury, personal injury and property damage. CONSULTANT shall cause CITY, its officers, employees, and agents, to be named as an additional insured on said policy and shall obtain a waiver of the insurer's right of subrogation against CITY.

C. For all vehicles operated by CONSULTANT to provide services under this Agreement, Business Auto Coverage under standard ISO form including symbol 1 (All Auto) auto coverage with limits of no less than \$1,000,000.00 and scheduled under any umbrella policy.

D. CONSULTANT shall obtain and maintain professional liability (errors and omissions) insurance in an amount of not less than \$1,000,000.00.

E. CONSULTANT shall provide CITY with written proof of the existence of such insurance and the commitment of the insurance carrier (either by policy endorsement or similar agreement) to notify CITY in writing 30 days before any reduction in coverage or the cancellation of such insurance. All insurance coverage required herein shall apply on a primary non-contributing basis in relation to any insurance or self-insurance available or applicable to CITY.

SECTION 25-DISCRIMINATION:

A. CONSULTANT agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, handicap or marital

status, place of national origin or any other basis prohibited by local, State or Federal law.

B. CONSULTANT agrees to comply with all local, State and Federal laws relating to equal employment opportunity rights.

SECTION 26-ENTIRETY OF AGREEMENT:

This Agreement contains the entire Agreement of CITY and CONSULTANT with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Agreement shall be binding or valid.

SECTION 27-ATTORNEYS FEES:

In the event that any action or proceeding is instituted for the breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees.

SECTION 28-CONSISTENCY WITH CURRENT LAW:

A. It is the intent and understanding of the parties to this Agreement that every provision of law required to be inserted in this Agreement is inserted here.

B. If through mistakes or otherwise, any of those provisions are not inserted in correct form, then this Agreement shall upon application of either party, be amended by insertion so as to comply strictly with the law and without prejudice to the rights of either party.

C. If this Agreement contains any unlawful provisions, not an essential part of the Agreement and which appear not to have been a controlling or material inducement to the making of this Agreement, those provisions shall be deemed of no effect, and shall upon application of either party be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting those provisions.

SECTION 29-VENUE:

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Los Angeles or where appropriate, in the United States District Court, Central District of California, Los Angeles, California.

SECTION 30-INTERNAL INCONSISTENCIES:

If this Agreement contains any errors, inconsistencies, ambiguities, or discrepancies, including typographical errors, CONSULTANT shall request a clarification of those items by writing to the City Manager whose decision shall be binding upon the parties.

SECTION 31-CAPTIONS AND HEADNOTES:

The captions and headnotes or sections of this Agreement, and marginal notes are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent of this Agreement.

SECTION 32-CALIFORNIA STATE BOARD OF EQUALIZATION COMPLIANCE:

CITY and CONSULTANT understand and agree that both are in compliance with the California Revenue and Taxation Code, Section 7056, that CONSULTANT is authorized to act as CITY'S

designated representative to examine all sales and use tax records collected by the California State Board of Equalization, and further acknowledge compliance with the following items:

1. CONSULTANT has an existing contract with CITY to examine sales and use tax records.
2. CONSULTANT is required by this Agreement to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of CITY who is authorized by the resolution to examine the information.
3. CONSULTANT is prohibited by this Agreement from performing consulting services for a retailer during the term of the Agreement.
4. CONSULTANT is prohibited by this Agreement from retaining the information contained in, or derived from, those sales or transactions and use tax records, after the Agreement has expired.

IN WITNESS WHEREOF, this Agreement for Professional services has been duly authorized and executed by the parties hereto on the day and year first herein above written.

"CITY"
City of Covina

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"CONSULTANT"

Municipal Auditing Services LLC
a California Limited Liability Company

By: _____
Kevin Weigant

Its: President

**ATTACHMENT A
TO AGREEMENT FOR PROFESSIONAL SERVICES**

CONSULTANT will provide to the CITY comprehensive business license tax discovery and deficiency services intended to enhance compliance with Covina Municipal Code Chapter 5.04.

CONSULTANT will assist taxpayers in education of the Covina Municipal Code as it applies to the taxpayer's obligations under Chapter 5.04. CONSULTANT will assist the taxpayer in completion of the application and tax calculations in order to facilitate the taxpayer's compliance with Chapter 5.04.

CONSULTANT will provide telephone, 800 service, email, and fax communication contacts for taxpayers use. CONSULTANT will provide quality control of all taxpayer submitted documents and tax payments to insure compliance with the CITY's standards of acceptance.

CONSULTANT will transmit batches of completed taxpayer accounts to the CITY with a summary invoice for services rendered. Invoice billing will be in accordance with the Agreement. If the batch is accepted, the invoice is to be processed by the CITY in accordance with the Agreement.

In the event a taxpayer remains non-compliant after proper notification, CITY is obligated to continue the enforcement against the taxpayer, throughout the term of this Agreement, as the CONSULTANT does not have authority in this area.

RESOLUTION NO. 13-7127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COVINA, CALIFORNIA, DESIGNATING MUNICIPAL AUDITING SERVICES AS AN AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS.

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Covina has adopted a sales and use tax ordinance which imposes a tax and provides a measure that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Covina, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Covina has entered into a non-exclusive agreement for revenue audits and information services with the firm Municipal Auditing Services (“MAS”) to designate MAS as an authorized Consultant to examine such sales tax allocation records maintained by the Board on behalf of the City of Covina; and

WHEREAS, all legal prerequisites prior to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Covina, as follows:

SECTION 1. In all respects as set forth above, the City Council of the City of Covina hereby certifies to the State Board of Equalization that MAS is a designated representative of the City of Covina to examine all of the sales and use tax records collected by the Board on behalf of the City of Covina.

SECTION 2. Pursuant to the California Revenue and Taxation Section 7056(b), the Council hereby certifies that MAS (hereinafter referred to as “Consultant”), meets all of the following conditions;

- a) Consultant is required to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
- b) Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
- c) Consultant is prohibited by the contract from retaining the information contained in, or derived from, those sales tax records after the contract has expired.

SECTION 3. The City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 15TH DAY OF JANUARY 2013.

Kevin Stapleton, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM;

Marco Martinez, City Attorney

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CC 6

STAFF SOURCE: Marco A. Martinez, City Attorney
Anthony Arroyo, Director of Human Resources *WAB*

ITEM TITLE: Amended & Restated Employment Agreement for City Manager Services with Daryl Parrish to Extend the Term of the Agreement, Implement Additional Reductions in Benefits and Share in Administrative Savings

STAFF RECOMMENDATION:

That the City Council approve an Amended & Restated Employment Agreement for City Manager Services with Daryl Parrish to June 30, 2014.

FISCAL IMPACT:

The City will have to pay-out \$21,552 in accrued sick/vacation time and a lump-sum payment of \$13,620. However, the City expects to save over \$65,000 over the next 10 years.

BACKGROUND:

In May of 2009, the City Council approved an Employment Agreement (“Agreement”) for City Manager Daryl Parrish. That Agreement was amended most recently in November of 2012 in order to implement certain benefit reductions and extend the term of the Agreement to June 30th of 2013. It was understood at that time, that the City Manager and City would continue to negotiate certain changes to his retirement benefits to reduce the City’s long-term pension liability.

ANALYSIS

The City Manager was hired in May of 2009. Since that time, he has received no increases in total compensation. Instead, he has agreed to certain benefit reductions, including paying the full member contribution to the Public Employee Retirement System (PERS), reducing his severance package and health insurance plan coverage. He has also worked with the City to implement additional reductions in his retirement plan to reduce the City’s long-term pension liability.

Currently, the City Manager is provided a retirement package that includes participation in PERS at a 2.5% at 55 benefit level. This is the same amount provided to all City employees. In addition, the City Manager receives an enhanced supplemental retirement plan through the Public Agency Retirement System (PARS). That plan provides an additional .2% benefit (for a total of 2.7% at 55). The supplemental PARS plan was implemented to provide the City

Manager with the same retirement plan he received at his former city. The supplemental PARS plan is currently fully funded and has cost the City approximately \$33,000. In addition, the City is required to pay PARS \$425 per month in administration fees and the cost of actuarial studies performed every 2 years (approximately \$3,000 to \$5,000 per actuarial). The administrative fees typically increase by 3% each year. These administrative fees would have to be paid for the life of the pension.

In order to reduce the City's pension liability and provide certainty in budgeting, the City Manager and City have negotiated the following changes to his employment agreement to terminate the supplemental PARS plan. These changes are designed to provide the City Manager with a lump sum benefit that he can use to buy additional service time in PERS or purchase his own private retirement plan. The package would include the following:

1. City and City Manager would agree to terminate the supplemental PARS plan.
2. The City Manager would receive his accrued retirement amount from the PARS plan - approximately \$33,000.
3. The City Manager would be allowed to cash-out approximately 100 hours of accrued vacation time and 200 hours of accrued sick time with a total value of \$21,552.
4. Since the City will be saving the PARS administrative and actuarial fees, the City Manager would share in this savings by being provided a one-time, \$13,620 lump sum payment.
5. The City Manager would use these funds to purchase his own retirement plan or investigate the purchase of additional PERS service time.
6. The City Manager's employment agreement would be extended to June 30, 2014.

The proposed changes would benefit the City by terminating the supplemental PARS plan and its unknown future liability. The changes will also terminate the City's obligation to pay \$425+ per month in administrative fees and several thousand dollars in actuarial fees over what would have been the life of the City Manager's pension. Finally, the changes reduce the City's vacation and sick time accrual liabilities (future) and assures that the City Manager remains under contract until June 30, 2014.

RELEVANCE TO THE STRATEGIC PLAN

None.

EXHIBITS

- A. Redline Version of Amended & Restated Employment Agreement

REVIEW TEAM ONLY

City Attorney: ~~_____~~ Finance Director: _____

City Manager: _____ Other: _____

**AMENDED & RESTATED EMPLOYMENT AGREEMENT
FOR
CITY MANAGER SERVICES**

THIS AMENDED & RESTATED EMPLOYMENT AGREEMENT FOR CITY MANAGER SERVICES is made and entered into this 15th day of January 2013, by and between the City of Covina, a California general law municipal corporation of the State of California, hereinafter referred to as "City" and Daryl Parrish hereinafter referred to as "Manager."

WITNESSETH

WHEREAS, the City desires to continue to employ the services of Daryl Parrish as City Manager of the City of Covina as provided by the Covina Municipal Code ("CMC") and State law; and

WHEREAS, it is the desire of the City Council of the City of Covina to extend the term of Manager's employment agreement and provide for certain amended benefits; and

WHEREAS, Manager desires to continue employment as the City Manager of the City of Covina and to accept the provisions of this Amended & Restated Employment Agreement.

WHEREAS, Manager desires to terminate his membership in the supplemental PARS plan for enhanced retirement benefits and, in lieu thereof, receive certain one-time payments from the City that may be utilized by Manager to purchase alternative supplemental retirement benefits.

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WHEREAS, City will benefit from Manager's termination from the PARS plan and making certain one-time payments to Manager in that City will terminate future PARS liabilities and costs, as well as reduce accrued vacation and sick leave time liabilities to Manager.

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NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and agreed, and subject to all the terms and conditions hereof, City and Manager agree as follows:

Section 1: Appointment and Duties

A. The City Council of the City of Covina hereby appoints Daryl Parrish as City Manager of the City of Covina to perform those functions and duties specified in the Covina Municipal Code, and the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign during the time specified in this Agreement.

Section 2: Compensation

A. Salary

(1) **Base Salary:** The City shall pay Manager the annual base salary of Two Hundred Thirteen Thousand Four Hundred and Sixty Five Dollars (\$213,465.00) in installments paid at the same time and in the same manner as other executive employees of the City.

(2) **Educational Incentive:** The Base Salary shall be increased by the educational incentive (2.0%) in accordance with the 2008 Executive Compensation Rules.

B. Transportation. Manager shall have the exclusive use at all times during his employment with the City of an automobile provided by the City for City related business use and to commute between home and City Hall. Said automobile shall be a fully equipped sedan capable of seating at least five (5) adults, and shall display exempt license plates. The City shall be responsible for providing public liability, property damage, and comprehensive insurance in coverage amounts as determined by the City. The costs of such insurance premiums shall be borne by the City. The City shall be responsible for paying for the operation, repair, and maintenance of said automobile. The City understands that Manager will remain on-call at all times, and the vehicle may be used for incidental personal as well as official business. Manager further agrees to keep the vehicle clean and in respectable condition.

C. Leave Time.

(1) **Sick Leave.** Manager shall accrue and use Sick Leave on the same terms and conditions as executive personnel in accordance with the 2008 Executive Compensation Rules, as may be from time to time amended by the City Council.

(2) **Administrative Leave.** Manager shall accrue seventy-five (75) hours per year during the term of this Agreement. Manager shall not be entitled to cash out or carry over to any subsequent year any accrued, but unused, Administrative Leave at the end of each year.

(3) **Vacation Leave.** Manager shall accrue twenty (20) days of Vacation Leave (total 160 hours) during each year of the term of this Agreement up to the maximum of two times (2x) the annual earning allowance. Manager shall be compensated for unused and accrued Vacation Leave in excess of the maximum allowed in accordance with the 2008 Executive Compensation Rules, as may be from time to time amended by the City Council.

(4) **Holiday Leave.** Manager shall be entitled Holiday and Floating Holiday Leave in accordance with the 2008 Executive Compensation Rules, as may be from time to time amended by the City Council.

D. Miscellaneous Benefits.

(1) Manager shall be entitled to the same annual physical, long-term disability benefits, insurance benefits including, but not limited to, life, health, vision, and dental coverages, as provided other executive personnel (Department Heads) within the City's employ

in effect as of the date of this Agreement and as they may be changed from time to time by the City Council.

Notwithstanding any provision to the contrary in this Agreement, City shall provide Manager a term life insurance policy up to \$100,000.00 limit and shall contribute \$990.00 per month toward the optional benefits plan available through the City.

E. Retirement Benefits.

(1) ~~Manager shall receive a 2.5% @ 55 benefit with the California Public Employees' Retirement System ("CalPERS") as well as an enhancement through a supplemental plan adopted through PARS ("Enhanced Benefit") which will provide in combination with CalPERS a total benefit of 2.7% @ 55. In addition to paying the employer contribution required under CalPERS and PARS with respect to the Enhanced Benefit, the City shall also pay the employee contribution required by PARS with respect to the Enhanced Benefit only. Manager shall pay the full CalPERS member contribution.~~

(2) Manager is deemed to be an "eligible retiree" as of the effective date of this Agreement as provided in Section 3, below. Upon retirement from the City of Covina directly into CalPERS, Manager shall be eligible to receive Supplemental Retiree Benefits, currently in the amount of \$472 per month, in the same manner as provided to other executive personnel in accordance with the 2008 Executive Compensation Rules as may from time to time be amended by the City Council. However, this provision shall not be effective if:

- a. This provision is prohibited by law and/or by the City's then medical insurers underwriting practice; or
- b. Manager becomes employed with another public agency or private entity subsequent to his employment with the City, but prior to retirement into CalPERS.

(3) City shall pay Manager Two Hundred Fifty Dollars (\$250.00) per month up to a maximum of \$3,000.00 per year towards Manager's deferred compensation plan (457 plan).

F. Special Provisions Re: PARS Membership Termination and One-Time Payment.

(1) Manager agrees to terminate his membership in the supplemental PARS plan for enhanced retirement benefits which, as of the effective date of this Agreement, is calculated to have an accrued benefit value of Thirty Two Thousand Eight Hundred Sixty Eight Dollars (\$32,868.00) ("PARS Amount").

(2) By Manager's termination in the supplemental PARS plan, the City will realize certain savings by avoiding future PARS plan administration costs for what would have been the life of Manager's pension. City agrees to share a portion of these savings by paying Manager a one-time lump sum of Thirteen Thousand Six Hundred Twenty Dollars (\$13,620.00) ("PARS Savings Share").

(3) Notwithstanding any provision of subsections (C)(1) or (C)(3) of this Agreement, or any provision of the 2008 Executive Compensation Rules to the contrary, Manager shall be entitled to immediately cash-out up to (i) one hundred (100) hours of accrued vacation leave and

two hundred (200) hours of accrued sick leave, at those rates in accordance with the 2008 Executive Compensation Rules, as may be from time to time amended by the City Council ("Leave Amount").

(4) City agrees to pay Manager the PARS Amount, PARS Savings Share and Leave Amount as a combined lump-sum payment within thirty (30) days following the effective date of this Agreement.

(5) Manager shall apply the combined total payment of the PARS Amount, PARS Savings Share and Leave Amount toward the purchase of (i) additional time/service credit toward his PERS retirement benefits or (ii) a private retirement plan (e.g.: IRA).

FG. City covenants to take such action as may be reasonably necessary to include all benefits to Manager hereunder during any fiscal year of City in its annual budget for such year and to make the necessary annual appropriations for all such benefits.

Section 3: Term; Notice of Termination; and Severance

A. Term and Extension. This Agreement shall be effective from ~~November 30~~ January 15, 2013, through ~~June 30, 2013~~ July 1, 2014, unless extended or terminated as provided herein.

B. Notice of Termination. Manager serves at the pleasure of the City Council and City Council reserves the right to terminate Manager and this Agreement upon the vote of a majority of the entire City Council in attendance at any lawfully called meeting. In any event, City shall provide Manager with thirty-(30) days notice of its decision to terminate this Agreement in accordance with , and as provided by the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq., and in accordance with CMC Sections 2.08.080 and 2.08.090. Notwithstanding the provisions of CMC Sections 2.08.080 and 2.08.090, the Manager shall not be removed from office during or within a period of 90 days next succeeding any general municipal election held in the City, at which election a member of the city council is elected. After the expiration of such 90-day period, the provisions of CMC Sections 2.08.080 and 2.08.090 as to the removal of the city manager shall apply and be effective. Due to the important nature of Manager's duties to the City, if Manager terminates this Agreement, Manager must provide the City Council with thirty (30) days written notice prior to the date he ceases to perform his duties and responsibilities under this Agreement and the provisions of the City's Municipal Code.

