SUBJECT: SECOND READING - ORDINANCE 1612

SOURCE: Administration

COMMENT: Ordinance No. 1612 amended Municipal Code Section 15-20(e) Regulations, Community Civic Events, regarding the regulation of vendors. It was given First Reading on August 6, 2002, and has been printed.

RECOMMENDATION: That Council give Second Reading to Ordinance No. 1612, waive further reading, and adopt said ordinance.

Attachment: Ordinance No. 1612
ORDINANCE NO. 1612

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 15, BUSINESS LICENSES, SECTION 15-20, REGULATIONS, OF THE CITY CODE

Section 1.

City Code Chapter 15, Section 15-20. Regulations, Section 15-20(e) Community Civic Events, is hereby deleted in its entirety.

Section 2.

City Code Chapter 15, Section 15-20. Regulations, Section 15-20(e) Community Civic Events, is hereby included to read as follows:

(e) Community Civic Events.

(1) The City Council finds and declares that it has historically closed City streets in portions of the downtown area, for the purpose of assisting certain community and regional events benefitting the City, the community at large, and non-profit organizations operating in the City. Control over the operation of these Community Civic Events has traditionally been turned over to the entity sponsoring the event. The City Council finds and declares that there is a need to provide written guidelines and regulations on how these Community Civic Events shall operate.

(2) Purpose.

The purpose of this Section is to establish a legal framework for the operation of Community Civic Events, to set forth minimal requirements for sponsors of these events, to meet the need for order and control during these events, and to ensure that the theme or character of the event is maintained, and that use of public property is compatible with the event.

(3) Definition.

Community Civic Event (hereafter referred to as “CCE”) shall mean the sponsoring and conducting by a nonprofit organization of a civic, artistic, cultural, charitable, educational, veteran or benevolent activity of community interest. The Council shall require reasonable proof of the nonprofit status of the sponsoring organization.
(4) Participation.

Participation in a CCE and use of public right-of-way shall be limited to those members of the sponsoring organization, in good standing with the organization, and those persons and vendors as may be approved by the sponsoring organization.

(5) Permit Required.

The CCE sponsor shall obtain a CCE permit from the City not less than thirty (30) nor more than one hundred and eighty (180) days before the commencement date of the proposed permit activities; provided that the council may waive these time requirements if it determines such a waiver to be in the public interest. Upon receipt of an application, the Business License Clerk shall circulate the application to the following departments for comments and approval: Police Department, Fire Department, Finance Department, Department of Community Development, Public Works Department, Parks and Recreation Department, and Risk Management Department. These departments may impose terms and conditions upon the CCE permit and issuance and approval of the permit is conditioned upon compliance with the required conditions. At a minimum, the permit shall include conditions for holding the City harmless, maintaining minimum limits of liability insurance in accordance with City standards, providing security and traffic control, providing adequate restroom and sanitation facilities, and paying for the cost of City services. The nonprofit sponsor of the CCE shall be exempt from a license fee. Said permit shall be valid for a period not to exceed four (4) consecutive days, one of which shall be a Saturday, Sunday, or national holiday. No person or sponsoring organization shall fail to keep the permit, at all times, at the place where the activities are being conducted, nor fail upon demand therefor to exhibit such permit to any public officer. The permit may be revoked for non-compliance with the conditions of the permit and the provisions of this Section. Revocation may be made by the Council, City Manager, Chief of Police, or their designees. If the grounds for revocation occur during the CCE, the Council, City Manager, Chief of Police or their designee shall first advise the CCE sponsor of the grounds for revocation and provide an opportunity to correct the same. The permit may also be revoked during the CCE if fire or another emergency requires the CCE to be terminated to protect the public safety. When the permit is revoked for this reason, all CCE participants must immediately comply with instructions from any City police officer or Fire Department personnel.

(6) Application.

The application for the CCE permit shall contain:

a. The name of the applicant, the sponsoring organization, the CCE chairperson, and the addresses and telephone numbers of each.
b. The location and outside perimeter of the CCE area, indicated upon a map of the area.

c. The date and times at which the CCE activities are to take place.

d. A description of the CCE activities which will be conducted.

A list of all persons who will be engaging in the CCE, and a list of all persons engaging in temporary selling activities at any time during the dates and times for which a temporary selling permit has been granted shall be furnished to the City no later than one (1) week before the CCE is to take place.

The Council shall cause such application to be investigated and shall grant the permit if it determines that the proposed CCE activities will not disrupt to an unreasonable extent the movement of vehicular or pedestrian traffic or create a hazard to the public; that the proposed CCE activities are not a size or nature that require the diversion of so great a number of police personnel to regulate such CCE activities that it prevents reasonable police protection for the City; that the concentration of persons, equipment and materials is not so great in the CCE areas that it would prevent proper fire, police and ambulance protection; and that the CCE permit applicant agrees to be responsible for cleanup necessitated by the proposed activities. The Council may, in its discretion, require a cleanup deposit to guarantee that cleanup takes place. The Council shall condition the granting of permits upon compliance with the provisions of this subsection and also with such other conditions as the Council may deem necessary to impose for the proper protection of persons and property.

