PORTERVILLE CITY COUNCIL MEETING
REGULAR MEETING JULY 15, 2003
CITY HALL COUNCIL CHAMBERS

Call to Order: 7:00 p.m.
Pledge of Allegiance: Led by BSA Troop No. 132.
Invocation: Led by Mayor Pro Tem Martinez.

PRESENTATIONS

1. Fire Chief Guyton presented a detailed audio-visual report on the Porterville Air Attack Base, stating it was a joint venture between the US Forest Service and CDF which provided fire suppression and protection services in surrounding foothill and forest areas. He said the $5-million, five-acre project was the major source of operating revenue for the City’s airport operations. He reviewed complex staffing patterns, aircraft and equipment, and procedures involved in the operation of the Air Attack Base. He said after the fire season, a grand opening to the public would be planned.

2. Adoption of the Fiscal Year 2003-04 Budget.
3. Completion of the Henderson Avenue Signalization Project.
4. Acquisition of right-of-way for the Porterville Rails to Trails project.

ORAL COMMUNICATIONS

Dick Eckoff, 30 East Oak, requested confirmation that Item #20, Graffiti, would be removed from the agenda. Mayor Stadtherr requested that comments on scheduled matters be addressed at the time of presentation.

Ben Webb, 97 South Corona Drive, requested clarification and direction on addressing subject matter on Item #15. Mayor Stadtherr said this would be addressed at the time of presentation.

CONSENT CALENDAR

Items 6, 8, and 10 were removed from the Consent Calendar.


Disposition: Approved.
Document No: MO. 01-071503

2. APPROVAL OF PURCHASES

Recommendation: That the City Council approve purchases as listed, and authorize the Chief Financial Officer to issue payment for same upon satisfactory delivery.

Disposition: Approved.
Document No: MO. 02-071503

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3. ACCEPTANCE OF IMPROVEMENTS - WESTWOOD VILLAGE MOBILE HOME PARK, PHASE TWO (SOUTHEAST CORNER OF WESTWOOD STREET AND OLIVE AVENUE)

Recommendation: That Council accept the sewer and water main improvements at Westwood Village Mobile Home Park, Phase Two, for maintenance.

Disposition: Approved
Document No: MO. 03-071503

4. ACCEPTANCE OF THE HENDERSON AVENUE HAZARD ELIMINATION SAFETY PROJECT.

Recommendation: That Council (1) Accept the project as complete; (2) Authorize filing of the Notice of Completion; (3) Authorize release of the ten percent retention thirty-five (35) days after recordation, provided no Stop Notices have been filed.

Disposition: Approved
Document No: MO. 04-071503

5. ACCEPTANCE OF THE SCENIC HEIGHTS RESERVOIR PROJECT

Recommendation: That Council (1) Accept the project as complete; (2) Authorize filing of the Notice of Completion; (3) Authorize release of the ten percent retention thirty-five (35) days after recordation, provided no Stop Notices have been filed.

Disposition: Approved
Document No: MO. 05-071503


Recommendation: That the Council approve the resolution adopting the appropriation limit of $30,282,185 for the Fiscal Year 2003-04.

Disposition: Approved.

9. REQUEST TO APPROVE HIGHWAY 190 WHITE PAPER FOR SUBMISSION TO CONGRESSMEN NUNES.

Recommendation: That the Council authorize the submission of the T-21 Reauthorization Demonstration Project to Congressman Nunes in coordination with Porterville College, Porterville Chamber of Commerce, Tule River Tribal Council and Sierra View District Hospital.

Disposition: Approved.
Document No: MO. 06-071503
11. PURCHASE OF SPECIALIZED EQUIPMENT.

Recommendation: That Council authorize purchase by negotiation of the specialized equipment listed and authorize payment for said equipment upon satisfactory delivery.

Disposition: Approved.
Document No: MO. 07-071503

12. PORTERVILLE MUNICIPAL POOLS RENOVATION.

Recommendation: That Council approve the July 23, 2003, adjourned meeting to discuss the various concepts associated with the new pool design.

Disposition: Approved.
Document No: MO. 08-071503

13. APPROVAL FOR PURCHASE OF IRRIGATION PIPELINE - LOWER TULE RIVER IRRIGATION DISTRICT AND CITY OF PORTERVILLE JOINT PROJECT.