C. Severance. In the event Manager is terminated other than for cause or disability by a majority vote of the entire City Council in attendance at any lawfully called meeting, City shall provide Manager with severance pay equal to six (6) months of the then current base salary. Manager and his dependents shall also receive continuing health insurance plan coverage for a six (6) month period from the effective date of termination. Pursuant to California Government Code section 53261, the continuing eligibility of Manager and his dependents for such health insurance plan coverage shall terminate should Manager obtain other employment. Manager shall be compensated for any unused leave, holidays, and other benefits then accrued as provided in this Agreement.

D. Termination for Cause. In the event Manager is terminated because of his conviction of any illegal act involving a felony, personal gain, or moral turpitude, City shall have no obligation

to pay the severance as set forth in subsection 3.C. above. In the event that Manager is under investigation for any of the foregoing reasons, the City may withhold part or all of such severance pay until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered.

E. Termination as Including Salary Reduction. If at any time during the term of this Agreement, City reduces the salary or other financial benefits of Manager in an average (mean) percentage greater than that of other executive managers within City's employ, or in the event City refuses, following written notice, to comply with any provision benefiting Manager herein, or Manager resigns following a request that he resign made by a majority of the entire City Council in attendance at a lawfully called meeting, then Manager shall be deemed to be "terminated" as of the date of such reduction, refusal, or request within the meaning and context of Section 3.C herein.

F. Termination Based on Disability. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health reasons for a period of three consecutive months beyond any provided sick leave, the City may terminate this Agreement. Upon termination of the Agreement for the reasons stated in this paragraph, Manager's salary then in effect shall continue until six months have elapsed from the date of the incident or onset of illness giving rise to the disability or incapacity. The amount of salary shall be reduced by an amount equal to any disability insurance proceeds then being received by Manager.

Section 4: General Expenses

A. City agrees to budget reasonable sums for and to pay for professional dues and subscriptions of Manager necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for Manager's continued professional participation, growth, and advancement, and for the good of City.

B. City agrees to budget reasonable sums for and, consistent with the City's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time, to pay for travel and subsistence expenses of Manager for professional and official travel, meetings, and occasions to adequately continue the professional development of Manager and to pursue necessary official functions for City, including but not limited to the ICMA Annual Conference, League of California Cities, and such other national, regional, state, and local governmental groups and committees in which Manager serves as a member.

C. City agrees to budget reasonable sums for and, consistent with the City's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time, to pay for travel and subsistence expenses of Manager for short courses, institutes, and seminars that are necessary for Manager's professional development and for the good of City.

D. City recognizes that certain expenses of a non-personal but job related nature may be incurred by Manager, and agrees to reimburse or to pay reasonable general expenses consistent with the City's reimbursement policy adopted pursuant to Assembly Bill 1234, as it may be amended from time to time. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

E. City acknowledges the value of having Manager participate and be directly involved in local civic clubs or organizations. Accordingly, City shall pay for the reasonable membership fees and/or dues to enable Manager to become an active member in local civic clubs or organizations.

Section 5: Housing Assistance

A. In order to facilitate Manager's duties and encourage Manager's participation in community events, City shall provide manager with a monthly rental subsidy for the purpose of paying the actual rent of property within the boundaries of the City of Covina. Manager shall live in the rental unit for a majority of the time he is in Covina. The rental subsidy shall be the actual monthly rental amount up to \$1,000 per month.

Section 6: Indemnification

A. City agrees to defend, hold harmless, and indemnify Manager against any tort, professional liability claims or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Manager's duties. City, at its discretion, is not required to indemnify Manager for any illegal acts committed by Manager.

Section 7: Performance Review

A. City Council agrees to provide, prepare, and participate in reviews of Manager's performance. The objective of such review shall be to maintain an optimal working relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between Manager and the City Council. At least annually at a City Council meeting in May of any calendar year, the City Council shall conduct such review.

Section 8: Bonding Requirements

A. City shall bear full cost of the fidelity bond required of the Manager under the Covina Municipal Code or State law.

Section 9: Other Terms and Conditions

A. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties provided, however, Manager may not assign Manager's obligations hereunder.

B. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Manager. No waiver by either party at any time or the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

C. The text herein shall constitute the entire agreement between the parties and shall supersede any and all previous agreements and understandings of the parties except as otherwise provided in this Agreement.

Section 10: Severability

A. If any provision, or portions thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall remain in full force and effect.

Section 11: Notices

A. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

City of Covina
125 East College Street
Covina, California 91723
Attention: Mayor

Daryl Parrish
11451 Casa Blanca Avenue
Yucaipa, CA 92399

B. Notices also may be personally served in the same manner as is applicable to civil judicial practice.

C. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission by the United States Postal Service.

D. Either party hereto may change its respective address of record by providing written notice thereof in accordance with this Section.

[Signature Page to Immediately Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

MANAGER

Daryl Parrish

CITY OF COVINA

Kevin Stapleton
Mayor

ATTEST:

Kay Manning
City Clerk

APPROVED AS TO FORM:

Marco A. Martinez
City Attorney

CITY OF COVINA

AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO: PH 1

STAFF SOURCE: Dilu de Alwis, Finance Director *DA*
Debbie Pacheco, Sr. Management Analyst

ITEM TITLE: Council to hold public hearing to consider approval of the Fiscal Year 2013-2014 Community Development Block Grant (CDBG) program budget

STAFF RECOMMENDATION

- a. City Council to receive the staff report and open the public hearing and consider testimony; and
- b. Consider approval of the fiscal year 2013-2014 Community Development Block Grant Program budget as recommended selecting Column C of the Table on Exhibit A with the provision that allocations be adjusted based on the final allocation as determined by the Community Development Commission, with a maximum of 15% of funding allocated for public service programs, and
- c. Authorize the City Manager or his designee to execute documents related to the fiscal year 2013-2014 Community Development Block Grant.

FISCAL IMPACT

None. The City anticipates that no more than \$304,199 of federal CDBG funds will be available to the City. These funds will reimburse the expenditures of the programs. This is a reduction of \$382 from the amount that we received in fiscal year 2012-2013.

BACKGROUND

The City of Covina receives federal Community Development Block Grant funds which are budgeted under the Redevelopment and Housing cost center in the Community Development Department budget. Because our municipal population is below 50,000 the City cannot receive the money directly from the federal government, and instead participates in the Urban County Program and receives our funds via the Los Angeles County Community Development Commission (CDC).

The CDC requires we submit our preliminary budget and spending contracts by February 3rd of each year. Specific projects must be approved by the CDC and found in compliance with federal regulations.

The CDC has notified us of the City's estimated final allocation for fiscal year 2013-2014 will be \$304,199. These funds can only be spent on activities that:

- benefit low- and moderate-income persons
- prevent or eliminate slum and blight, or
- Meet community development needs having a particular urgency (must pose a serious and immediate threat to the health or welfare of the community).

Under the Community Development Block Grant program, public service (non-capital/non-construction) projects are limited to 15% of the annual allocation. The public service allocation for fiscal year 2013-2014 will be \$45,630.

Expenses of administering the program will only be allowed for project related tasks, and will be charged directly to the projects. There is no separate administrative allowance, as had been allowed in the past.

Total requests for funding for other programs for fiscal year 2013-2014 will amount to \$258,569 as shown in Exhibit A.

The Housing and Community Development Advisory (HCDA) Committee did not consider any requests, or staff recommendations, at their December 12, 2012 meeting as their meeting was cancelled due to lack of quorum. Today's meeting was properly noticed and provides the public with a forum to discuss this matter.

The staff recommendation is as follows, providing for \$45,630 in public service projects, and \$258,569 for housing rehabilitation and economic development programs, for a total allocation of \$304,199 as shown in Exhibit A, Column C. Two local non-profits, Economic Relief Center and Improving the Community Through Literacy, as well as one private citizen who resides outside of City limits, submitted applications for funding as well (Exhibit C CDBG Applications Received). Staff is recommending the four City public service programs (Senior Case management, Senior Information and Referral, Senior Nutrition, and Second Start Literacy) and the Housing Rehabilitation and Economic Development programs as the funding is needed for these community programs to continue in their current role.

Update on FY 2012-2013 CDBG status

The City's original allocation for CDBG funds for the current fiscal year, 2012-2013 was \$304,581. However, there were \$399,786 of unspent funds at June 30, 2012, which have been carried over, bringing the total amount of CDBG funds available for this fiscal year 2012-2013 to \$704,367. See Exhibit B for a breakdown of current year funding.

There is \$176,208 available for residential rehabilitation. Staff is in the process of working with applicants with health and safety issues in order to provide assistance to these individuals. To date, \$20,777 has been expended and 4 homeowners are in the process of being assisted. Staff anticipates spending the majority of the remainder of the residential rehabilitation funds by the end of June, 2013. Administrative expenses charged directly to this program are estimated at \$35,240.

Three businesses have been approved for participation in the Economic Development Program for \$125,000 in funding in FY 2012-2013. In addition, four businesses participating in the program were carried over from the previous fiscal year 2011-2012 to the current fiscal year 2012-2013 for \$267,977. \$15,000 is available for additional programming. To date, \$71,493 has

been expended. Administrative expenses charged directly to this program are estimated at \$96,500.

RELEVANCE TO THE STRATEGIC PLAN

This CDBG funding assists enhancing parks and recreation and library services by providing funding for public service programs such as Second Start Literacy.

EXHIBITS

- A. Recommended Funding Table
- B. Current Year Funding Table
- C. CDBG Applications Received

REVIEW TEAM ONLY	
City Attorney: _____	Finance Director: _____
City Manager: _____	Other: _____

Recommended Funding Table

For Planning Purposes 2013-2014:

Estimated Funding Available

New Year Funds Available estimated allocation

\$304,199

Public Services (15%)

\$45,630

Other (78%)

\$258,569

Estimated

A	B	C	D	E
Program Name	Original Funding Requests 2013-2014	Staff Recommendation	City of Covina Program?	Meets the need of City Programs?
<u>PUBLIC SERVICE PROGRAMS</u>				
Sr. Case Mgmt	\$10,000.00	\$10,000.00	Yes	Yes
Senior Info & Referral	\$10,000.00	\$10,000.00	Yes	Yes
Senior Nutrition	\$10,000.00	\$10,000.00	Yes	Yes
Second Start Literacy	\$15,651.00	\$15,630.00	Yes	Yes
Subtotal Public Service	\$45,651.00	\$45,630.00		
<u>Other Programs</u>				
Residential Rehabilitation	\$80,000.00	\$58,569.00	Yes	Yes
Economic Development	\$200,000.00	\$200,000.00	Yes	Yes
Subtotal Other Programs	\$280,000.00	\$258,569.00		
Total Funding Requested	\$325,651.00	\$304,199.00		

CITY OF COVINA CDBG APPROVED PROGRAMS 2012-2013

Budget Code	Project #	Program Name	Original Funding Approved 2012- 2013	Carryover from 2011-2012	Final Allocation
		<u>PUBLIC SERVICE PROGRAMS</u>			
21004800-80043 2800LS73	D96153-12	Second Start Literacy	\$15,629.00		\$15,629.00
21004800-80044 1010SS74	601181-12	Senior Info & Referral	\$10,000.00		\$10,000.00
21004800-80045 1010SS75	601198-12	Senior Nutrition (YWCA)	\$10,000.00		\$10,000.00
21004800-80046 1010SS76	601194-12	Sr. Case Mgmt (YWCA)	\$10,000.00		\$10,000.00
		Subtotal Public Service	\$45,629.00	\$0.00	\$45,629.00
		<u>Other Programs</u>			
21004750-75007	600525-12	Economic Development	\$158,569.00	\$323,961.00	\$482,530.00
21004850-85000	D96164-12	Residential Rehabilitation	\$100,383.00	\$75,825.00	\$176,208.00
		Subtotal Other Programs	\$258,952.00	\$399,786.00	\$658,738.00
		Total Funding Requested	\$304,581.00	\$399,786.00	\$704,367.00

CDBG APPLICATIONS RECEIVED

TABLE OF CONTENTS

Program Name	Funding Requested FY 13-14	See Application No.
<u>PUBLIC SERVICE PROGRAMS</u>		
Senior Case Mgmt	\$10,000.00	1
Senior Info & Referral	\$10,000.00	2
Senior Nutrition	\$10,000.00	3
Second Start Literacy	\$15,650.00	4
Economic Relief Center	\$25,000.00	7
Improving the Community Through Literacy	\$10,000.00	8
Subtotal Public Service Programs	\$80,650.00	
Estimated Amount Available for Public Service Programs	\$45,687.00	
Amount over/(under)	\$34,963.00	
<hr/>		
Residential Rehabilitation	\$80,000.00	5
Economic Development	\$178,894.00	6
Repave Street outside City Limits	\$15,000.00	9
Total Funding Req	\$273,894.00	
Total Planning Funding Available	\$258,894.00	
Amount over/(under)	\$15,000.00	

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CB 1

STAFF SOURCE: Kalieh Honish, Interim Director of Public Works 
Chief Kim Raney, Covina Police Department
Captain David Povero, Covina Police Department
Alex Gonzalez, Assistant Director of Public Works

ITEM TITLE: Consideration of Ordinance No. 12-2015 Adopting Revised Administrative Citation Regulations by Repealing Chapter 1.26 (“Community Improvement and Administrative Citations”) and Adopting a New Chapter 1.26 (“Administrative Citations”) in Title 1 (“General Provisions”) of the Covina Municipal Code

STAFF RECOMMENDATION

That City Council hold second reading and approve adoption of **Ordinance No. 12-2015**, repealing Chapter 1.26 (“Community Improvement and Administrative Citations”) and adopting a new Chapter 1.26 (“Administrative Citations”) in Title 1 (“General Provisions”) of the Covina Municipal Code.

FISCAL IMPACT

All code enforcement citation fine revenues are directed to the Community Improvement Fund (2188-4200) because property compliance, not revenue generation, is the purpose of code enforcement operations. Citation fine revenues may only be used to fund code enforcement operations that result in improvements to the community, such as the cost of property abatements and community cleanups, as well as the costs of achieving code enforcement compliance that cannot be recovered by the City. Therefore, the revision of Chapter 1.26 is intended to have no effect on the City’s General Fund.

BACKGROUND

As noted in the October 2, 2012 special meeting of the Covina City Council related to field operations for Code Enforcement and Police, there has been a substantial increase (+352% from 2006 to 2011) in property inspections related to code enforcement cases. This caseload increase, which accompanied the 2008 economic downturn and the foreclosure crises, led to a streamlining of operations to focus on the most egregious violations while attempting to simplify the processing of minor infractions. Protecting the health, welfare and safety of the general public under the current provisions of the Municipal Code was shown to be problematic when dealing with absentee land owners and foreclosed properties with existing staff resources under increased caseloads, so the City Prosecutor was enlisted to review Chapters 1.26, 1.28, 8.40 and 17.59.

The proposed ordinance has been developed to address the concerns of staff, clarify enforcement, and improve processes for properties that are in violation.

As drafted, the proposed revision of Chapter 1.26 would address the following issues:

- New definitions have been added for improved clarity and legal strength;
- Regulations for service of citations have been streamlined;
- Fines are no longer set forth in Chapter 1.26, with the exception of fines for violations that would otherwise have been infractions and are capped by the California Government Code. Fines are now to be established under a separate City Council resolution which will be presented to the Covina City Council in January 2013;
- Late penalty and interest charges are imposed, along with re-inspection fees;
- Although procedures are set forth for the denial of a City approval, entitlement, license or permit resulting from the failure to pay an administrative fine, the specific circumstances under which the City would issue such a denial are intentionally NOT codified. It is recommended that the City create a policy/guideline so that the City can make appropriate decisions on a case-by-case basis, and
- The failure to pay a fine is only a misdemeanor, if willful (see Section 1.26.120). This is intended to comply with recent judicial decisions.

An overview of the changes to Chapters 1.26, 1.28 and 8.40 were previously presented to the City Council at a public workshop on October 2, 2012 by the Police and Public Works Departments, as a potential tool for City Officials, especially for Code Enforcement field operations, to maintain community safety standards. Since that time, the City Attorney's Office and the City Prosecutor have reviewed the changes to all three Chapters and added certain provisions to ensure the ordinance's compliance with recent case law.

RELEVANCE TO THE STRATEGIC PLAN

On October 25, 2012 the City held a Strategic Planning session which directed staff to return to Council with revisions to the Municipal Code in order to enhance Code Enforcement efforts, under the goal of improving safety and quality of life in Covina.

EXHIBITS

A. Ordinance No. 12-2015

REVIEW TEAM ONLY
City Attorney:  Finance Director: 
City Manager:  Other: _____

ORDINANCE NO. 12-2015

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA
ADOPTING REVISED ADMINISTRATIVE CITATION REGULATIONS BY REPEALING
CHAPTER 1.26 ("COMMUNITY IMPROVEMENT AND ADMINISTRATIVE
CITATIONS") AND ADOPTING A NEW CHAPTER 1.26 ("ADMINISTRATIVE
CITATIONS") IN TITLE 1 ("GENERAL PROVISIONS")
OF THE COVINA MUNICIPAL CODE**

WHEREAS, pursuant to California Government Code Section 53069.4, on March 16, 2004, the City Council of the City of Covina adopted Ordinance No. 04-1900 (enacted as Chapter 1.26 of Title 1 of the Covina Municipal Code) that established a process for imposing administrative fines and/or penalties for violations of the Covina Municipal Code by means of an administrative citation; and,

WHEREAS, the City Council of Covina desires to revise provisions of Chapter 1.26, including but not limited to administrative procedures relating to the imposition, enforcement, collection of administrative fines, and the administrative review of administrative citations.

THE CITY COUNCIL OF THE CITY OF COVINA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 1.26 ("Community Improvement and Administrative Citations") of Title 1 ("General Provisions") of the Covina Municipal Code is hereby repealed and deleted in its entirety.

SECTION 2: A new Chapter 1.26 ("Administrative Citations") is hereby added to Title 1 ("General Provisions") of the Covina Municipal Code to read as follows:

**"CHAPTER 1.26
ADMINISTRATIVE CITATIONS**

Sections:

- 1.26.010 Findings.
- 1.26.020 Applicability.
- 1.26.030 Definitions.
- 1.26.040 Scope.
- 1.26.050 Issuance of Administrative Citation; Contents Thereof.
- 1.26.060 Service of Citation.
- 1.26.070 Imposition of Administrative Fines, Late Penalty and Interest Charges, as well as Re-Inspection Fees; Payment and Collection Thereof.
- 1.26.080 Denial of City Approvals, Entitlements, Licenses and Permits for Delinquent Administrative Citation Fines, Late Penalty and Interest Charges, as well as for Unpaid Re-Inspection Fees.