(7) Responsible Party.

The sponsoring organization shall be responsible for the CCE and for all necessary planning, physical facilities, equipment, fire lanes, and removal, cleanup, and staffing. The sponsoring organization shall be responsible for any necessary permits and code requirements for the conduct of such CCE as may be required by County and State agencies and coordination with appropriate City departments, such as Police and Fire. All necessary certificates and approvals by any health or other governmental organization shall be in possession of the person representing the sponsoring entity in such CCE.

(8) Management.

Subject to the minimum requirements imposed by this Section, the CCE sponsor shall:

a) Promulgate rules and regulations for the CCE, including rules and regulations to maintain the theme or character of the CCE. A copy of the rules and regulations shall be submitted to the Business License Clerk prior to the CCE.
b) Have control over the terms and conditions under which person chosen to provide vending services will operate at a CCE including, but not limited to, products sold, hours of sale, fees, vendor locations and issuance of seller permits.

c) Take any other actions which are necessary for the efficient management and operation of the CCE.

(9) Minimum Requirements.

The CCE sponsor shall abide by the following minimum requirements. These minimum requirements shall be deemed a part of the permit conditions and may be supplemented by resolution of the City Council.

a) Maintain openings between vendor booths or sizes, and at locations and distances, required by the City. The required openings shall be identified on the CCE sponsor’s street plan.

b) Not use any permanent or semi-permanent paint or other markers to delineate or mark the location or other direction on any public street, sidewalk, alley or parking lot.

c) Not discriminate in the selection of any vendor on the basis of race, color, religion, sex, national origin, or familial status, or violate any law with respect to the selection of any vendor.

d) Require that all vendors obtain and display all appropriate permits, licenses, and certificates, and comply with all applicable federal, state and local laws, ordinances, and regulations.

e) Require that all vendors maintain their spaces in a clean and sanitary condition, including the removal of containers, waste and trimmings before leaving the area.

f) Require that vendors take sufficient measures to keep the City storm drain system free from contamination, and require that food vendors take special precaution to keep grease and other waste products off all public streets, sidewalks, alleys and parking lots.

g) Provide on-site personnel who can be contacted by appropriate City officials for immediate corrective action either for noncompliance with this Section or the permit conditions, for emergencies, or for actions deemed necessary by the City official. Such personnel shall be equipped with appropriate means of communication to be made known to the City by the CCE sponsor prior to the CCE.

h) Distribute the rules and regulations to each person participating in the CCE.
(10) Cost of CCE.

The CCE sponsor will be responsible for the costs associated with the CCE, including, but not limited to the cost of City services related to the CCE, and the cost of repair of any damage caused to any public property and rights-of-way, including landscaping. The CCE sponsor may apply to the City Council for cooperation in presenting a CCE and request financial assistance for some or all of the costs of City services related to the CCE.

(11) Permit to Sell.

No person shall sell or offer to sell any item at the CCE except under the authority of a valid permit approved by the CCE sponsor. The CCE sponsor shall designate a person or persons responsible for issuing permits to sell. A seller’s permit shall not be required for existing businesses selling merchandise from their stores. Whenever the CCE sponsor in good faith believes that a vendor has violated the conditions of the seller’s permit, the CCE sponsor may immediately suspend the seller’s permit. Vendors shall have an opportunity to appeal the denial or suspension of a seller’s permit as set forth in Section 15-20(e)(20). Permits to sell shall give a seller (including vendors, peddlers and other sellers) the privilege of selling at the CCE only if the following conditions are met:

a) The seller properly files an application for a permit to sell at the CCE with the CCE sponsor.

b) The seller complies with all federal, state and local laws and regulations relating to the CCE, including the rules and regulations of the CCE sponsor.

c) The seller obtains all required permits, licenses and certificates.

d) The seller pays all required fees to the appropriate authorities, including any fees due the sponsor.

e) The seller grants permission to the CCE sponsor, or an authorized representative, to enter the seller’s premises for the reasonable inspection of land, facilities, and records, in order to determine whether the seller is in compliance with the permit conditions, the rules and regulations of the CCE sponsor, and the terms of this Section.

(12) Peddlers and Itinerant Vendors.

All peddler and itinerant vendor permits and licenses issued by the City shall be deemed suspended for the duration of any CCE. All permit and license holders shall be notified of this provision. No person holding a peddler or itinerant vendor permit or license shall sell merchandise within the designated CCE area for the duration of any declared CCE unless the holder of the peddler or itinerant vendor permit or license has a
written agreement with the CCE sponsor to participate in the CCE, or otherwise has a seller’s permit from the CCE sponsor. The CCE sponsor shall allow peddler and itinerant vendor permit and license holders with suspended City permits and licenses under this subsection the same opportunity to participate in a declared CCE as the CCE sponsor offers to other vendors.