Recommendation: That Council authorize staff to purchase 700 feet of 36-inch reinforced concrete storm drain pipe and fittings in the amount of $38,500.

Disposition: Approved
Document No: MO. 09-071503

14. RESCIND COUNCIL ACTION OF APRIL 15, 2003, AMENDMENT OF THE CITY OF PORTERVILLE TRUCK ROUTE MAP.

Recommendation That Council (1) Rescind Council Action of April 15, 2003, amending the City of Porterville Truck Route Map; and (2) Refund any deposit paid to the City in connection with this issue, subject to satisfactory proof of payment.

Disposition: Approved
Document No: MO. 10-071503

COUNCIL ACTION

MOVED by Council Member West, SECONDED by Council Member Hamilton that Council approve Consent Calendar Items 1-5, 7, 9 and 11-14. The motion carried unanimously.

6. MOTOCROSS RACE PROPOSAL: AWARD OF CONTRACT TO CENTRAL VALLEY RACING.


Councilman Irish requested an explanation of reduced fees for the contractor’s participation. City Manager Longley said the request for lower fees was based on review of the last years’ returns and the degree of importance of the event to the community. Ensuing discussion addressed receipts and costs for provision of
services, lack of competitive bidders and the number of races to be held. Mr. Stowe stated that conversations with Central Valley Racing indicated their profit for the previous year was approximately $300.00.

COUNCIL ACTION

MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Pete Martinez that the Council return this matter to staff for renegotiation of the contract with Central Valley Racing for provision of racing at the OHV Park. The motion carried unanimously.

Disposition: Approved

10. AUTHORIZATION TO EXECUTE A LICENSE AGREEMENT FOR THE REMOVAL OF FILL MATERIAL FROM DRAINAGE RESERVOIR NO. 6.

Recommendation: That Council: (1) Authorize the sale of fill material from drainage Reservoir No. 6; and (2) Authorize the Mayor to sign the attached “License Agreement.”

Councilman Irish requested that the contractor’s liability insurance limits be increased to $1-million from $500,000 to remain congruous with other contractors who provide services for the City of Porterville.

COUNCIL ACTION

MOVED by Council Member Irish, SECONDED by Council Member Hamilton that the Council direct staff to prepare documents changing all areas of liability limits from $500,000 to $1 million. The motion carried unanimously.

Disposition: Approved

8. WATER & SEWER SERVICE TO FAMILY HEALTH CARE NETWORK, 1107 W. POPLAR AVE.

Councilman Irish declared a potential Conflict of Interest due to business dealings in the form of security contracts with Family Health Care Network and recused himself from all discussion and voting on this matter. Mayor Pro Tem Martinez declared a potential Conflict of Interest due to business dealings in the form of a business contract which exceeded limitations placed by law to participate in the proposed action and recused himself from all discussion and voting on this matter. Mayor Stadtherr stated he was the company’s Chief Accounting Officer and recused himself from all discussion and voting on this matter. Councilman Irish, Mayor Pro Tem Martinez and Mayor Stadtherr exited the dais to quarters situated outside the Council Chambers.

City Attorney Lew invoked the Rule of Necessity which would legally allow the least involved Council member to be returned to the dais in order to achieve a quorum needed for any action taken on this item. Ms. Lew stated the Mayor obviously had the strongest conflict and would be recused; she said Councilman Irish’s dealings involved a consistent monthly security contract which would eliminate his ability to act on this matter; Ms. Lew stated Mayor Pro Tem Martinez’s dealings with the applicant were of an intermittent nature and held the least potential for a conflict of interest. She said she had spoken to Mayor Pro Tem Martinez who stated he could be objective in the matter before the Council.

Recommendation: That Council (1) Authorize the sale of fill material from Drainage Reservoir No. 6; and (2) Authorize the Mayor to sign the attached “License Agreement.”
COUNCIL ACTION

MOVED by Council Member Hamilton, SECONDED by Council Member West
that the Council approve the recommendation.