- 1.26.090 Right to an Administrative Hearing; Waiver of Advance Deposit of Fine.
- 1.26.100 Administrative Hearing – Procedures.
- 1.26.110 Hearing Officer Decision; Right of Appeal Therefrom.
- 1.26.120 Penalties.
- 1.26.130 Severability.

Section 1.26.010 Findings.

The City Council of the City of Covina finds and declares as follows:

A. Enforcement of the Covina Municipal Code and adopted ordinances throughout the City is an important public service. A program for enforcement of local codes is vital to protect public health, safety, and welfare. The establishment of a comprehensive and effective code enforcement program that is able to utilize both administrative and judicial remedies against violations of the City's laws is best equipped to protect public health, safety, and welfare.

B. Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making a violation of any local ordinance subject to an administrative fine or penalty. The State Legislature has also enacted other provisions of California law that allow local governments to impose administrative fines and/or penalties for violations of specified provisions of State law. The City Council intends, pursuant to this statute, to establish an administrative citation program that:

1. Imposes a non-judicial administrative fine and/or penalty for offenses of the Covina Municipal Code (including, but not limited to, any other code adopted therein) and other state laws as authorized by statute;
2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,
3. Creates deterrence against future violations of the City's laws.

C. The administrative citation remedy is not intended to replace any other remedy allowed by the Covina Municipal Code or State law. It is intended to provide an alternative and/or additional means by which the City's laws may be enforced.

Section 1.26.020 Applicability.

A. Use of this Chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Covina Municipal Code or other applicable provisions of State law. By adopting this Chapter, the City does not intend to limit its discretion or ability to utilize any administrative, civil, criminal, or other remedy available at law or equity, or any combination thereof, to address violations of the City's laws.

B. This Chapter makes a violation of any provision, restriction, or requirement of this Code or any Code adopted by reference herein, any ordinance of the City, any rule or regulation promulgated pursuant thereto, or any condition of any permit, license, or other entitlement issued pursuant to this Code subject to an administrative fine.

C. This Chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of administrative fines and/or penalties pursuant to Government Code Section 53069.4.

D. An administrative fine in an amount adopted by resolution of the City Council shall be imposed by means of an administrative citation issued by an Enforcement Officer, and shall be paid directly to the City of Covina. Payment of a fine shall not excuse a failure to correct a violation, nor shall it bar concurrent or further enforcement actions by the City.

E. The City Manager, or a designee thereof, may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

F. The City Manager, or a designee thereof, is authorized to promulgate procedural rules and regulations governing the provisions in this Chapter.

Section 1.26.030 Definitions.

As used in this Chapter, the following words are defined as follows:

A. "Administrative fine", "fine", "penalty" and/or "administrative penalty" shall mean the monetary sanction established by resolution of the City Council that is imposed upon a Responsible Person by means of a Citation.

B. "Citation" shall mean an administrative citation that is issued to a Responsible Person pursuant to this Chapter.

C. "Citee" shall mean a Responsible Person to whom a citation is issued.

D. "City" shall mean the City of Covina, California.

E. "City Manager" shall mean the chief administrative official of the City as appointed by the City Council.

F. "Code" shall include: (i) the entire Covina Municipal Code and any other Code, rule, or regulation incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the City Council of Covina, (iii) any rule or regulation promulgated pursuant to the provisions of the Covina Municipal Code, (iv) any condition

of any permit, license, or other entitlement issued pursuant to this Code, and (v) other State laws as authorized by statute.

G. "Enforcement officer" and "Officer" shall mean any City employee with obligations to enforce the Covina Municipal Code. Enforcement Officers shall include personnel of the Public Works Department and Covina police officers. The City Manager may designate additional employees of other City departments to act as Officers for purposes of implementing and enforcing the provisions of this Chapter.

H. "Hearing officer" shall include a private person, or a public official, or duly constituted reviewing authority or commission that the City Manager designates or appoints to consider all timely requests for an administrative hearing upon issuance of a citation.

I. "Owner" shall mean and include any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, or responsibility for, any real property in the City, including all persons shown as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. Owners include persons with powers of attorney, executors of estates, trustees, or who are court appointed administrators, conservators, guardians or receivers. An owner of personal property shall be any person who has legal title, charge, control, responsibility for, or possession of such property.

J. "Person" shall mean and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

K. "Property" or "Premises" shall mean any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.

L. "Responsible Person" shall mean any person, whether as an owner or an agent, manager, or representative of an owner, or otherwise, that allows, causes, creates, maintains, suffers, or permits a violation of the Code to exist or continue, by any act or the omission of any act or duty.

M. "Violation" shall mean an act or omission of any act, or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval, entitlement or license issued pursuant to the Code. A "transient" violation is one that is brief or spontaneous in its commission, or that is not typically confined to a fixed location. A "Non-transient" violation is continuing in nature and generally present at one location.

Section 1.26.040 Scope.

This Chapter provides for imposition of an administrative fine pursuant to a Citation for any violation of the Code, as well as for a breach or violation of any condition of a permit, approval, entitlement or license issued pursuant to the Code. This remedy may be utilized in place of, or in addition to, any other remedy allowed by the Code or state law. The City Manager, or designees thereof, shall have sole discretion to utilize any remedy or remedies as authorized by law.

Section 1.26.050 Issuance of Administrative Citation; Contents Thereof.

A. Whenever an Officer determines that a violation has occurred, the Officer may issue a Citation on a City-approved form imposing an administrative fine or fines to the Responsible Person(s) in accordance with the provisions of this Chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that creates an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for a violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues shall not be issued pursuant to this Chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day, or any portion thereof, that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall constitute a separate violation for which an administrative fine may be imposed. A single Citation may charge multiple violations of the Code, however, each violation is subject to a separate and distinct administrative fine.

E. Each Citation shall contain the following information:

1. Name and mailing address of the Responsible Person.
2. The address or description of the location of the violation.
3. The date and approximate time of the commission of the violation(s), or detection thereof by an Officer.
4. The relevant provision(s) or section(s) of the Code alleged to have been violated;
5. A description of the violation(s);

6. Amount of the fine for each violation, the amount of any re-inspection fee, as well as the procedure and place to pay the fine(s) and/or re-inspection fees, and any late penalty and/or interest charge(s), if not timely paid;

7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s);

8. A description of the administrative citation review process and the manner by which a hearing on a Citation may be obtained (including the form to be used, where it may be procured from, and the period in which a request must be made in order to be timely);

9. The name and signature of the Officer, and the signature of the Citee, if he or she is physically present and will sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code;

10. A statement that the failure to timely tender the fine(s) and other charges/ fees imposed pursuant to this Chapter may result in: (i) a civil action against Citee; (ii) the recordation of a lien or special assessment against the Citee's real property; and, (iii) the denial of any City approval, license, entitlement or permit to Citee until all delinquent monies are paid to the City; and,

11. Any other information deemed necessary by the City Manager.

Section 1.26.060 Service of Citation.

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service. The date of personal service shall constitute the issuance date of a Citation.

B. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business or residence address as same appears in public records of the City, the Los Angeles County Tax Assessor's Office, and/or the Secretary of State. The date a Citation is deposited with the United States Postal Service shall: (i) constitute its issuance date, and (ii) the date that service by first class mail shall be deemed to have been completed.

C. If an agent, manager or representative of a Responsible Person is personally served with a citation, a copy thereof shall also be served by first class mail to the Responsible Person at his or her last-known business or residence address as same appears in public records of the City, the Los Angeles County Tax Assessor's

Office, and/or the Secretary of State. In such instances, the date a copy of the Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

D. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation on the real property where the violation is alleged to have occurred. The date of posting shall constitute the issuance date of a Citation.

E. Any notice or order given pursuant to any provision of this Chapter shall be served in the manner provided for in this section, unless otherwise stated.

F. Failure of a Citee to receive a Citation or notice shall not invalidate any fine, late penalty charge, action or proceeding that is imposed or brought pursuant to this Chapter, if service was given in a manner stated in this section.

Section 1.26.070 Imposition of Administrative Fines, Late Penalty and Interest Charges, as well as Re-Inspection Fees; Payment and Collection Thereof.

A. The amounts of the fines imposed pursuant to this Chapter shall be set forth in a schedule of fines established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses of the same ordinance. The amounts of fines may be modified from time to time by a resolution of the City Council.

B. If a violation is otherwise classified as an infraction under the Code, the administrative fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense of the same Code provision within a twelve month period of time, and \$500.00 for a third or subsequent offense of the same Code provision within a twelve month period of time, as set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by state law.

C. In addition to any fine imposed pursuant to this Chapter, a re-inspection fee shall be assessed against any Responsible Person in an amount established by resolution of the City Council if the Responsible Person does not timely and completely correct or abate a violation (with all requisite approvals, permits, entitlements, licenses, and/or inspections) after having received notification from the City to correct or abate same.

D. The due date for the City's receipt of an administrative fine and any applicable re-inspection fee shall be twenty (20) calendar days from the issuance date of a citation. Thereafter, a late penalty charge shall be due and owing for the unpaid fine, as well as interest, as imposed by this Chapter.

E. Failure to pay an administrative fine by the due date shall result in the assessment of a late penalty charge. The late penalty charge shall be equal to one hundred percent (100%) of the total fine owed (excluding any re-inspection fee).

F. Failure to pay an administrative fine within sixty (60) days after the issuance of an uncontested administrative citation or, if contested, within sixty (60) days after an order to pay pursuant to a decision by a hearing officer or judicial officer confirming the fine, shall also result in the imposition of an interest charge at a rate established by resolution of the City Council. Interest shall not accrue on a late penalty charge or re-inspection fee. The rate of interest may be modified from time to time by resolution of the City Council.

G. Administrative fines, re-inspection fees, late penalty charges, and any interest due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the City Manager.

H. Payment of an administrative fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

I. Abatement of a violation shall not excuse the obligation of a Citee to pay an administrative fine or any other charges, fees, or costs imposed as a result of the issuance of a citation.

J. Unpaid administrative fines and other charges, fees, or costs imposed in accordance with this Chapter shall constitute a debt that may be collected in any manner allowed by law, including, but not limited to: (i) the filing of a civil action in the Los Angeles Superior Court; and/or, (ii) the recordation of a lien with the Los Angeles County Recorder's Office against Citee-owned property that was the subject of the Citation in the manner set forth in Section 1.28.040 of the Code; and/or, (iii) by means of a special assessment against Citee-owned property that was the subject of the Citation in the manner set forth in Section 1.28.050 of the Code; and/or, (iv) by means of collecting the debt using the California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government Code); and/or, (v) by denying the issuance or renewal in the manner set forth in Section 1.26.080 of this Chapter, of any City approval, entitlement, license or permit to any Citee who has failed to tender all unpaid administrative fines, late penalty charges, interest charges, or re-inspection fees. The City shall be entitled to recover its attorney fees and costs arising from an action to collect an administrative fine and other charges, fees, or costs imposed in accordance with this Chapter, if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon. The City Manager, or a designee thereof, may promulgate policies and procedures for the City's election to use one or more of the foregoing collection remedies.

Section 1.26.080 Right to an Administrative hearing; Waiver of Advance Deposit of Fine.

A. Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing on a City-approved form with the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 and paying an appeal fee in an amount set by Council resolution within ten (10) calendar days after the issuance date of a citation. If the Office of the City Clerk does not receive the request and/or payment of the appeal fee in the required period, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

B. A request for a hearing shall contain the following:

1. The citation number.
2. The name, address, telephone and any facsimile numbers, of each person contesting the citation.
3. A statement of the reason(s) why a citation is being contested.
4. The date and signature of the Citee(s).

C. [Reserved]

D. Requests for a hearing shall be accompanied by an advance deposit of the entire amount of the fine stated in the Citation. Failure to deposit a fine within the required period, or the tender of a non-negotiable check in the required period, shall render a request for an administrative hearing incomplete and untimely, in which case the Citee shall have waived the right to a hearing and the Citation shall be deemed final. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines in the event a Citation is overturned.

E. A Citee who is financially unable to deposit the administrative fine with his or her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereinafter, "Hardship Waiver"). This form and all required accompanying records shall be tendered, along with a request for a hearing, to the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 within ten (10) calendar days from the issuance date of a Citation.

F. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form,

as well as other documentation demonstrating the Citee's financial hardship. The City may, at its sole discretion, request additional documents in order to determine a Citee's financial ability to tender an advance deposit of the fine. Failure to submit sufficient evidence of a Citee's financial inability to tender an advance deposit of the fine shall result in a denial of the Hardship Waiver. The City may, at a time chosen in its sole discretion and after a Citation is final or confirmed, destroy or discard the documents submitted by a Citee for a Hardship Waiver without prior notice to the Citee.

G. Failure to submit a completed, signed Hardship Waiver form, along with sufficient records that support a claim of financial hardship, shall render the request for hearing incomplete and untimely. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

H. The City shall issue a written decision regarding the application for a Hardship Waiver. If the Hardship Waiver is denied, the written decision shall specify the reasons for not issuing the Hardship Waiver. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail.

1. Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to Section 1.26.090 A. of this Chapter.

2. If the City determines that the Citee is not entitled to a Hardship Waiver, he or she shall tender the full amount of the administrative fine to the Office of the City Clerk within ten (10) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period (i) the request for a hearing is rendered incomplete and untimely, (ii) the Citee shall have waived the right to a hearing and the Citation shall be deemed final, and (iii) a late penalty charge shall be imposed upon the administrative fine.

I. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

Section 1.26.090 Administrative Hearing – Procedures.

A. An administrative appeal hearing shall be scheduled and conducted within sixty (60) calendar days after the date a timely and complete request is received by the Office of the City Clerk. A Citee who files a request for an administrative hearing to contest a citation (hereafter “Appellant”) shall be notified in writing by first class mail of the date, time, and location of the hearing at least ten (10) calendar days prior to the date of the hearing. The failure of an Appellant to receive a properly addressed notice shall not invalidate the Citation or any hearing or City action or proceeding conducted pursuant to this Chapter.

B. At the place and time set forth in the notification of administrative hearing, the hearing officer shall hear and consider the testimony of the issuing officer, the Appellant(s), and/or their witnesses, as well as any documentary evidence presented by these persons concerning the violation(s) alleged in the Citation.

C. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The issuance of an administrative citation shall constitute prima-facie evidence of the violation. The appellant(s), and Officer, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses. An Appellant and the Officer issuing the Citation may represent himself/herself/themselves or be represented by anyone of his/her/their choice. An Appellant may bring an interpreter to the hearing at the appellant's sole expense. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording. The hearing officer may question any person who presents evidence or who testifies at any hearing.

D. An Appellant may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If an appellant elects to appear at the hearing by written declaration, the Enforcement Officer who issued the Citation shall not be required to attend or participate at the hearing. If the appellant fails to attend the scheduled hearing, or to otherwise submit a written declaration in a timely manner, the hearing officer shall cancel the hearing and send a notice thereof to the appellant(s) by first class mail to the address (es) stated on the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the Citation (and corresponding fine and other applicable fees) shall be deemed final.

E. Hearings may be continued once at the request of an Appellant or the Officer who issued the citation. The hearing officer may also continue the hearing for cause.

Section 1.26.100 Hearing Officer Decision; Right of Appeal Therefrom.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or overturn the Citation and shall state the reasons therefore. The City shall preserve all exhibits and evidence submitted at the hearing until all appeals have been exhausted. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and provide a deadline to complete said action(s). The decision of the hearing officer shall be final. If the Citation is upheld and the appellant did not deposit the fine at the time the appellant requested an administrative appeal hearing, the hearing officer shall also order the payment of the fine (and other applicable fees and costs) within twenty (20) calendar days of the decision.

B. The appellant(s) shall be served by first class mail with a copy of the hearing officer's written decision. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of an appellant to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this Chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the appellant(s) of this appeal right and the procedures and court-filing fee for its exercise. An appellant shall serve a copy of the court filed Notice of Appeal on the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 by personal service or first class mail within five (5) calendar days after filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.

E. The superior court is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the City Council. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within forty-five (45) calendar days after the City's receipt of a notice of judgment or ruling from the superior court clerk.

Section 1.26.110 Denial of City Approvals, Entitlements, Licenses and Permits for Delinquent Administrative Citation Fines, Late Penalty and Interest Charges, as well as for Unpaid Re-Inspection Fees.

A. Cause to Deny Approvals, Entitlements, Licenses and Permits. The City may deny any City approval, entitlement, license, permit, or renewal thereof, due to the Citee's non-payment of all fines, late penalties and interest charges, as well as re-

inspection fees (hereafter, collectively, the "Debt") that are due in connection with an uncontested Citation, or with a final or confirmed Citation.

1. The City's election not to exercise this remedy and to alternatively issue an approval, entitlement, license, permit, or renewal thereof, does not constitute a satisfaction, discharge, or waiver of the Debt. The issuance of any approval, entitlement, license or permit does not bar the City from denying the issuance of a different City approval, entitlement, license, permit, or renewal thereof, nor the election to use any other remedy to collect the Debt.

B. Notice Denying an Approval Due to an Unpaid Debt. The Department charged with receiving an application for a City approval, license, permit or entitlement, or renewal thereof, may, within five business days after receiving an application, issue a written Notice of Denial to the Citee and to the applicant therefor (hereafter in this section, collectively, the "Citee"), stating that the application is denied for failure to pay the Debt (a summary accounting for which shall be included therein). The notice shall also contain information concerning the right to appeal the denial and the time period and manner in which to do so.

C. Service of Notice. The notice issued under this section shall be served by first class mail to the Citee. The date of its placement in a United States Postal Container shall be the date of service. Failure of the Citee to receive a properly addressed notice shall not invalidate any action under this section.

D. Appeal. Notwithstanding any other provisions of the Code, a Citee seeking to appeal a denial pursuant to this section (hereafter the "Appellant") may not challenge or contest the underlying basis for the issuance of the citation or citations that gave rise to the Debt. For any other reasons to appeal a denial pursuant to this Section, Appellant shall file a written notice of appeal with the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 within ten (10) calendar days of the date of service of the Notice that contains the following information:

1. The full name, address and telephone number for each person filing the appeal.

2. The grounds for the appeal, including, if applicable, a completed or pending bankruptcy action whereby the Debt has been discharged, or is subject to discharge.