(13) Sidewalks.

The City shall not approve vendor or sidewalk sales or other activities within the closure area for a CCE. The sponsoring entity may allow such sales or events, however selling activity during a parade must take place in conformity with Section 15-20(g).

(14) Parades.

Any person or organization desiring to have a parade as a CCE or in connection with a CCE, and all vendors, peddlers, solicitors, or merchants not located inside a commercial location, shall comply with Section 15-20(g) of the Municipal Code in addition to the provisions of this Section.

(15) Interference.

It shall be unlawful for any person to interfere with, disrupt or impede a permitted CCE. It shall also be unlawful for a person to put up any booth, table, chair, stool, structure, vehicle or piece of equipment in any public area located within a designated CCE area for which a CCE sponsor has been issued a permit without consent of the CCE sponsor. This section shall not apply to persons acting under the direction or control of the City.

(16) Business License Fees.

Any individual, company, firm, concessionaire, fair operator, carnival operator, etc., who engages in, conducts, organizes, or promotes business for profit shall pay a business license fee of one dollar ($1.00) per day per amusement, entertainment, exhibit, ride or per booth, space, stall, stand or other unenclosed location used for the purpose of advertising, promoting, or sale of, or taking orders for, goods or services; except that no individual, company, firm concessionaire, fair operator, carnival operator, etc., who possesses a valid City business license shall be subject to separate licensing pursuant to this subsection.

The nonprofit sponsor shall collect said fee and remit the fee to the City within five (5) working days following the CCE. Said remittance shall be accompanied by consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee’s California Seller’s Permit number. Said receipts shall be furnished by the City. One (1) copy of the receipt shall be furnished
to the licensee, one (1) copy filed with the finance department of the City, and one (1) copy retained by the CCE sponsor for a period of three (3) years for audit purposes.

(17) Charges and Exhibit Fees.

The sponsoring entity may impose a reasonable charge or exhibit fee on each participating seller or exhibitor and shall be responsible for enforcing all requirements of this subsection and regulations imposed by the sponsoring entity. Any net profit received by the sponsoring organization shall be utilized for the civic, artistic, cultural, charitable, educational, veteran or benevolent activities of the organization within the City of Porterville.

(18) Insurance.

The Council shall condition the granting of a CCE permit upon the sponsoring entity’s filing with the Council a policy of public liability insurance in which the City has been named as insured or coinsured with the permittee. The policy of insurance shall insure the City, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars ($1,000,000.00) per occurrence of bodily injury and property damage, combined single limit.

(19) Violations.

Any person who violates the provisions of these subsections shall be deemed guilty of either a misdemeanor or an infraction, in accordance with Section 15-21 of this Code. In addition, civil penalties of $100.00 for a first violation and up to $1,000.00 for subsequent violations may be imposed. Every day that any such violation continues shall constitute a separate offense. In addition, the CCE sponsor is authorized to take civil action to enforce the requirements of these subsections, and the rules and regulations established by the CCE sponsor. The remedies provided herein shall not be exclusive, and the violation of any provision of these subsections shall be subject to other remedies as may be provided by law.

(20) Appeal of the Denial or Suspension of a Seller Permit.

After the denial or suspension of a Seller’s Permit, the CCE sponsor shall allow the vendor an opportunity for an appeal hearing before the CCE sponsor’s governing board, or if no governing board, the person with the highest decision making authority, to determine if the permit shall be issued, further suspended, reinstated, or revoked for repeated violations. The hearing shall be held within a reasonable time, depending on the date and duration of the CCE, no later than thirty-five (35) days. The CCE sponsor shall establish procedures for the conduct of the hearing.
(21) Other Rules and Regulations - Applicability.

The CCE sponsor shall comply with all other applicable City ordinances, resolutions, policies, rules and regulations.

(22) Compatibility with State and Federal Laws and Constitutions.

It is the intention of the City Council and the people of the City of Porterville that these subsections shall be interpreted in a manner compatible with the State of California Constitution and the United States Constitution and the laws of the State of California and the United States.

(23) Severability.

If any section, subsection, sentence, clause or phrase of these subsections are for any reason held to be unconstitutional or invalid, that holding shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed these subsections, irrespective of the fact any one or more sections, subsections, sentences, clauses or phrases might be declared unconstitutional or invalid.

Section 3.

This ordinance shall be in full force and effect thirty (30) days from and after its publication and passage.

PASSED AND ADOPTED this _______ day of _________________, 2002.

_________________________________
Gordon T. Woods, Mayor

ATTEST:

_________________________________
John Longley, City Clerk