M.O. 13-071503

AYES: West, Martinez, Hamilton
NOES: None
ABSENT: None
ABSTAIN: Irish, Stadtherr

Disposition: Approved

PUBLIC HEARINGS

15. PROCEDURE FOR REQUIRING PROPERTY OWNERS TO REIMBURSE THE CITY FOR CURB, GUTTER AND SIDEWALK IMPROVEMENTS MADE DURING STREET IMPROVEMENT PROJECTS AND CONSIDERATION OF A RESOLUTION TO RECOUP IMPROVEMENT COSTS THROUGH THE IMPOSITION OF CHARGES AS A CONDITION OF DEVELOPMENT.

Recommendation: That Council (1) For each of the projects listed above, hold a public hearing for the purpose of obtaining public input with regard to the imposition of these costs; (2) Upon conclusion of the public hearings, adopt the included resolutions; and (3) Set a public hearing August 5, 2003, for the purpose of amending the City’s regulations.

City Manager Longley presented the staff report and said the City Attorney advised that these particular improvements had been financed through the stated funding sources, and that recovery of costs from benefitted property owners was a legal procedure. He said the policy for recouping these costs had been adopted about ten years ago but that no formal notice other than agenda posting had been established. He reviewed procedures which would trigger required payment of the cost of improvements which were (1) Parcel or Subdivision Applications, (2) Building Permit Applications for projects exceeding the $9,638 set by the Municipal Code. City Manager Longley reviewed the Fee Mitigation Act Process, Notice and Hearing requirements and Option of a Payment Plan for reimbursement of concrete improvements designed to ensure a fair process consistent over time.

Mayor Stadtherr opened the public hearing at 7:30 p.m. and called those who would address the Council.

Ben Webb, 97 South Corona: “Not all the property owners that have been affected by the Council’s proposed reimbursement resolution and amendments to the City regulations have been able to retain Council to represent them at tonight’s meeting; therefore, on advice of counsel, I am lodging the following formal objections to the procedure and to the substance of the action proposed to be taken tonight by your Council on behalf of all the affected property owners, so that these legal objections will be in the record in the event that legal action is initiated by any of the property owners affected by your decisions and actions tonight. The proposed hearing format improperly includes groups of dissimilar properties that cannot be readily distinguished in differential from one another based upon the individual factual circumstances which apply uniquely to each property: such as the length of time that the improvements have been made, impact on the value of the individual property, previous transfer of ownership without notice of the proposed item, and a host of other factors which under the law makes each property separate, individual and unique; therefore, there should be a separate hearing for each individual property. Number two, the notice given by the proposed hearing and action was variable and insufficient to provide adequate legal notice to the affected parties, for example, registered letters were sent to property owners of record, many of whom have already sold or
transferred their property to a successor in an interest who have not received adequate written notice. The project description in the public notice was vague and insufficient to give all actual notices to the property owners within the so-called project area. 3. In numerous cases, the actions taken by the City to improve the subject properties were taken without any notice whatsoever to the former property owners, without an opportunity to lodge a formal objection or to make the necessary improvements by private contractors at a significantly lower cost than that incurred by the City as a public entity, subject to the statutory wages and our requirements relative to the bidding in construction of the public projects. In certain incidents, the so-called public improvements actually damaged the subject properties, and the property owners may have counter-claims to bring against the City, yet no provision has been made for such circumstances in the proper resolution. Without considering each property separately, the City cannot make a finding of fact and/or determination of law that the application’s statute of limitation has not expired, thereby leaving the City without a legal remedy to collect the cost of the public improvements constructed over three years ago. Nowhere in the staff report or elsewhere in the agenda package is there discussion or analysis of the potential impact of the expiration of the statute of limitations and how the running of the statute may cause an unlawful and equal impact on the property owners who are similarly situated except for date of the notice of the accrual of the claim or the cause of action against them. Such disparities may give rise to claims against the City of violation of due process and/or equal protection of the law.