3. A copy of the Notice of Denial that was issued pursuant to this section.

Payment of a fee is not required for an appeal under this section. If the Office of the City Clerk does not receive a Notice of Appeal in the required period, the Appellant shall be deemed to have waived the right to appeal the denial. The appeal procedure in this section shall supersede all other appeal procedures in the Code.

The procedure outlined in this section shall be the only method of challenging a denial of a City approval, license, permit or entitlement, or renewal thereof, that was based solely on the City's contention that the Citee has an outstanding Debt.

E. Notice of Appeal Hearing. Upon receipt of a timely Notice of Appeal, the Office of the City Clerk shall issue a Notice of Hearing before the hearing officer, via first class mail to the appellant at the address shown in the application. An appeal hearing shall be set within sixty (60) calendar days of receipt of the Notice of Appeal.

1. The date the Notice of Hearing is deposited in a United States Postal Container shall constitute the date of service.

2. The notice shall include the date, time, and location of the hearing, which must be no sooner than ten (10) calendar days after the date of service of the Notice of Hearing.

3. The failure of an appellant to receive a properly addressed Notice of Hearing shall not invalidate any action under this section.

F. Administrative Appeal Hearing – Procedure.

1. At the place and time set forth in the Notice of Hearing, the hearing officer shall hear and consider the testimony of the appellant(s) and/or their witnesses, and of the representative, if present, of the Department that issued the denial of the application, as well as any documentary evidence presented by these persons concerning the denial of the application.

2. This administrative hearing is informal, and formal rules of evidence and discovery do not apply. The appellant bears the burden of proving he/she/it is not the Citee that owes the Debt, or that the entire Debt has been paid to the City, or that the Debt has been discharged in a bankruptcy action, or is subject to discharge in a pending bankruptcy action. The appellant(s), and Department representative, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses. An appellant may bring an interpreter to the hearing at the appellant's sole expense. The hearing officer may question any person who presents evidence or who testifies at any hearing.

3. Failure of the appellant, or a representative thereof, to attend the hearing, shall result in the hearing officer canceling the hearing and sending a notice thereof to the Appellant by first class mail to the address stated in the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the denial of the application shall be deemed final, without right of appeal to the City Council.

4. Hearings may be continued once at the request of the Appellant or the Department who issued the denial of application. The hearing officer may also continue the hearing for cause.

G. Decision of Hearing Officer; Notice Thereof.

1. The hearing officer shall consider the evidence and testimony in reaching a decision, but shall not consider testimony or evidence that constitutes a challenge to the underlying basis for the issuance of a Citation or Citations that gave rise to the Debt in rendering a decision.

2. The hearing officer shall affirm the denial of application if he or she determines the appellant is the Citee with regard to the unpaid Citation(s), and the entire Debt has not been paid to the City.

3. The hearing officer shall overrule the denial of application if he or she determines: (i) the appellant is not the Citee with regard to the unpaid Citation(s); or, (ii) the entire Debt has been paid to the City; or, (iii) the Debt has been discharged, or is subject to discharge in a pending bankruptcy action, as established with satisfactory evidence of the Appellant at the appeal hearing.

4. The Appellant shall be served by first class mail with a copy of the hearing officer's written decision.

5. The decision shall be deemed final, without right of appeal to the City Council.

A decision by a hearing officer to grant an appeal (i.e., to overturn the denial of a City approval, entitlement, license, permit, or renewal thereof) on any basis other than the Debt having been paid or otherwise discharged by a bankruptcy does not constitute a satisfaction, discharge, or waiver of the Debt, nor does such a decision bar the City from denying the issuance of a different City approval, entitlement, license, permit, or renewal thereof, nor the election to use any other remedy to collect the Debt.

H. Effect on Existing Approvals, Entitlements, Licenses and Permits Pending Appeal. When the holder of a City approval, entitlement, license, or permit is notified in accordance with Section 1.26.110 B. that such approval, entitlement, license or permit will not be renewed unless a Debt is paid, the approval, entitlement, license or permit shall remain in effect during the pendency of the appeal process described in Section Sections 1.26.110 F. and G. When an approval, entitlement, license or permit is found to be eligible for renewal, through the appeal process, it shall remain in effect until the renewal is issued. When an approval, entitlement, license or permit is found to be ineligible for renewal, through the appeal process, it shall expire at such time as the holder has exhausted or failed to exhaust the appeal procedures described in this Section.

Section 1.26.120 Penalties.

Failure of a Citee to comply with a corrective action within the time stated in any uncontested citation, or with regard to a correction order in any hearing officer decision that is deemed confirmed and not appealed to the superior court, or with regard to a correction order appealed to and upheld by the superior court, shall constitute a misdemeanor. A Citee's willful non-payment of administrative fines, late penalty charges, interest charges or re-inspection fees shall constitute a misdemeanor."

SECTION 3: If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council 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 sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 4: The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary of the ordinance, 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 Covina.

SECTION 5: This ordinance shall take effect thirty (30) days after its adoption.

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

SIGNED AND APPROVED this _____ day of _____, 2013.

KEVIN STAPLETON, MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Covina City Council at its regular meeting held on the _____ day of _____, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CB 2

STAFF SOURCE: Kalieh Honish, Interim Director of Public Works 
Chief Kim Raney, Covina Police Department
Captain David Povero, Covina Police Department
Alex Gonzalez, Assistant Director of Public Works

ITEM TITLE: Consider Ordinance No. 12-2016 Adopting Revised and New Regulations for Chapter 1.28 (“Enforcement”) of Title 1 (“General Provisions”) of the Covina Municipal Code

STAFF RECOMMENDATION

That City Council hold second reading and approve adoption of **Ordinance No. 12-2016**, adopting revised and new regulations for Chapter 1.28 (“Enforcement”) of Title 1 (“General Provisions”) of the Covina Municipal Code.

FISCAL IMPACT

All code enforcement citation fine revenues are directed to the Community Improvement Fund (2188-4200) because property compliance, not revenue generation, is the purpose of code enforcement operations. Citation fine revenues may only be used to fund code enforcement operations that result in improvements to the community, such as the cost of property abatements and community cleanups, as well as the costs of achieving code enforcement compliance that cannot be recovered by the City. Therefore, the revision of Chapter 1.26 is intended to have no effect on the City’s General Fund.

BACKGROUND

As noted in the October 2, 2012 special meeting of the Covina City Council related to field operations for Code Enforcement and Police, there has been a substantial increase (+352% from 2006 to 2011) in property inspections related to code enforcement cases. This caseload increase, which accompanied the 2008 economic downturn and the foreclosure crises, led to a streamlining of operations to focus on the most egregious violations while attempting to simplify the processing of minor infractions. Protecting the health, welfare and safety of the general public under the current provisions of the Municipal Code was shown to be problematic when dealing with absentee land owners and foreclosed properties with existing staff resources under increased caseloads, so the City Prosecutor was enlisted to review Chapters 1.26, 1.28, 8.40 and 17.59. The proposed ordinance has been developed to address the concerns of staff, clarify enforcement, and improve processes for properties that are in violation.

As drafted, the proposed revision of Chapter 1.28 would address the following issues:

- This ordinance proposes to maintain much of what is currently in the Municipal Code for Chapter 1.28 with minimal changes to improve clarity and efficiency, as well as to provide staff procedures and guidance to properly complete liens and special assessments;
- Section 1.28.030 has been revised to reflect the most recent rendition of an attorney fee clause that is consistent with judicial decisions;
- Sections 1.28.040 and 1.28.050 are new, and are to be teamed with in-house staff training to ensure that lien and assessment procedures are legal and appropriate. State statutes vary in the required period before imposing a lien or assessment, therefore the longest period (45 days) is proposed for all liens and special assessments. This way, the need for City staff to determine the appropriate time period for each separate instance where the City wishes to record a lien or special assessment is eliminated;
- Sections 1.28.040 and 1.28.050 will control how the City records a lien or special assessment for unpaid administrative fines, late penalty charges and interest, as well as for unpaid re-inspection fees (see Chapter 1.26, Section 1.26.070(J));
- Note that “nuisance abatement liens” and “nuisance abatement special assessments” will have their own (very similar) procedures in the new Public Nuisance Ordinance (Chapter 8.40) and will also be teamed with in-house staff training, and
- Liens and assessments may also be used to collect unpaid code enforcement fees pursuant to Section 1.28.020 (F).

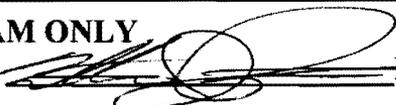
An overview of the changes to Chapters 1.26, 1.28 and 8.40 were previously presented to the City Council at a public workshop on October 2, 2012 by the Police and Public Works Departments, as a potential tool for City Officials, especially for Code Enforcement field operations, to maintain community safety standards. Since that time, the City Attorney’s Office and the City Prosecutor have reviewed the changes to all three Chapters and added certain provisions to ensure the ordinance’s compliance with recent case law.

RELEVANCE TO THE STRATEGIC PLAN

On October 25, 2012 the City held a Strategic Planning session which directed staff to return to Council with revisions to the Municipal Code in order to enhance Code Enforcement efforts, under the goal of improving safety and quality of life in Covina.

EXHIBITS

A. Ordinance No. 12-2016

REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____

ORDINANCE NO. 12-2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA ADOPTING REVISED AND NEW REGULATIONS FOR CHAPTER 1.28 ("ENFORCEMENT") OF TITLE 1 ("GENERAL PROVISIONS") OF THE COVINA MUNICIPAL CODE

WHEREAS, the City Council of Covina desires to revise existing regulations in this chapter in order to remain consistent with applicable state statutes and judicial decisions, and to add new regulations pertaining to uniform lien procedures and uniform assessment procedures.

WHEREAS, California Health and Safety Code Section 17951(a) authorizes the City to prescribe fees to defray its costs of enforcement of State Housing Law regulations that relate to apartment houses, hotels, motels, and dwellings, and buildings and structures accessory thereto, as well as with regard to the premises they are located on.

WHEREAS, California Government Code Section 54988(a)(1) authorizes the City to collect fees, costs or charges for all types of structures and premises with regard to: (i) correction of violations of the Code that would also be violations of California Civil Code section 1941.1 (with regard to untenable dwellings); (ii) enforcement of zoning ordinances adopted pursuant to Chapter 4 (commencing with Section 65800) of Division 1 of Title 7 of the Government Code or any other constitutional or statutory authority (iii) inspections and abatement of violations of Article 1 (commencing with Section 13100) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code and regulations or ordinances adopted pursuant to that article; (iv) inspections and abatement of violations of the State Housing Law and regulations or ordinances adopted pursuant to that part; (v) inspections and abatement of violations of the California Building Standards Code (Title 24 of the California Code of Regulations); and (vi) inspections and abatement related to local ordinances and regulations that implement any of the foregoing.

WHEREAS, several State statutes, including, but not limited to California Government Code Sections 38773.1, 38773.2, 38773.5, 38773.6, and 54988, either explicitly or impliedly authorize local jurisdictions to enact procedures by ordinance to collect fees, costs, and penalties either by means of a lien or a special assessment.

WHEREAS, the City Council of Covina desires to establish procedures to collect fees, costs or charges that are authorized by state statutes or as otherwise allowed pursuant to the City's police powers.

THE CITY COUNCIL OF THE CITY OF COVINA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 1.28.020 (“Recovery of code enforcement fees on residential properties”) of Chapter 1.28 (“Enforcement”) of Title 1 (“General Provisions”) of the Covina Municipal Code is hereby amended to read as follows:

~~1.28.020 Recovery of code enforcement fees on residential properties.~~

The City Council finds and declares as follows:

A. Pursuant to California Government Code Section 54988 and California Health and Safety Code Section 17951 (and any successor statutes thereto), the Covina Building Code, and any other applicable local, State, or Federal law, as well as by the City’s police powers as authorized by the California Constitution, responsible persons, who cause, allow, permit, suffer, or maintain a violation in, or upon, ~~residential properties~~ any real property located within the City, shall be charged fees (hereafter “code enforcement fees”) by the City to defray its costs of code enforcement actions. Such fees shall not exceed the amount reasonably required to achieve this objective and are chargeable whether the city’s code enforcement actions occur in the absence of formal administrative or judicial proceedings, as well as prior to, during, or subsequent to, the initiation of such proceedings.

1. As used herein, “responsible person” means and includes any person that causes, creates, allows, permits, suffers, or maintains a public nuisance to exist or continue within the City, by any act or the omission of any act or duty, including, but not limited to, any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, any real property in the city, including all persons shown as owners on the last equalized assessment roll of the Los Angeles County assessor’s office. A responsible person shall also include, but shall not be limited to, employees, principals, joint venturers, officers, agents, and/or other persons acting in concert with, or at the direction of, and/or with the knowledge and/or consent of the owner and/or occupant of the lot, building or structure on, or in which, a public nuisance or violation exists or existed, as well as any persons with powers of attorney, executors of estates, trustees, or who are court-appointed administrators, conservators, guardians or receivers. “Responsible person” with regard to personal property shall be any person who has legal title, charge, control, or possession of such property. The actions or inactions of a responsible person’s agent, employee, representative or contractor may be attributed to that responsible person.

2. ~~As used herein, “residential properties” mean and include all structures and premises that are regulated by the California State Housing Law (California Health and Safety Code, Division 13, Part 1.5, Section 17910 et seq.) and any future amendments thereto, as well as all dwellings, residences and premises upon which they are located that are regulated by CMC Title 17, Zoning, and other provisions of the Covina Municipal Code.~~ “Public nuisance” or “nuisance” means anything which is, or likely to become, injurious or detrimental to health, safety or welfare, or is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or that unlawfully obstructs the free passage or use, in the customary manner, of any sidewalk, public park, square, street or

highway. Any condition, use, or activity that violates or is otherwise contrary to any provision of this Code or any approval, license, permit, or other entitlement issued pursuant to or in accordance with this Code, or that violates or is contrary to any applicable County, State, or Federal law or regulation shall also constitute a public nuisance.

3. As used herein, "violation" means and includes any prohibited activity, condition, or use on land or in connection with a building or a structure that is caused, allowed to exist, or maintained (whether due to an affirmative act, inaction, or omission) by a responsible person in disregard of, or nonconformity with, any other provision, regulation, prohibition, or requirement of the Covina Municipal Code, or any applicable county, state, or federal laws or regulations. Any such violation shall also constitute an unlawful public nuisance for each and every day or part thereof, during which it is allowed, committed, continued, maintained or permitted by a responsible person.

4. As used herein, "code enforcement fees" shall mean fees imposed by the city to defray its costs of code enforcement actions, pursuant to California Government Code Section 54988 and California Health and Safety Code Section 17951 (and any successor statutes thereto), the Covina Building Code, and any other applicable local, State, or Federal law, as well as by the City's police powers as authorized by the California Constitution, including, but not limited to, the time and other resources of public officials and city consultants expended by them in identifying, inspecting, investigating, seeking or causing the abatement of a violation at a real residential property. Examples of code enforcement actions include, but are not limited to, site inspections, drafting reports, taking photographs, procuring other evidence, engaging in meetings with other officials of the city or other agencies, engaging in conferences and communications with responsible persons, their agents or representatives, concerning a violation, as well as with attorneys for the city at any time, and appearances before judicial officers or reviewing authorities during the commencement or pendency of a judicial or administrative hearing. The time and resources that public officials and city consultants further expend to confirm that a residential real property remains free of a violation while a responsible person is on probation to a court or when a matter concerning a property remains pending before a reviewing authority in an administrative action, shall also constitute code enforcement actions.

B. The amount(s) or rate(s) of code enforcement fees for city personnel time and other resources that are used for code enforcement actions shall be established, and may thereafter be amended, by resolution of the city council.

C. The city manager, or a designee thereof, is authorized to adopt regulations for the uniform imposition of code enforcement fees, and for related administrative actions pertaining to such fees.

D. The fees imposed pursuant to this section shall be in addition to any other fines, fees, interest or charges that responsible persons may owe in accordance with

any other provision of the Covina Municipal Code, or which are imposed pursuant to county, state or federal laws or regulations.

E. Code enforcement fees shall be recoverable in conjunction with any civil, administrative or criminal action to abate, cause the abatement or cessation of, or otherwise remove a violation as defined in this section.

1. In every instance where an owner or other responsible person is required to obtain a permit, approval, license or entitlement under any provision of the Covina Municipal Code in connection with the abatement of a violation, the city may condition the issuance of said permit, approval, license or entitlement on the prior payment of all code enforcement fees.

F. Unpaid code enforcement fees shall constitute a debt that is collectible in any manner allowed by law, including, but not limited to: (i) the filing of a civil action in the Los Angeles Superior Court; and/or, (ii) the recordation of a lien with the Los Angeles County Recorder's Office provided the responsible person has a legal interest in the property on which the violation was located; and/or, (iii) by means of a special assessment provided the responsible person has a legal interest in the property on which the violation was located; and/or, (iv) by means of collecting the debt using the California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government Code); and/or, (v) by denying the issuance or renewal, pursuant to Section 1.26.110 of the Code, of any City approval license, entitlement, permit to any responsible person who has failed to pay code enforcement fees that are imposed pursuant to this section. The remedies may be concurrently used to collect unpaid code enforcement fees."

SECTION 2: Section 1.28.030 ("Recovery of attorney's fees") of Chapter 1.28 ("Enforcement") of Title 1 ("General Provisions") of the Covina Municipal Code is hereby amended to read as follows:

"1.28.030 Recovery of attorney's fees.

A. A prevailing party in any ~~administrative, civil or equitable~~ judicial action, administrative proceeding, or special proceeding to abate, or cause the abatement of a violation of this code or any public nuisance, or in any appeal or other judicial action arising therefrom, ~~may~~ shall be entitled to recover reasonable attorney's fees. Attorney's fees are not recoverable by any person as a prevailing party unless the city manager, or a designee thereof, or an attorney for, and on behalf of, the city, elects in writing to seek recovery of the city's attorney's fees at the initiation of that individual action or proceeding. Failure to make such an election precludes any entitlement to, or award of, attorney's fees in favor of any person or the city.

~~2. The city is the prevailing party when an administrative or judicial determination is made or affirmed by which a person is found to be responsible for one or more activities, conditions or uses that constitute a violation or a public nuisance. A~~

~~person is the prevailing party only when a final administrative or judicial determination completely absolves that person of responsibility for all activities, conditions or uses that were alleged, in that action or proceeding, to constitute a violation or a public nuisance. An administrative or judicial determination that results in mixed findings of both responsibility and nonresponsibility on the part of a person for activities, conditions or uses that were alleged in that action or proceeding to constitute a violation or public nuisance, shall nevertheless result in the city being the prevailing party.~~

B. Provided that the city has made an election to seek attorney's fees, an award of attorney's fees to a person shall not exceed the amount of reasonable attorney's fees incurred by the city in that action or proceeding.

C. Unpaid attorney's fees shall constitute a debt that is collectible in any manner allowed by law."

SECTION 3: A new Section 1.28.040 ("Uniform lien procedures") of Chapter 1.28 ("Enforcement") of Title 1 ("General Provisions") of the Covina Municipal Code is hereby added to read as follows:

"1.28.040 Uniform lien procedures.

A. Unless a different procedure is authorized elsewhere in this Code, where the Code authorizes the City to record a lien for any unpaid fee, cost, charge, or other monies, the following procedures shall apply:

1. A lien may be recorded upon real property that is the subject of enforcement activity if the fine, fee, cost, charge, or other monies resulting from said enforcement activity is not paid within forty-five (45) calendar days of written notice thereof.

a) Said notice must have advised the owner(s) of the subject property in plain language of the City's intent to record a lien if the fine, fee, cost, charge, or other monies was not paid within forty-five (45) calendar days, the amount of the proposed lien, a description of the basis for the amount(s) comprising the lien, and an opportunity to appear before the City Council (or designee thereof) and to be heard regarding the amount of the proposed lien.

b) Where the City Council designates another hearing body should the property owner(s) exercise his/her/their right to be heard, the hearing body shall make a written recommendation to the City Council that shall include factual findings based on evidence introduced at the hearing. The City Council may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the City Council. Notice in writing of the de novo hearing shall be provided to the property owner(s) at least ten (10) calendar days in advance of the scheduled hearing.

2. The lien shall be recorded in the Los Angeles County Recorder's Office and from the date of recording shall have the force, effect, and priority of a judgment lien.

3. A lien authorized by this section shall specify the amount of the lien for the City, the name of the City department or division on whose behalf the lien is imposed, the date upon which the lien was created, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

4. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in Subsection (3) shall be recorded by the City. A lien and the release of the lien shall be indexed in the grantor-grantee index.

5. A lien may be foreclosed by an action brought by the City for a money judgment.

6. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien, providing notice to the property owner as part of its foreclosure action to enforce the lien, and of pursuing a foreclosure action to enforce the lien."

SECTION 4: A new Section 1.28.050 ("Uniform special assessment procedures") of Chapter 1.28 ("Enforcement") of Title 1 ("General Provisions") of the Covina Municipal Code is hereby added to read as follows:

"1.28.050 Uniform special assessment procedures.

A. Unless a different procedure is authorized elsewhere in this Code, where the Code authorizes the City to impose a special assessment for any unpaid fee, cost, charge, or other monies, the following procedures shall apply:

1. A special assessment may be imposed upon real property that is the subject of enforcement activity if the fine, fee, cost, charge, or other monies resulting from said enforcement activity is not paid within forty-five (45) calendar days of written notice thereof.

a) Said notice must have advised the owner(s) of the subject property in plain language of the City's intent to impose a special assessment if the fine, fee, cost, charge, or other monies was not paid within forty-five (45) calendar days, the amount of the proposed assessment, a description of the basis for the amount(s) comprising the assessment, and an opportunity to appear before the City Council (or designee thereof) and to be heard regarding the amount of the proposed assessment.

b) Where the City Council designates another hearing body should the property owner(s) exercise his/her/their right to be heard, the hearing body shall make a written recommendation to the City Council that shall include factual findings based on evidence introduced at the hearing. The City Council may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the City Council. Notice in writing of the de novo hearing shall be provided to the property owner(s) at least ten (10) calendar days in advance of the scheduled hearing.

2. The special assessment may be collected at the same time and in the same manner as property taxes are collected. All laws applicable to the levy, collection, and enforcement of ad valorem taxes shall be applicable to the special assessment, except that if any real property to which the assessment would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bonafide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the assessment that would otherwise be imposed by this section shall not attach to the real property and instead shall be transferred to the unsecured roll for collection.

3. A Notice of Special Assessment shall be sent to the owner(s) of the subject real property by certified mail at the time the assessment is imposed which shall contain the following recitals:

The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

4. The City Attorney or City Prosecutor shall establish the Notice of Special Assessment form for use, or consideration by, the tax collector for the City in collecting a special assessment.

5. The Notice of Special Assessment shall also be entitled to recordation with the Los Angeles County Recorder's Office.

6. It shall be the duty of the City Manager (or designee thereof) to add the amounts of the assessment, or assessments, to the next regular bills for taxes levied against the respective real property in accordance with the policies and procedures established by the Los Angeles County Department of Auditor-Controller.

7. The amount of a Special Assessment shall also constitute a personal obligation of the owners the subject property."

SECTION 5: The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary of the ordinance, 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 Covina.

SECTION 6: If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council 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 sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 7: This ordinance shall take effect thirty (30) days after its adoption.

SECTION 8: The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SIGNED AND APPROVED this _____ day of _____, 2013.

KEVIN STAPLETON, MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Covina City Council at its regular meeting held on the _____ day of _____, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk

CITY OF COVINA
AGENDA ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: CB 3

STAFF SOURCE: Kalieh Honish, Interim Director of Public Works 
Chief Kim Raney, Covina Police Department
Captain David Povero, Covina Police Department
Alex Gonzalez, Assistant Director of Public Works

ITEM TITLE: Consider Ordinance No. 12-2017 Modifying and Enhancing Regulations Relating to Public Nuisances by Repealing Chapter 8.40 (“Abatement of Real Property Nuisances”) and Adopting a New Chapter 8.40 (“Public Nuisances”) in Title 8 (“Health and Safety”) of the Covina Municipal Code

STAFF RECOMMENDATION

That City Council hold second reading of and approve adoption of **Ordinance No. 12-2017**, modifying and enhancing regulations relating to public nuisances by repealing Chapter 8.40 (“Abatement of Real Property Nuisances”) and adopting a new Chapter 8.40 (“Public Nuisances”) in Title 8 (“Health and Safety”) of the Covina Municipal Code.

FISCAL IMPACT

All code enforcement citation fine revenues are directed to the Community Improvement Fund (2188-4200) because property compliance, not revenue generation, is the purpose of code enforcement operations. Citation fine revenues may only be used to fund code enforcement operations that result in improvements to the community, such as the cost of property abatements and community cleanups, as well as the costs of achieving code enforcement compliance that cannot be recovered by the City. Therefore, the revision of Chapter 1.26 is intended to have no effect on the City’s General Fund.

BACKGROUND

As noted in the October 2, 2012 special meeting of the Covina City Council related to field operations for Code Enforcement and Police, there has been a substantial increase (+352% from 2006 to 2011) in property inspections related to code enforcement cases. This caseload increase, which accompanied the 2008 economic downturn and the foreclosure crises, led to a streamlining of operations to focus on the most egregious violations while attempting to simplify the processing of minor infractions. Protecting the health, welfare and safety of the general public under the current provisions of the Municipal Code was shown to be problematic when dealing with absentee land owners and foreclosed properties with existing staff resources under increased caseloads, so the City Prosecutor was enlisted to review Chapters 1.26, 1.28, 8.40 and 17.59. The proposed ordinance has been developed to address the concerns of staff, clarify enforcement, and improve processes for properties that are in violation.

As drafted, the proposed revision of Chapter 8.40 would address the following issues:

- This ordinance proposes to consolidate all nuisance regulations in Chapter 8.40, with the forthcoming proposed repeal of Chapter 17.59. Because it would amend the Zoning Code, the repeal of Chapter 17.59 will move to the Planning Commission in January 2013 for its recommendation and is scheduled to be placed before the Covina City Council in February 2013;
- The new Chapter 8.40 is very comprehensive and incorporates current best practices. It is intended to promote the effective use of the administrative citation remedy, abatement of nuisances by City personnel using administrative remedies, the criminal remedy, and the civil/injunctive remedy – while still ensuring due process to any responsible party;
- Some provisions (e.g. Section 8.40.030E) are intentionally broad to give the City the ability to address many different problem properties, as in the case of dance halls, nightclubs, arcades and bars, to name a few;
- This new chapter does not retain satellite dishes, as the City’s ability to regulate them is limited by Federal regulations;
- The new Chapter 8.40 provides the authorization and process for ordering a building or structure to be vacated. However, the decision to vacate a structure is limited to being made by the Building Official, Fire Chief, or Health Official. Although there are other statutory authorities for such action, it is reasonable to have such regulations contained within this Chapter to consolidate proceedings. The authority to vacate a structure under this chapter will be concurrent with other statutory authority, and
- The recovery of code enforcement fees and attorney’s fees are not included in Chapter 8.40, as such provisions have been included in Chapter 1.28.

An overview of the changes to Chapters 1.26, 1.28 and 8.40 were previously presented to the City Council at a public workshop on October 2, 2012 by the Police and Public Works Departments, as a potential tool for City Officials, especially for Code Enforcement field operations, to maintain community safety standards. Since that time, the City Attorney’s Office and the City Prosecutor have reviewed the changes to all three Chapters and added certain provisions to ensure the ordinance’s compliance with recent case law.

RELEVANCE TO THE STRATEGIC PLAN

On October 25, 2012 the City held a Strategic Planning session which directed staff to return to Council with revisions to the Municipal Code in order to enhance Code Enforcement efforts, under the goal of improving safety and quality of life in Covina.

EXHIBITS

A. Ordinance No. 12-2017

REVIEW TEAM ONLY	
City Attorney: _____	Finance Director: _____
City Manager: _____	Other: _____

**CITY OF COVINA
ORDINANCE NO. 12-2017**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINA
MODIFYING AND ENHANCING REGULATIONS RELATING TO PUBLIC
NUISANCES BY REPEALING CHAPTER 8.40 (“ABATEMENT OF REAL PROPERTY
NUISANCES”) AND ADOPTING A NEW CHAPTER 8.40 (“PUBLIC NUISANCES”) IN
TITLE 8 (“HEALTH AND SAFETY”) OF THE COVINA MUNICIPAL CODE**

WHEREAS, Section VII of Article XI of the California Constitution provides that a City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, California Government Code section 38771 provides that legislative bodies of Cities may declare what constitutes a nuisance; and,

WHEREAS, California Government Code section 38772 et seq. further provides that legislative bodies of Cities may also provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining the nuisance, and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a personal obligation against the property owner; and,

WHEREAS, the City Council finds that nuisance conditions are offensive and/or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private), and/or are hazardous or injurious to the health, safety, and/or welfare of the general public; and,

WHEREAS, it is the City Council’s desire to develop and utilize regulations that will promote the sound maintenance of real property and enhance the appearance, habitability, occupancy, use, and safety of all structures and premises in the City; and,

WHEREAS, the City Council wishes to revise the administrative procedures for the City’s use, upon its election, to correct or abate nuisance conditions on real properties throughout the City, while still protecting the responsible parties’ right to due process under the law.

WHEREAS, the City currently has procedures for the identification, investigation, and abatement of “real property nuisances” within the City’s “Health & Safety” and “Zoning” titles of the Municipal Code, and the City Council wishes to consolidate such regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 8.40 (“Abatement of Real Property Nuisances”) of Title 8 (“Health and Safety”) of the Covina Municipal Code is hereby repealed and deleted in its entirety; however, that such repeal shall not affect or excuse any violation of said Chapter that occurred prior to the effective date of this Ordinance, nor shall such repeal impede, deter, impact, or negate any administrative, civil, or criminal enforcement of any violation of said Chapter that occurred prior to the effective date of this Ordinance.

SECTION 2: A new Chapter 8.40 (“Public Nuisances”) is hereby added to Title 8 (“Health and Safety”) of the Covina Municipal Code to read as follows:

**"Chapter 8.40
PUBLIC NUISANCES**

Sections:

- 8.40.010 Findings, Purpose, and Intent.
- 8.40.020 Definitions.
- 8.40.030 Prohibited Public Nuisance Conditions.
- 8.40.040 Penalty.
- 8.40.050 Abatement of Public Nuisances.
- 8.40.060 Continuing Obligation of Responsible Persons to Abatement a Public Nuisance.
- 8.40.070 Notice of Public Nuisance and Intention to Abate with City Personnel.
- 8.40.080 Additional Requirements for Demolition of Buildings or Structures.
- 8.40.090 Notice and Order to Vacate Buildings or Structures.
- 8.40.100 Sample Notice of Abatement.
- 8.40.110 Service of Notice.
- 8.04.120 Right of Appeal from a Notice of Abatement.
- 8.04.130 Consequence of an Untimely Appeal.
- 8.40.140 Abatement by Responsible Person Prior to Hearing.
- 8.40.150 Review by Hearing Officer.
- 8.40.160 Decision of Hearing Officer; Order of Abatement.
- 8.40.170 Abatement of Nuisance by Responsible Persons Prior to City Abatement Actions.
- 8.40.180 Emergency Action to Abate an Imminent Hazard.
- 8.40.190 Combination of Notices.
- 8.40.200 Establishment of Costs of Abatement.
- 8.40.210 Collection of Abatement Costs by Special Assessment.
- 8.40.220 Collection of Costs of Abatement by Nuisance Abatement Lien.
- 8.40.230 Treble the Costs of Abatement.
- 8.40.240 Violations and Penalties.
- 8.40.250 Recordation of Substandard Notice.
- 8.40.260 Applicability of Other Laws.
- 8.40.270 Severability.

Part 1 – Nuisances Enumerated

8.40.010 Findings, Purpose, and Intent.

A. Findings. The City Council finds and declares as follows:

1. Section VII of Article XI of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

2. California Government Code section 38771 provides that legislative bodies of cities may declare what constitutes a nuisance.

3. California Government Code section 38772 et seq. further provides that legislative bodies of cities may also provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it, and by ordinance may make the expense of abatement of nuisances a lien against the property on which the nuisance is maintained and a personal obligation against the property owner.

4. Nuisance conditions are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private), and/or are hazardous or injurious to the health, safety, or welfare of the general public.

B. Purpose and Intent.

The purpose and intent of this Chapter are as follows:

1. To define as public nuisances and violations those conditions and uses of land that are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction or interference with the comfortable enjoyment of adjacent properties or premises (both public and private), and/or are hazardous or injurious to the health, safety, or welfare of the general public.

2. To develop regulations that will promote the sound maintenance of property and enhance of conditions of appearance, habitability, occupancy, use and safety of all structures and premises in the City.

3. To establish administrative procedures for the City's use, upon its election, to, correct or abate violations of this Chapter on real property throughout the City.

4. This Chapter is not intended to be applied, construed or given effect in a manner that imposes upon the City, or upon any officer or employee thereof, any duty towards persons or property within the City or outside of the City that creates a basis for civil liability for damages, except as otherwise imposed by law.

8.40.020 Definitions.

As used in Chapter, the following definitions shall apply. For purposes of this Chapter, these definitions shall supersede any other definitions of the same terms elsewhere in this Code.

A. "Abandoned structure" shall mean real property, or any building or structure thereon, that is vacant and is maintained in an uninhabitable condition or a condition of disrepair or deterioration as evidenced by the existence of public nuisances therein, or that is vacant and under a current notice of default and/or notice of trustee's sale, pending tax assessor's lien sale, or that is vacant and has been the subject of a foreclosure sale where title was retained by the beneficiary of a deed of trust involved in the foreclosure. Factors that may also be considered in a determination of an abandoned structure include, without limitation: present operability and functional utility; the presence of non-functional, broken or missing doors or windows, such that entry therein by unauthorized persons is not deterred; the existence of real property tax delinquencies for the land upon which the structure is located; age and degree of obsolescence of the structure, and the cost of rehabilitation or repair versus its market value.

B. "Abandoned personal property" shall mean and refers to any item, object, thing, material or substance that, by its condition of damage, deterioration, disrepair, nonuse, obsolescence or location on public real property or on private real property, causes a reasonable person to conclude that the owner has permanently relinquished all right, title, claim and possession thereto, or that the object, thing, material or substance cannot be used for its intended or designed purpose. Abandoned personal property may include junk and vehicles.

C. "Abatement costs" shall mean all costs, fees, and expenses, incidental or otherwise, incurred by the City in investigating and abating a public nuisance.

D. "Attractive nuisance" shall mean any condition, device, equipment, instrument, item or machine that is unsafe, unprotected and may prove detrimental to minors whether in a structure or in outdoor areas of developed or undeveloped real property. This includes, without limitation, any abandoned or open and accessible wells, shafts, basements or excavations; any abandoned refrigerators and abandoned or inoperable motor vehicles; any structurally unsound fences or structures; or, any lumber, trash, fences, debris or vegetation which may prove hazardous or dangerous to inquisitive minors. An attractive nuisance shall also include pools, standing water or excavations containing water, that are unfenced or otherwise lack an adequate barrier thereby creating a risk of drowning, or which are hazardous or unsafe due to the

existence of any condition rendering such water to be clouded, unclear or injurious to health due to, without limitation, any of the following: bacterial growth, infectious or toxic agents, algae, insect remains, animal remains, rubbish, refuse, debris, or waste of any kind.

E. "Building" shall mean any structure designed, used, or maintained for the shelter or enclosure of persons, animals, chattels, equipment, or property of any kind, and shall also include structures wherein things may be grown, made, produced, kept, handled, stored, or disposed of, and all appendages, accessories, apparatus, appliances, and equipment installed as a part thereof.

F. "City" shall mean the City of Covina.

G. "City Manager" shall mean the City Manager or designee thereof.

H. "City Personnel" shall mean any City employee, representative, agent, contractor, or service provider designated by the City Manager to abate a public nuisance.

I. "Code", "Codes", and "Covina City Municipal Code" shall mean the Covina Municipal Code and any code, law, or regulation incorporated therein by reference, including the Covina Comprehensive Zoning Ordinance (Title 17), and any adopted and uncodified ordinances.

J. "Code enforcement officer" and "Officer" shall mean any City employee with obligations to enforce the Covina Municipal Code. Enforcement Officers shall include the personnel of the Public Works Department and Covina police officers. The City Manager may designate additional employees of other City departments to act as Officers for purposes of implementing the provisions of this Chapter.

K. "Commercial vehicle" shall mean any vehicle of a type required to be registered under the State of California Vehicle Code used or maintained for the transportation of persons for hire, compensation or profit, or designed, used, or maintained primarily for the transportation of property or for other commercial purposes. Passenger vehicles that are not used for the transportation of persons for hire, compensation, or profit, trailers, recreational vehicles, and vanpool vehicles are not commercial vehicles.

L. "Compliance period" shall mean the period of time and/or required schedule set forth in a Notice of Abatement and/or an Order of Abatement within which all nuisance abatement actions referenced in such Notice of Abatement and/or Order of Abatement must be completed.

M. "Controlled substances" shall mean any substance that is declared by State or Federal law to be a controlled substance.

N. "Fire Hazard" shall include, but shall not be limited to, any device, equipment, waste, vegetation, condition, thing, or act which is in such a condition that it increases or could cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing, or extinguishing fire or that otherwise provides a ready fuel to augment the spread and intensity of fire or explosion arising from any cause; or any device, equipment, waste, vegetation, condition, thing, or act which could obstruct, delay, hinder, or interfere with, or may become the cause of obstruction, delay, or hindrance of, the operations of the Fire Department or other emergency service personnel or the egress of the occupants in the event of fire.

O. "Graffiti" shall mean any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on or otherwise glued, posted, or affixed to or on any real or personal property (including, but not limited to, buildings, structures, and vehicles), regardless of the nature of the material to the extent that the same was not authorized in advance by the owner thereof.

P. "Hazardous materials" shall mean any material or substance of any kind that is declared by any Federal, State, or local law, ordinance, or regulation to be composed of hazardous material.

Q. "Hearing officer" shall mean the city employee or representative appointed by the City Manager, or a designee thereof, to hear all timely appeals from a Notice of Abatement.

R. "Incidental expenses" shall include, but shall not be limited to, the actual expenses and costs of the City, such as preparation of notices, specifications, contracts, inspection of work, costs of printing and mailings required hereunder, costs of any filing and/or recordation with the County Recorder's Office or other governmental agency, and the costs of administration and legal services.

S. "Inoperable vehicle" shall mean and include, without limitation, any vehicle that is incapable of being lawfully driven on a street and/or highway. Factors that may be used to determine this condition include, without limitation, vehicles that have a "planned non-operational" status with the California Department of Motor Vehicles, vehicles lacking a current and valid registration, a working engine, transmission, wheels, inflated tires, doors, windshield or any other part or equipment necessary for its legal and safe operation on a highway or any other public right-of-way.

T. "Junk" shall mean and include, but is not limited to, any cast-off, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn-out or wrecked appliance, device, equipment, furniture, fixture, furnishing, object, material, substance, tire, or thing of any kind or composition. Junk may include abandoned personal property, as well as any form of debris, refuse, rubbish, trash or waste.

Factors that may be considered in a determination that personal property is junk include, without limitation, its:

1. Condition of damage, deterioration, disrepair or nonuse.
2. Approximate age and degree of obsolescence.
3. Location.
4. Present operability, functional utility and status of registration or licensing, where applicable.
5. Cost of rehabilitation or repair versus its market value.

U. "Junkyard" means real property of any zoning classification on which junk is kept, maintained, placed or stored to such a degree that it constitutes a principal use or condition on said premises. The existence of a junkyard is not a nuisance when it is an expressly permitted use in the applicable zone and it is in full compliance with all provisions of Title 17 in the Covina Municipal Code, and all other applicable provisions of the Covina Municipal Code, as well as all future amendments and additions thereto.

V. "Notice of Abatement" shall mean a Notice of Public Nuisance and Intention to Abate with City Personnel", as described in Section 8.40.070 of this Chapter.

W. "Order of Abatement" shall mean an order issued by a Hearing Officer following an appeal of a Notice of Abatement.

X. "Owner" shall mean and include any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, any real property in the City, including all persons shown as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. Owners include persons with powers of attorney, executors of estates, trustees, or who are court-appointed administrators, conservators, guardians or receivers. An owner of personal property shall be any person who has legal title, charge, control, or possession of such property.

Y. "Person" shall mean and include any individual, partnership of any kind, corporation, limited liability company, association, joint venture or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

Z. "Personal property" means property that is not real property, and includes, without limitation, any appliance, furniture, article, device, equipment, item, material, product, substance or vehicle.

AA. "Police Chief" shall mean the highest-ranking officer of the Police Department or his/her designee.

BB. "Police Department" shall mean the Covina Police Department.

CC. "Public nuisance" means anything which is, or likely to become, injurious or detrimental to health, safety or welfare, or is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any sidewalk, public park, square, street or highway. All conditions hereafter enumerated in this Chapter, or that otherwise violate or are contrary to any provision of the Covina Municipal Code, are public nuisances by definition and declaration, and said enumerated conditions shall not, in any manner, be construed to be exclusive or exhaustive. A public nuisance shall also exist when a person fails to comply with any condition of a City approval, entitlement, license or permit or when an activity on, or use of, real property violates, or is contrary to, any provision or requirement of the Covina Municipal Code.

DD. "Real Property" or "premises" means any real property owned by any person and/or any building, structure, or other improvement thereon, or portions thereof. "Real Property" or "premises" includes any adjacent sidewalk, parkway, street, alley, or other unimproved public easement, whether or not owned by the City of Covina.

EE. "Responsible person" means any person, whether as an owner as defined in this Chapter, or otherwise, that allows, causes, creates, maintains, suffers, or permits a public nuisance, or any violation of the Covina Municipal Code or County or State law, or regulation thereof, to exist or continue, by any act or the omission of any act or duty. A responsible person shall also include employees, principals, joint venturers, officers, agents, and/or other persons acting in concert with, or at the direction of, and/or with the knowledge and/or consent of the owner and/or occupant of the lot, building or structure on, or in which, a public nuisance or violation exists or existed. The actions or inactions of a responsible person's agent, employee, representative or contractor may be attributed to that responsible person.

FF. "Structure" means that which is built or constructed, an edifice, wall, fence, or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. For purposes of this Chapter, this definition shall supersede any other definition of this term in the Covina City Municipal Code.

GG. "Vacant" shall mean real property or any building or structure thereon that is not legally occupied. Factors that may be used, either alone or in combination, to determine whether real property, or building or structures thereon, is vacant include, but

shall not be limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers, and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or other debris; the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items consistent with residential and/or commercial furnishings consistent with the permitted uses within the zone of the real property; statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

HH. "Vehicle" means any device, by which any person or property may be propelled, moved, or drawn upon a highway or other public right of way, and includes all vehicles as defined by the California Vehicle Code and all future amendments thereto. "Vehicle" does not include devices (i) that are propelled exclusively by human power such as bicycles and wheelchairs, or (ii) those that are used exclusively upon stationary rails or tracks.

II. "Violation" shall mean and include a public nuisance as described in this Chapter, or any condition, activity, or use that is caused, allowed to exist, or maintained (whether due to an affirmative act, inaction, or omission) by a responsible person in violation of any other provision, regulation, or requirement of this Code, or any applicable County, State, or Federal laws or regulations.

JJ. "Weeds" shall include, but shall not be limited to, any of the following:

1. Any plant, brush, growth, or other vegetation that bear seeds of a downy or wingy nature;
2. Any plant, brush, growth, or other vegetation that attains such large growth as to become, when dry, a fire hazard;
3. Any plant, brush, growth, or other vegetation that is noxious or dangerous;
4. Poison oak and poison ivy when the conditions of growth are such as to constitute a threat to the public health; or,
5. Dry grass, rubble, brush, or other flammable plant, growth, or other vegetation that endangers the public safety by creating or tending to create a fire hazard.

8.40.030

Prohibited Public Nuisance Conditions.

The City Council finds and declares that, notwithstanding any other provision of the Covina Municipal Code, it is a public nuisance and unlawful for any person to allow, cause, create, maintain, or suffer, or permit others to cause, create, or maintain the following:

A. Any real property or premises in the City in such a manner that any one or more of the following conditions are found to exist thereon:

1. Land, the topography, geology or configuration of which whether in natural state or as a result of the grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare, or to adjacent properties.

2. Buildings or other structures, or portions thereof, that are partially constructed or destroyed or allowed to remain in a state of partial construction or destruction for an unreasonable period of time. As used herein, an "unreasonable" period shall mean any portion of time exceeding the period given to a responsible person by the City for the complete abatement of this nuisance condition with all required City approvals, permits and inspections. Factors that may be used by the City to establish a reasonable period for the complete abatement of this nuisance include, but are not limited to, the following:

(a) The degree of partial construction or destruction and the cause therefor.

(b) Whether or not this condition constitutes an attractive nuisance or if it otherwise poses or promotes a health or safety hazard to occupants of the premises, or to others.

(c) The degree of visibility, if any, of this condition from public or adjoining private real property.

(d) The scope and type of work that is needed to abate this nuisance.

(e) The promptness with which a responsible person has applied for and obtained all required City approvals and permits in order to lawfully commence the nuisance abatement actions.

(f) Whether or not a responsible person has complied with other required technical code requirements, including requesting and passing required inspections in a timely manner, while completing nuisance abatement actions.

(g) Whether or not a responsible person has applied for extensions to a technical code permit or renewed an expired permit, as well as the number of extensions and renewals that a responsible person has previously sought or obtained from the City.

(h) Whether or not a responsible person has made substantial progress, as determined by the City, in performing nuisance abatement actions under a technical code permit that has expired, or is about to expire.

(i) Whether delays in completing nuisance abatement actions under a technical code permit have occurred, and the reason(s) for such delays.

3. Real property, or any building or structure thereon, that is abandoned or vacant (irrespective of whether said structure is secured against unauthorized entry) for a period of more than six (6) months.

4. Exterior portions of buildings or structures (including, but not limited to, roofs, balconies, decks, fences, stairs, stairways, walls, signs and fixtures), as well as walkways, pedestrian ways, driveways, parking areas, and any detached or freestanding structure, that have become defective, unsightly or no longer viable, or are maintained in a condition of dilapidation, deterioration or disrepair to such an extent as to result in, or tend to result in, a diminution in property values, or where such condition creates a hazard to persons using said building, structure, or way, or where such condition interferes with the peaceful use, possession and/or enjoyment of adjacent properties, or where such condition otherwise violates, or is contrary to, the Code, or other applicable law.

5. Failure to provide and maintain adequate weather protection to structures or buildings, in such a manner that results in or tends to result in the existence of cracked, peeling, warped, rotted, or severely damaged paint, stucco or other exterior covering.

6. Broken, defective, damaged, dilapidated, or missing windows, doors, or vents in a building or structure, and/or broken, defective, damaged, dilapidated, or missing screens for windows, doors, or crawl spaces in a building or structure.

7. Windows or doors that remain boarded up or sealed after ten (10) calendar days written City notice to a responsible person requesting the removal of

these coverings and the installation of fully functional or operable windows or doors. City actions to board up or seal windows or doors in order to deter unauthorized entry into structures shall not relieve responsible persons from installing fully functional or operational windows or doors.

8. Obstructions of any kind, cause or form that interfere with required light or ventilation for a building or structure, or that interfere with, hinder, delay, or impede ingress therein and/or egress therefrom.

9. Abandoned personal property that is visible from public or private property.

10. Any form of an attractive nuisance.

11. Interior portions of buildings or structures (including, but not limited to attics, ceilings, walls, floors, basements, mezzanines, and common areas) that have become defective, unsightly, or are maintained in a condition of dilapidation, deterioration or disrepair to such an extent as to result in, or tend to result in, a diminution in property values, or where such condition interferes with the peaceful use, possession and/or enjoyment of properties in the vicinity, or where such condition otherwise violates, or is contrary to, the Code or other applicable law.

12. Items of junk, trash, debris, or other personal property that are kept, placed, or stored inside of a structure or on exterior portions of real property that constitute a fire or safety hazard or a violation of any provision of the Code; or items of junk, trash, debris, or other personal property that are visible from public or private real property, or that are otherwise out of conformity with neighboring community standards to such an extent as to result in, or tend to result in, a diminution in property values. Notwithstanding the foregoing, the existence of a junkyard is not a nuisance when such use and the premises on which such use occurs are in full compliance with all provisions of the Covina Comprehensive Zoning Ordinance (including all approvals and permits required thereby), and all other applicable provisions of the Code and any future amendments and additions thereto, as well as applicable County, State, and/or Federal laws and regulations.

13. The keeping or disposing of, or the scattering or accumulating of flammable, combustible or other materials including, but not limited to, composting, firewood, lumber, junk, trash, debris, packing boxes, pallets, plant cuttings, tree trimmings or wood chips, discarded items, or other personal property on exterior portions of real property, or within any building or structure thereon, when such items or accumulations:

(a) Render premises unsanitary or substandard as defined by the Covina Housing Code, the State Housing Law, the Covina Building Code, or other applicable local, State, or Federal law, rule, or regulation;

(b) Violate the Covina Health Code, the Los Angeles County Health Code, or other any other Health Code adopted by and/or applicable in the City of Covina;

(c) Cause, create, or tend to contribute to, a fire or safety hazard;

(d) Harbor, promote, or tend to contribute to, the presence of rats, vermin and/or insects;

(e) Cause, create, or tend to contribute to, an offensive odor; or,

(f) Cause the premises to be out of conformity with neighboring community standards to such an extent as to result in, or tend to result in, a diminution of property values. Provided, however, that this use of land or condition shall not constitute a nuisance when expressly permitted under the applicable zone classification and the premises are in full compliance with all provisions in Title 17, and all other applicable provisions of the Code and any future amendments and additions thereto, as well as applicable County, State, and/or Federal laws and regulations.

14. Unsanitary, polluted or unhealthful pools, ponds, standing water or excavations containing water that constitutes an attractive nuisance or that is otherwise likely to harbor mosquitoes, insects or other vectors. The likelihood of insect harborage is evidenced by any of the following conditions: water which is unclear, murky, clouded or green; water containing bacterial growth, algae, insect larvae, insect remains, or animal remains; or, bodies of water which are abandoned, neglected, unfiltered or otherwise improperly maintained.

15. The hanging, drying, or airing of clothing or household fabrics on fences, trees, or shrubberies, or the existence of clotheslines, in front yard areas of any real property, or in any yard area that is visible from a public right-of-way.

16. Canopies, tents, tarps, or other similar membrane structures located in the front yard of any real property or in any yard area that is visible from a public right-of-way, unless otherwise authorized pursuant to a permit or other entitlement from the City;

17. Overgrown vegetation including, but not limited to, any one of the following:

(a) Vegetation likely to harbor, or promote the presence of, rats, vermin and/or insects.

(b) Vegetation causing detriment to neighboring properties, or that is out of conformity with neighboring community standards to such an extent as to result in, or contribute to, a diminution of property values, including, but not limited to:

(1) Lawns with grass in excess of six inches (6") in height.

(2) Hedges, trees, lawns, plants, or other vegetation that are not maintained in a neat, orderly, and healthy manner as a result of lack of adequate mowing, grooming, trimming, pruning, fertilizing, watering, and/or replacement.

(c) Vegetation that creates, or tends to create, the existence of a fire hazard.

(d) Vegetation that overhangs or grows onto or into any public property, including, but not limited to, any public alley, highway, land, sidewalk, street or other right-of-way, so as to cause an obstruction to any person or vehicle using such public property.

(e) Tree branches or other vegetation within three feet (3') of the rooftop of a structure so as to facilitate rodent or animal access thereto.

18. Dead, decayed, diseased or hazardous trees, weeds, ground cover, and other vegetation, or the absence of healthful vegetation, that causes, contributes to, or tends to cause or contribute to, any one of the following conditions or consequences:

(a) An attractive nuisance;

(b) A fire hazard;

(c) The creation or promotion of dust or soil erosion;

(d) A diminution in property values; or,

(e) A detriment to public health, safety or welfare.

19. Lack of landscaping or other ground cover in any yard area as otherwise required by Title 17 or other provisions of the Code.

20. Waste containers, yard waste containers, and recycling containers that are kept, placed or stored in driveways or parking areas, or in front or side yards, such that said containers are visible from public streets, except when located in places of collection at times permitted and in full compliance with this Code.

21. The use, parking, or storing of any recreational vehicle as temporary or permanent living space.

22. Vehicles, trailers, campers, boats, recreational vehicles, and/or other mobile equipment placed, parked or stored in violation of any provision of the Code, including Title 17.

23. Vehicles, trailers, campers, boats, recreational vehicles, and/or other mobile equipment placed, parked, or stored on any unpaved surface within the front yard setback of any real property.

24. Parking spaces required by the Code, including Title 17, that are not maintained in such a manner that said spaces are continuously free, accessible, and available for vehicle parking without the movement of real or personal property.

25. Abandoned, dismantled, inoperable or wrecked boats, campers, motorcycles, trailers, vehicles, or parts thereof, unless kept, placed, parked, or stored inside of a completely enclosed, lawfully constructed building or structure.

26. Commercial vehicles or equipment placed, parked, or stored on any private real property that is located within a residential zone of the City or any other private real property used for residential purposes, except when the commercial vehicle is parked in connection with, and in the aid of, the performance of a service to or on the private real property where it is parked until such service is completed.

27. Vehicles, construction equipment, or other machinery exceeding the permissible gross vehicle weight for the streets or public property upon which they are located. A nuisance also exists under this provision when a vehicle, construction equipment, or other machinery is stopped, kept, placed, parked, or stored on private real property and when such vehicle, equipment, or machinery exceeds the permissible gross vehicle weight for the streets or public property that were utilized in its placement on said private real property unless pursuant to a valid permit issued by the City.

28. Any equipment, machinery, or vehicle of any type or description that is designed, used, or maintained for construction-type activities that is kept, parked, placed, or stored on public or private real property except when such item is being used during excavation, construction, or demolition operations at the site where said equipment, machinery, or vehicle is located pursuant to an active permit issued by the City or as otherwise authorized by law.

29. Maintenance of signs, or sign structures, on real property relating to uses no longer lawfully conducted or products no longer lawfully sold thereon, or signs

and their structures that are in disrepair or which are otherwise in violation of, or contrary to, the Code, including Title 17.

30. Specialty structures that have been constructed for a specific single use only, and which are unfeasible to convert to other uses, and which are abandoned, partially destroyed or are permitted to remain in a state of partial destruction or disrepair. Such specialty structures include, but are not limited to, the following: tanks for gas or liquid(s), lateral support structures and bulk-heads, utility high-voltage towers and poles, utility high-rise support structures, electronic transmitting antennas and towers, structures which support or house mechanical and utility equipment and are located above the roof lines of existing buildings, high rise freestanding chimneys and smoke stacks, and recreational structures such as tennis courts and cabanas.

31. Any personal property or structure that obstructs or encroaches on any public property, including, but not limited to, any public alley, highway, land, sidewalk, street or other right-of-way, unless a valid encroachment permit has been issued authorizing said encroachment or obstruction.

32. Causing, maintaining or permitting graffiti or other defacement of real or personal property to be present or to remain on a building, structure or vehicle, or portion thereof, that is visible from a public right-of-way or from private real property.

33. Storage of hazardous or toxic materials or substances, as so classified by any local, State or Federal laws or regulations, on real property in such a manner as to be injurious, or potentially injurious or hazardous, to the public health, safety or welfare, or to adjacent properties, or that otherwise violates local, State or Federal laws or regulations.

34. Any discharge of any substance or material other than storm water which enters, or could possibly enter, the City's storm sewer system in violation of the Covina Municipal Code.

35. Maintenance of any tarp or similar covering on or over any graded surface or hillside, except in the following circumstances:

(a) A state of emergency has been declared by local, County, State, or Federal officials directly impacting the area to be covered; and/or,

(b) Covering with a tarp performed pursuant to an active building or grading permit.

36. Maintenance of any tarp or similar covering on or over any roof of any structure, except during periods of active rainfall, or when specifically permitted under an active roofing or building permit.

37. Maintenance of any tarp or similar covering attached to, affixed to, or located on a fence for purposes of screening or for providing shade;

38. The keeping or suffering of any animal, reptile, or insect in a manner that poses a threat, disturbance, or menace to persons or property, or in such a manner or quantity that otherwise violates any provision of the Code.

39. Any noise that is made, generated, produced, or continued in such a manner that it unreasonably disturbs the peace and quiet of any neighborhood of which causes any discomfort or annoyance to any reasonable person of normal sensitivities, or that otherwise violates any provision of the Covina Municipal Code. Factors which shall be considered in determining whether the noise is a nuisance shall include, but not be limited to the following:

- (a) The volume of the noise;
- (b) The intensity of the noise;
- (c) Whether the nature of the noise is usual or unusual;
- (d) Whether the origin of the noise is natural or unnatural;
- (e) The volume and intensity of the background noise, if any;
- (f) The proximity of the noise to residential sleeping facilities;
- (g) The nature of the zoning of the area from which the noise emanates;
- (h) The density of inhabitation of the area from which the noise emanates;
- (i) The time of day or night the noise occurs;
- (j) The duration of the noise;
- (k) Whether the noise is recurrent, intermittent, or constant;
- (l) Whether the noise is produced by commercial or noncommercial activity; and,

- (m) Whether the noise is a consequence or expected result of an otherwise lawful use.

40. Maintenance of premises so out of harmony or conformity with the maintenance standards of properties in the vicinity as to cause, or that tends to cause, substantial diminution of the enjoyment, use, or property values of such properties in the vicinity.

41. Any condition recognized in local or State law or in equity as constituting a public nuisance, or any condition existing on real property that constitutes, or tends to constitute, blight, or that is a health or safety hazard to the community or neighboring properties.

B. Any "unsafe building", "unsafe structure", "substandard building", or "substandard property" as defined by any provision or provisions in Title 14 of the Code.

C. Any building or structure, or portion thereof, or the premises on which the same is located, in which there exists any of the conditions listed in Section 17920.3 of the California Health & Safety Code, and any future amendments thereto.

D. Any building or structure used by any person to engage in acts which are prohibited pursuant to the laws of the United States or the State of California, the provisions of the Covina Municipal Code, including, but not limited to the following acts:

- 1. Unlawful possession, use, and/or sale of controlled substances;
- and/or,
- 2. Prostitution; and/or
 - 3. Unlawful gambling.

E. Any real property, or any building or structure thereon, that is used by persons to cause, allow, contribute to, permit, or suffer any of the following acts:

- 1. Disturbances of the peace;
- 2. Excessive and/or loud noise disturbances;
- 3. Consumption of alcohol in public and/or public intoxication;
- 4. Urination in public;
- 5. Harassment of passersby;

6. Theft, assault, battery, or vandalism;
7. Storage or sale of stolen goods;
8. Excessive littering;
9. Illegal parking or traffic violations;
10. Curfew violations;
11. School attendance violations;
12. Lewd and/or lascivious conduct; and/or
13. Excessive responses by the Police Department or other law enforcement personnel.

F. Any condition, use, or activity that constitutes a public nuisance as defined by Sections 3479 or 3480 of the California Civil Code, and any future amendments thereto.

G. Any building, structure, or use of real property that violates or fails to comply with (i) any applicable approval, permit, license, or entitlement or condition relating thereto, (ii) any ordinance of the City, including, but not limited to any provision of this Code, or (iii) any applicable County, State, or Federal law or regulation.

8.40.040 Penalty.

A. Notwithstanding any other provision of the Covina Municipal Code to the contrary, any person who causes, permits, suffers, or maintains a public nuisance, or any person who violates any provision of this Chapter, or who fails to comply with any obligation or requirement of this Chapter, is guilty of a misdemeanor offense punishable in accordance with Section 1.16.010 A. in Chapter 1.16 of Title 1 of this Code. A criminal prosecution and/or civil litigation may be initiated without the commencement of the "Nuisance Abatement" procedures outlined in Part 2 of this Chapter.

B. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.

Part 2 – Administrative Procedures for Abatement of Nuisances

8.40.050 Abatement of Public Nuisances.

All conditions or uses that constitute a public nuisance as defined in Part 1 of this Chapter, or that are contrary to, or in violation of, any other provision or requirement of the Code, or of any applicable County or State law, or regulation thereof, which shall also constitute a public nuisance, shall be abated by repair, rehabilitation, demolition, removal or termination. The procedures for abatement in this part shall not be exclusive and shall not, in any manner, limit or restrict the City from pursuing any other remedies available at law, whether civil, equitable or criminal, or from enforcing City codes and adopted ordinances, or from abating or causing abatement of public nuisances, in any other manner provided by law.

8.40.060 Continuing Obligation of Responsible Persons to Abate a Public Nuisance.

A. No person shall allow, cause, create, permit, suffer or maintain a public nuisance to exist on their premises. If public nuisances do arise or occur, responsible persons shall promptly abate them by repair, rehabilitation, demolition, repair, removal or termination with all required City approvals, permits and inspections, when applicable.

B. The City may exercise its administrative, civil/injunctive and criminal remedies, or any one or combination of these remedies, to compel responsible persons to abate a public nuisance when, in its judgment, such persons have not completed nuisance abatement actions in a timely or proper manner, or when responsible persons have failed to prevent an occurrence or recurrence of a public nuisance.

8.40.070 Notice of Public Nuisance and Intention to Abate with City Personnel.

A. Whenever a code enforcement officer or other public official determines that City Personnel may need to abate a public nuisance, he or she shall serve a written "Notice of Public Nuisance and Intention to Abate with City Personnel" (hereafter in this section and in subsequent sections of this Chapter, the "Notice of Abatement") on the responsible person(s) that contains the following provisions:

1. The address of the real property on which the nuisance condition(s) exist(s).
2. A description of the nuisance condition(s).

3. A reference to the law describing or prohibiting the nuisance condition(s).
4. A brief description of the required corrective action(s); and,
5. A compliance period in which to complete the nuisance abatement actions (with all required City approvals, permits and inspections, when applicable).
6. The period and manner in which a responsible person may contest the Notice of Abatement as set forth in Section 8.40.120 of this Chapter. No such right shall exist when the City is not seeking to establish the right to abate a public nuisance with City Personnel.
7. A statement that the City may record a Declaration of Substandard Property with the Los Angeles County Recorder's Office against the premises if the public nuisance is not fully abated or corrected (with all required approvals, permits and inspections), as determined by the City, within the compliance period specified in the Notice of Abatement, provided that a timely appeal therefrom has not been made.

B. The procedure in Subsection A shall not apply to public nuisances constituting an imminent hazard. In such instances, the provisions in Section 8.40.180 ("Emergency Action to Abate an Imminent Hazard") shall be followed.

C. The City's election to issue a Notice of Abatement pursuant to this section shall not excuse responsible persons from their continuing obligation to abate a public nuisance in accordance with all applicable laws, regulations and legal requirements. Furthermore, the issuance of a Notice of Abatement shall not obligate the City to abate a public nuisance.

8.40.080 Additional Requirements for Demolition of Buildings or Structures.

A. The City shall provide responsible persons with a reasonable period to elect between options of repair, rehabilitation, or demolition, as well as a reasonable period of time to complete any of these options, before City Personnel abate a public nuisance by demolishing a building or structure pursuant to Part 2 of this Chapter.

B. The City shall serve a Notice of Abatement on all secured lienholders of record with the Los Angeles County Recorder's Office by first class mail in the event abatement actions include demolition of a building or structure.

C. Notwithstanding the provisions of Section 8.04.130 of this Chapter, entry onto any real property to abate a public nuisance by demolition of a building or structure, excepting in cases involving an imminent hazard, shall be pursuant to a warrant issued by a court of competent jurisdiction.

D. The provisions of this Section shall not apply if demolition is required to address an imminent hazard. In such situation, the provisions of Section 8.40.180 ("Emergency Action to Abate an Imminent Hazard") shall apply.

8.40.090 Notice and Order to Vacate Buildings or Structures.

A. If the Building Official, Fire Chief, and/or Health Official (or designees thereof) determine that a public nuisance exists at real property (or any buildings or structures thereon) to such an extent that said property (or any building or structure thereon) is immediately dangerous to the life, limb, property, or safety of the occupants of the property or the general public, the building or structure shall be ordered to be vacated.

B. If any building or structure is ordered vacated pursuant to Section 8.04.090, the Notice of Abatement issued pursuant to Section 8.04.070, in addition to the information required pursuant to Section 8.04.070, shall include:

1. A determination that the Building Official, Fire Chief, and/or Health Official (or designees thereof) has determined that the property (and/or any building or structure thereon) constitutes an immediate danger to the life, limb, property, or safety of the occupants of the property or the general public;

2. A reference to the specific building(s) and/or structure(s), or portions thereof, which is/are being ordered vacated;

3. The date and/or time when the Order to Vacate (and/or To Not Enter) becomes effective; and,

4. Language that substantially states that "No person shall remain in or enter any building or structure that has been ordered vacated until authorized to do

so by the Building Official, Fire Chief, and/or Health Official. No person shall remove, alter, or deface this Notice after it has been posted at the property referenced herein until all required repairs, demolition, or removal have been completed in accordance with this Notice and until such time as the removal of this Notice has been authorized by the Building Official, Fire Chief, and/or Health Official. Any person violating this Order to Vacate shall be guilty of a misdemeanor."

8.40.100 Sample Notice of Abatement.

A. The Notice of Abatement shall be written in a form that is substantially consistent with the following:

**Notice of Public Nuisance(s) and Intention to Abate with City Personnel
("Notice of Abatement")**

[Date]

_____ **[Responsible Person(s)]**
_____ **[Mailing Address]**
_____ **[City, State and Zip Code]**

Re: Real Property at _____, Covina, CA
L.A. County A.P.N.: _____
Legal description [Optional]: _____

Notice is hereby given that the following public nuisance conditions or activities exist on the premises described above:

(1) [Describe condition or activities] _____ in violation of Covina Municipal Code **[as well as County and State laws, if applicable]** Section(s) _____.

(a) **Required Corrective Action(s):** _____
_____ (with all required permits, approvals and inspections).

(b) **Required Completion Date:** _____
[Repeat (1 a-b) for each additional public nuisance to be included in this notice]

The foregoing public nuisance conditions are subject to abatement by repair, rehabilitation, demolition, removal or termination.

Please Take Further Notice that you may appeal this Notice of Abatement by filing an appeal on a City approved form with the Office of the City Clerk – Covina City

Hall, 125 E. College Street, Covina, CA 91723 within ten (10) calendar days of service of this notice. No fee shall be due for the filing of an appeal. Failure of the City Clerk to receive a timely appeal constitutes a waiver of your right to any further administrative appeal and renders the Notice of Abatement final and binding. A written request for an appeal shall contain the following information, as well as any other information deemed necessary for the processing of the appeal by the City Manager or designee:

1. Name, address, and telephone number of each responsible party who is appealing the Notice of Abatement (hereinafter, "appellant"), as well as relationship of appellant to the public nuisance described in the Notice of Abatement.
2. Address and description of real property upon which the City intends to enter and abate a public nuisance.
3. Date of Notice of Abatement being appealed.
4. Specific action or decision being appealed.
5. Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy.
6. The signature of at least one appellant.

Following appeal, in the case of a final decision by the City, judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure sections 1094.6 et seq.

Please Take Further Notice that, if the public nuisance violations are not abated within the time specified in this Notice and a timely appeal is not made, such nuisance may be abated by City employees, representatives or contract agents (hereafter "City Personnel"), in the manner stated in this Notice of Abatement. On such occasions, all costs of the abatement, including, but not limited to, those defined in Section 8.40.020 C. of this Chapter, shall be assessed against the responsible person(s) and/or the subject property, as a lien, or as a special assessment, or as otherwise allowed by law.

Please Take Further Notice that the City may record a Declaration of Substandard Property with the Los Angeles County Recorder's Office against the premises if the public nuisance is not fully abated or corrected (with all required approvals, permits and inspections), as determined by the City, in the manner and time set forth in this Notice of Abatement and provided that a timely appeal therefrom has not been made.

Please Take Further Notice that, in the event of abatement by City Personnel, all buildings, structures, and/or personal property constituting a public nuisance may be

removed from the subject premises or from public property and destroyed or disposed of, without regard to its actual or salvage value.

Dated: This _____ day of _____, 20__.

Public Official ***[Name and Title]***

[End of Form]

.....

A Notice of Abatement shall be deemed in substantial compliance with this subsection regardless of form if all substantive information is contained in such Notice of Abatement.

8.40.110 Service of Notice.

A. Except as otherwise expressly required by a provision of this Chapter, any notice required by this Chapter may be served by personal delivery to any responsible person or by first class mail. The date of service shall be the date it is personally delivered or placed in a U.S. Postal Service receptacle. Failure of any responsible person to receive a properly addressed Notice of Abatement by mail shall not invalidate any action or proceeding pursuant to this Chapter.

1. Any Notice of Abatement that includes an Order to Vacate shall, in addition to being served upon a responsible party in accordance with Section 8.40.110 (A), shall also be posted at or upon each exit of the building or structure being ordered vacated.

B. Except as otherwise expressly required by a provision of this Chapter, any notice issued to an owner of real property shall be sent to the mailing address on the last equalized assessment roll of the Los Angeles County Assessor's Office. Failure of any owner to receive a properly addressed notice by mail shall not invalidate any action or proceeding pursuant to this Chapter.

8.40.120 Right of Appeal from a Notice of Abatement.

A. A responsible person may contest a Notice of Abatement by filing a written request for an appeal with the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 and paying an appeal fee in an amount set by Council resolution within ten (10) calendar days after service of the Notice of Abatement.

1. The filing of a request for an appeal shall not stay an order to vacate any building or structure issued in accordance with the provisions of this Chapter by the Building Official and/or Fire Chief, and/or Health Official.

B. A written request for an appeal shall contain the following information:

1. Name, address, and telephone number of each responsible party who is appealing the Notice of Abatement (hereinafter, "appellant").

2. Address and description of real property upon which the City intends to enter and abate a public nuisance.

3. Date of Notice of Abatement being appealed.

4. Specific action or decision being appealed.

5. Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy.

6. The signature of at least one appellant.

C. Failure of the City Clerk to receive a timely appeal and payment of the appeal fee constitutes a waiver of the right to contest a Notice of Abatement. In this event, the Notice of Abatement is final and binding.

D. The provisions of this section only apply to instances where the City has elected to establish the right, but not the obligation, to abate public nuisances with City Personnel. In no event does this Chapter limit the right of City officials to issue alternative written or oral notices of code violations to responsible persons or to cause the abatement of public nuisances in a different manner, including without limitation, by court orders arising from the City's exercise of its criminal or civil remedies. In such instances, a responsible person shall receive a right to hearing and other due process rights through the court process.

8.40.130 Consequence of an Untimely Appeal.

A. If a timely appeal and/or payment of the appeal fee is not received by the City Clerk, the right to appeal is waived and the Notice of Abatement is final and

binding. In such instances, the City may, without any administrative hearing, cause the abatement with City personnel of any or all of the nuisance conditions or activities stated in the Notice of Abatement. Entry onto private real property that is both improved and occupied shall, excepting instances of an imminent hazard, be pursuant to a warrant from a court of competent jurisdiction. The City shall follow the procedures stated in this Chapter for recovery of all abatement costs, fees and expenses (incidental or otherwise).

B. Nothing contained in this Chapter shall obligate the City to undertake abatement actions pursuant to a Notice of Abatement, whether or not there is a timely appeal.

8.40.140 Abatement by Responsible Person Prior to Hearing.

A. Any responsible person shall have the right to abate a nuisance in accordance with the Notice of Abatement at his or her own expense, provided all corrective actions are completed with all required City permits, approvals and inspections, prior to the date the matter is set for a hearing.

B. A hearing shall be cancelled if all nuisance conditions or activities are, as determined by the City, fully and lawfully abated prior thereto.

8.40.150 Review by Hearing Officer.

A. Any responsible person who contests a Notice of Abatement shall, subject to filing a timely appeal, obtain review thereof before a hearing officer. The administrative appeal shall be scheduled no later than sixty (60) calendar days, and no sooner than ten (10) calendar days, after receipt of a timely filed request for appeal. The appellants listed on the written request for an appeal shall be notified in writing of the date, time, and location of the hearing at least ten (10) calendar days prior to the date of the hearing.

B. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than two (2) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause or on his/her own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days without stipulation by all parties.

C. At the place and time set forth in the notification of appeal hearing, the hearing officer shall hear and consider the testimony of the appealing person(s), the issuing officer, and/or their witnesses, as well as any documentary evidence presented by these persons concerning the alleged public nuisance(s).

D. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a nuisance exists by a preponderance of evidence. The issuance of a Notice of Abatement shall constitute prima facie evidence of the violation. The appellant, and the enforcement officer issuing the Notice, if present, as well as all other responsible persons, shall have the opportunity to present evidence and to present and cross-examine witnesses. The appellant and the enforcement officer issuing the Notice of Abatement, or other responsible persons, may represent himself/herself/themselves or be represented by anyone of his/her/their choice. The appellant, or other interested persons, may bring an interpreter to the hearing at his/her/their sole expense. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording. The hearing officer may question any person who presents evidence or who testifies at any hearing.

E. The appellant, or other interested persons, may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If all appellants and interested persons elect to appear at the hearing by written declaration, the enforcement officer who issued the Notice of Abatement shall not be required to attend or participate at the hearing.

F. If the appellant fails, or other responsible persons fail, to appear, or to otherwise submit a written declaration or any admissible evidence demonstrating the non-existence of the alleged nuisance(s), the hearing officer shall cancel the hearing and send a notice thereof to the responsible person(s) by first class mail to the address (es) stated on the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the Notice of Abatement is final and binding.

8.40.160 Decision of Hearing Officer; Order of Abatement.

A. Not later than fifteen (15) calendar days following conclusion of the hearing, the hearing officer shall determine if any nuisance condition exists at the subject property. If the hearing officer determines that each nuisance condition described in the Notice of Abatement is non-existent, the Notice of Abatement shall be deemed cancelled. If the hearing officer determines that one or more of the nuisance conditions described in the Notice of Abatement exists, he/she shall issue a written Order of Abatement which shall contain the following:

1. A finding and description of each nuisance condition existing at the subject property.

2. The name of each person responsible for a nuisance condition or conditions at the subject property, as well as the name of any person who is not responsible therefor.

3. The required corrective action and a compliance period for each unabated nuisance condition.

4. Any other finding, determination or requirement that is relevant or related to the subject matter of the appeal.

5. The following statement: "The decision of the Hearing Officer is final, conclusive and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 et seq."

B. Notwithstanding any provision of the Code to the contrary, the decision of the hearing officer is final and conclusive.

C. A copy of the decision shall be served by first class mail on each responsible person to whom the Notice of Abatement was issued. If the owner is not an appellant, a copy of the Order of Abatement shall also be served on the owner by first class mail to the address shown on the last equalized assessment roll. Failure of a person to receive a properly addressed decision shall not invalidate any action or proceeding by the City pursuant to this Chapter.

8.40.170 Abatement of Nuisance by Responsible Persons Prior to City Abatement Actions.

A. Any responsible person shall have the right to fully abate a nuisance in accordance with the Hearing Officer's decision prior to the date of entry of City Personnel upon the subject real property, provided that all corrective actions are completed with all required City permits, approvals and inspections, prior to said entry date. In such instances, all administrative proceedings shall be cancelled, with the exception of the City's right to seek recovery of its incurred incidental expenses, Code Enforcement Fees, and Attorney's Fees as provided by and pursuant to the provisions of Chapter 1.28 of this Code.

B. Once the City enters a subject real property to abate a public nuisance, it shall have the right to complete this action.

C. It is unlawful and a misdemeanor for any person to obstruct, impede, or interfere with City Personnel in the performance of any act that is carried out to abate a public nuisance.

D. All buildings, structures, and/or personal property that are removed by City Personnel from premises in the abatement of a nuisance shall be lawfully disposed of or destroyed without regard to its actual or salvage value, if any.

8.40.180 Emergency Action to Abate an Imminent Hazard.

A. Notwithstanding any provision of the Covina Municipal Code to the contrary, the Police Chief, the Fire Chief, or the Building Official, or any of their designees, may cause a public nuisance to be summarily abated if it is determined that the nuisance creates an imminent hazard to a person or persons, or to other real or personal property.

B. Prior to abating nuisance that creates an imminent hazard, the City Manager shall attempt to notify a responsible person by telephone or in writing of the imminent hazard and request its abatement by said person; provided however, that the City Manager may dispense with any attempt at prior notification of a responsible person if, in the sole discretion of the City Manager, the nature or severity of the hazard does not reasonably allow for such prior notification. If notice has been so given, but, in the sole discretion of the City Manager, the responsible person(s) fail(s) to take immediate and meaningful steps to abate the imminent hazard, the City may abate the nuisance with City Personnel without further notice, and charge the costs and fees thereof to the responsible person(s).

C. Within ten (10) business days following emergency action of City Personnel to abate an imminent hazard, the City shall serve any responsible person with a Notice of Emergency Abatement by City Personnel of an Imminent Hazard by first class mail. Notice to a property owner shall be mailed to the mailing address set forth in the last equalized assessment roll of the Los Angeles County Assessor's Office. Failure of any responsible person to receive a properly addressed Notice of Emergency Abatement by City Personnel of an Imminent Hazard by mail shall not invalidate any action or proceeding pursuant to this Chapter.

D. A Notice of Emergency Abatement by City Personnel of an Imminent Hazard shall contain the following provisions:

1. The name of all known responsible persons who are being served with the Notice of Emergency Abatement by City Personnel of an Imminent Hazard and the address of the real property on which the imminent hazard was present.

2. A brief description of the condition(s) and reasons why it constituted an imminent hazard.

3. A brief description of the law prohibiting or pertaining to the imminent hazard.

4. A brief description of the actions City Personnel took to abate the imminent hazard.

E. Omission of any of the foregoing provisions in a Notice of Emergency Abatement by City Personnel of an Imminent Hazard, whether in whole or in part, or the failure of a responsible person to receive said Notice, or the failure of the City to issue said Notice in a timely fashion, shall not render it defective or render any proceeding or action pursuant to this Chapter invalid.

F. Emergency abatement of an imminent hazard by City Personnel shall not preclude the City from recording a Declaration of Substandard Property in accordance with the provisions of Section 8.40.250 of this Chapter, if conditions thereafter remain at the premises that constitute a violation of law or a public nuisance.

G. The City shall be entitled to recover its fees and costs (incidental or otherwise) for the abatement of an imminent hazard. In such instances, the City shall follow the procedures set forth in this Chapter.

8.40.190 Combination of Notices.

The notices that are authorized by this Chapter may be combined in the discretion of the City.

8.40.200 Establishment of Costs of Abatement.

A. The City shall keep an accounting of the Abatement Costs.

B. The City shall serve a Statement of Abatement Costs on the responsible persons within ninety (90) calendar days after the City's completion of nuisance abatement actions. Service of this statement may be made in the manner provided for in Section 8.40.110 of this Chapter.

C. Unless a timely contest of the Statement of Abatement Costs is filed, a responsible person shall tender the Abatement Costs in U.S. currency to the City within thirty (30) calendar days after the date of service of the Statement of Abatement Costs.

D. A responsible person has the right to contest a Statement of Abatement Costs by filing a written request for contest with the Office of the City Clerk – Covina City Hall, 125 E. College Street, Covina, CA 91723 within ten (10) calendar days after service of the Statement of Abatement Costs.

1. A written request for contest shall contain the following information:

(a) Name, address, telephone number, and signature of each responsible person who is contesting the Statement of Abatement Costs.

(b) Address and description of the real property upon which the City abated a public nuisance.

(c) Date of the Statement of Abatement Costs being appealed.

(d) Description of the specific Abatement Cost(s) being contested, and a statement of the grounds for contest in sufficient detail to enable the City Council to understand the nature of the controversy.

2. No fee shall be due for the filing of a request for contest of the Statement of Abatement Costs.

E. Failure of the City Clerk to receive a timely appeal request for contest constitutes a waiver of the right to contest a Statement of Abatement Costs. In this event, the Statement of Abatement Costs is final and binding, and the City may proceed to collect its Abatement Costs as contained in a final Statement of Abatement Costs in any manner allowed by law.

F. If a timely request for contest is received by the City Clerk, a hearing shall be set before the hearing officer no later than sixty (60) calendar days, and no sooner than ten (10) calendar days, after receipt of the request for contest. A notice of the date, time and location of the hearing shall be served on all responsible persons who contested the Statement of Abatement Costs by first class mail to the address(es) stated on the request form at least ten (10) calendar days prior to the hearing. Failure of a person requesting a contest to receive a properly addressed notice shall not invalidate any action or proceeding by the City pursuant to this Chapter.

G. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than five (5) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause or on his or her own motion; however, in no event may the hearing be continued for more sixty (60) calendar days without stipulation by all parties.

H. At the time and place fixed for receiving and considering the request to contest the Statement of Abatement Costs, the City Manager shall hear and pass upon the evidence submitted by City Personnel, together with any objections or protests raised by responsible persons liable for said costs. Testimony and evidence shall be limited to issues related to the abatement costs, and no person shall be permitted to present evidence or testimony challenging the existence of a public nuisance or the manner of abatement as described in the Notice of Abatement. Thereupon, the City

Manager may make such revision, correction or modification to the statement as he or she may deem just, after which the statement, as it is submitted, or as revised, corrected or modified, shall be confirmed. The hearing may be continued from time to time.

I. Notwithstanding any provisions of the Code to the contrary, the decision of the City Manager is final and binding.

J. The City Clerk shall cause a Confirmed Statement of Abatement Costs to be served upon all persons who contested the original statement by first class mail to the address(es) stated on the request form. The City Clerk shall cause a Confirmed Statement of Abatement Costs to be served on the owner of the property on which City Personnel abated a public nuisance by first class mail to the address shown on the last equalized assessment roll (irrespective of whether the owner contested the Statement of Abatement Costs). This document shall also contain the following statement: "The determination of the City Manager is final and binding. Judicial review of the this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure Sections 1094.6 et seq."

K. Failure of a person to receive a properly addressed confirmed statement shall not invalidate any action or proceeding by the City pursuant to this Chapter.

L. A responsible person shall tender the Abatement Costs in U.S. Currency to the City within thirty (30) calendar days after the date of service of the Confirmed Statement of Abatement Costs. The City may thereafter proceed to collect its Abatement Costs as contained in the confirmed Statement of Abatement Costs in any manner allowed by law.

8.40.210 Collection of Abatement Costs by Special Assessment.

A. The City may cause a special assessment to be made upon real property upon which a public nuisance was abated pursuant to California Government Code, Section 38773.5, and future amendments thereto, in the event a Statement of Abatement Costs or a confirmed Statement of Abatement Costs is not paid in a timely manner.

B. A Notice of Special Assessment shall be sent to the owner(s) of the subject real property by certified mail at the time the assessment is the imposed which shall contain the following recitals:

The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive

notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

C. The City Attorney or City Prosecutor shall establish the Notice of Special Assessment form for use, or consideration by, the Tax Collector in collecting a special assessment.

D. The Notice of Special Assessment shall be entitled to recordation with the Los Angeles County Recorder's Office.

E. The amount of a Special Assessment shall also constitute a personal obligation of the property owners of land upon which the nuisance was abated.

8.40.220 Collection of Costs of Abatement by Nuisance Abatement Lien.

A. As an alternative to the procedure contained in Section 8.04.210 of this Chapter, the City may cause a nuisance abatement lien to be recorded upon real property upon which a public nuisance was abated pursuant to California Government Code, Section 38773.1, and future amendments thereto, in the event a Statement of Abatement Costs or a confirmed Statement of Abatement Costs is not paid in a timely manner.

B. A lien shall not be recorded prior to serving the owner of record of the parcel of land on which the public nuisance is maintained, with a notice. This document shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in Los Angeles County pursuant to Section 6062 of the California Government Code.

C. The nuisance abatement lien shall be recorded in the Los Angeles County Recorder's office in the County in which the parcel of land is located and from the date

of recording shall have the force, effect, and priority of a judgment lien.

D. A nuisance abatement lien authorized by this section shall specify the amount of the lien for the City of Covina, the name of the City department or division on whose behalf the lien is imposed, the date of the abatement actions, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in Subsection (D) shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

F. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

G. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

H. The amount of a Nuisance Abatement Lien shall also constitute a personal obligation of the property owners of land upon which the nuisance was abated.

8.40.230 Treble the Costs of Abatement.

Pursuant to California Government Code section 38773.7 (or any subsequent amendment thereto), upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner of property is responsible for a public nuisance except for public nuisance conditions abated pursuant to California Health & Safety Code Section 17980 ("State Housing Law"), the court may order that person to pay treble the costs of the abatement.

8.40.240 Violations and Penalties.

A. Any person who remains in or enters any building or structure that has been ordered to be vacated pursuant to the provisions of this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

B. Any responsible person who fails to comply with an Order of Abatement by completing each of the requisite corrective actions in the manner and time set forth in the Order of Abatement is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

C. Any person who obstructs, impedes, or interferes with any representative of the City engaged in vacating, repairing, rehabilitating, or demolishing and removing any property pursuant to the provisions of this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

D. Any person who defaces, alters, or removes any notice or order posted as required in this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.16 of Title 1 of this Code.

E. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is allowed, committed, continued, maintained or permitted by such person, and shall be punishable accordingly.

Part 3 – Recordation of Substandard Notice

8.40.250 Recordation of Substandard Notice.

A. Notwithstanding any provision of the Covina Municipal Code to the contrary, if the City determines that any property, building or structure, or any part thereof, is in violation of any provision of the Covina Municipal Code and said violation has not been fully abated or corrected, as determined by the City, in the manner and time provided in any written notice to a responsible person, then the City, in its sole discretion, may record a Declaration of Substandard Property with the Los Angeles County Recorder's Office against said premises. As used herein, "fully abated or corrected" includes the procurement of all required City approvals, permits, licenses and the passage of all City required inspections.

B. A Declaration of Substandard Property shall not be recorded unless the City has first issued a written notice (in any form) to the owner of real property (i) identifying and requiring correction of a public nuisance condition; and, (ii) disclosing that a Declaration of Substandard Property may be recorded against the real property if the public nuisance condition(s) is/are not fully abated or corrected in the manner and time delineated in said notice, as determined by the City.

1. If the notice required pursuant to Section 8.40.250 B. was comprised of a Notice of Abatement as defined in this Chapter or of an administrative citation issued pursuant to Chapter 1.26 of Title 1 of this Code, a Declaration of Substandard Property shall not be recorded unless the Notice of Abatement and/or administrative citation is deemed a final and binding City decision.

C. The form that constitutes a Declaration of Substandard Property shall be approved by the City Attorney or the City Prosecutor.

D. The City shall record a Notice of Rescission of Declaration of Substandard Property with the Los Angeles County Recorder's Office within ten (10) business days of its determination that a violation or a public nuisance has been fully abated or corrected.

E. The City shall cause copies of recorded Declarations of Substandard Property and Notices of Rescission of Declaration of Substandard Property to be served on all persons having an ownership interest in the subject real property as shown in the last equalized assessment roll of the Los Angeles County Assessor's Office. Service thereof shall be by first class mail. Failure of any person to receive such notices shall not invalidate any action or proceeding pursuant to this Chapter.

8.40.260 Applicability of Other Laws.

A. This Chapter does not exclusively regulate the conditions and use of property within the City. This Chapter shall supplement other provisions of this Code and other statutes, ordinances or regulations now existing or subsequently enacted by the City, the State or any other entity or agency having jurisdiction.

B. The procedures for abatement set forth in this Chapter are not exclusive and are in addition to any other provisions set forth in this Code or by State law for the abatement of public nuisances."

SECTION 3: If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 5: The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this ordinance, the ordinance, or a summary of the ordinance, 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 Covina.

SECTION 6: The City Council finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section

15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SIGNED AND APPROVED this _____ day of _____, 2013.

KEVIN STAPLETON, MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

I HEREBY CERTIFY that the above and foregoing ordinance was duly passed and adopted by the Covina City Council at its regular meeting held on the _____ day of _____, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

City Clerk

CITY OF COVINA
AGENCY ITEM COMMENTARY

MEETING DATE: January 15, 2013

ITEM NO.: NB 1

STAFF SOURCE: Daryl J. Parrish, City Manager 
Anthony Arroyo, Human Resources Director
Catherine LaCroix, Sr. Deputy City Clerk 

ITEM TITLE: City Council to provide direction to staff and choose an option in the event of a tie vote during the March 5, 2013 General Municipal Election

STAFF RECOMMENDATION

Elections Code Section 15651 provides for two options for Council's consideration in the event of a tie vote during the March 5, 2013 General Municipal Election:

- 1) By Lot – In this instance, the candidates who have received the tie votes appear before City Council at a designated time and place to determine the tie by lot, otherwise described as a draw of envelopes consisting of candidate's names; or
- 2) By Special Election – In this instance, a special runoff election shall be held only if Council adopts a City Resolution providing for a special election prior to the conduct of the March 5, 2013 election. The Resolution would be presented for approval at the February 5, 2013 meeting.

FISCAL IMPACT

There would be no fiscal impact should City Council choose option 1. Should City Council select option 2, a special runoff election would cost about the same as a regular election and funding sources would need to be identified. The adopted budget for the March 2013 election is approximately \$74,000.

BACKGROUND

Currently, we have four candidates for three City Council seats for the March 5, 2013 election. Staff recognizes that the likelihood of a tie vote in any election is remote; however, the chances for a tie vote in this particular election may be slightly higher because of the small field of candidates. If two or more persons receive an equal and highest number of votes for an office, whether based upon canvass or upon a recount, the tie vote must be resolved in one of two ways.

If the City Council wishes to resolve the tie by lot, the candidates who have received the tie votes appear before Council at a designated time and place. City staff would suggest the candidate's names be placed in unmarked, sealed envelopes and the Council could select a person to draw an envelope and read the name of the winning candidate.

If the City Council wishes to resolve the tie by a special runoff election, the legislative body must adopt the provisions of Elections Code Section 15651 by City Resolution prior to the March 5, 2013 election. The special runoff election would then be held on a Tuesday not less than 40 nor more than 125 days after certification of the election that resulted in a tie vote.

Should the City Council choose to resolve the tie by a special runoff election, staff would look to the possibility of conducting an all-mail ballot election, under the provisions of Election Code Section 4004. There is a slight savings associated resulting from not requiring the training of poll workers or operating polling sites; however, the City would still incur the costs associated with mailing election material and consulting fees.

EXHIBITS

None.

REVIEW TEAM ONLY	
City Attorney: 	Finance Director: 
City Manager: 	Other: _____