Connie Pacheco, 458 North Plano: “The Mitigation Fee Act is not cited by reference to statute, therefore the public is left to guess which statute is referred to and applicable. If the Mitigation Fee Act referred to is Gov. Code is 66,000, the statute contemplates study of infrastructure needs, a public hearing regarding the unmet infrastructure needs, a public hearing with a reasonable opportunity to review any study and/or other analysis supporting the proposed Mitigation Fee Schedule. None of these steps have been taken by the City Council or staff; in fact, these issues should have been raised annually when the Mitigation Fee Ordinance was reviewed, along with the City’s annual budget and capital improvement program update. Under these circumstances, the City has not undertaken an adequate study of how these fees will impact on different property owners. Potential alternatives to this retroactive fee assessment and the potential impact of property owners who purchased this property well after the owner of the property at the time the improvements were made is long gone or deceased. To the extent that staff has advised City Council members of potential personal liability in the event that the Council rejects staff’s proposal, I suggest that the City Council requests the City Attorneys provide a complete and comprehensive written analysis for the Council analyzing and evaluating the potential risk of litigation and potential liability under all applicable federal and state laws pursuant to which legal action may be brought against the individual Council members prior to making its final decision and taking the final action. Staff refers to oral discussions regarding the intent of the City Council over ten years ago without providing any written evidence that the City intended to recoup the costs of these improvements from the benefitted property owners. Certainly, if such was the intent of the City Council, there would be staff reports or memorandums, correspondence from the City Attorney or its bond attorney regarding the intent and the conditions subsequent to the issuance of the Certificates of Participation. Similarly, the indentures and other investment documentation would be preserved by the issue and the City Attorney. Therefore, the Council accepts the vague recollection of oral discussions all property owners should have reasonable opportunity for their legal counsel or other advisors or representative to review such evidence. At this point, there is no substantial, credible evidence to support staff’s speculation of events occurring over ten years ago. In conclusion, given the fact that many years have elapsed since the majority of the so-called public improvements were made, it seems prescriptive to make the final decision in such a rush without considering and evaluating a range of options which may be fair or more equitable for both the property owners and the City. And the Council and affected property owners are entitled to expect to review more substantial documentary evidence of previous Council’s decisions and actions; therefore, this matter should be continued to a date certain by which time staff can retrieve and analyze the necessary documentation from the City’s archives or bond attorneys. Respectfully, Ben Webb, Connie Pacheco.”
Mary Ann Short, 1156 West Westfield: “My husband is George. We received our little information thing here about being charged for sidewalk and sewer lateral. We live in the county. My confusion is when this was beginning to happen, no one discussed it with us, we just saw....I think we received a letter and then we saw the sidewalk going up in front of our house. We already had put in curb and gutter years before. And I was a little confused at the time because I thought, ‘Gee, we live in the county, is the city doing this or the county? What’s going on here?’ And then when we received this, we’re in the process of selling our house, and, of course, I showed this to the prospective buyer and they’re saying, ‘Gee, we have to pay this?’ It could affect the sale of our property. My question is I object to it and I don’t understand—I guess the City and the County get together and decide these things—I don’t know, but I do object mainly because I feel like I’m a citizen and I’ve had no say over this. So I’d like to just give my official objection.”

Francis Street, 427 East Grand: “My father and I own the 18 acres on the corner of Plano and East Grand. We are designated county property also and we are zoned agricultural. We were recently informed by a friend, never notified officially until after the controversy, that there is a lien against our property for $22,023.27. I have two concerns I’d like to address. Number One, I understand the premise that we are responsible for the cost of this sidewalk because it is an improvement made adjacent to our property, and that if we decide to build houses on that property, we wouldn’t have to put in a curb, gutter and sidewalk; however, had we been notified ahead of time that this was the intent, we would have told the City that we have absolutely no current or future plans to build any houses on our land. If you really wanted to make an improvement, you could have built us a new tractor barn. In 1996, in what we assumed was another road widening project, the contractor came to my dad and told him (this is my second point) our fence needed to be removed to facilitate the grading of the land and asked if we wanted to do it or wanted him to do it for us. We let him do it for us, but it was never reinstalled or replaced. This has been, and continues to be, an inconvenience to us. My dad spends lots of time picking up empty fast food bags and hoeing tumbleweeds that our fence kept from blowing across our property. We would appreciate it if you would look into this matter and get back to us. My name is Francis Street and I oppose.”

Ed Street, 427 East Grand: “This is the same property that Francis mentioned. We’ve lived there for 80 years, and this is the first time that we’ve run across a conflict with the City of Porterville. I guess you know that this is county property, and we understand that the City is anxious to expand to the east, and that our property is one of those which would be considered as expansion. We don’t plan to leave. We want to stay there. If this interferes with your expansion plans, I’m sorry. Now, you talk about an improvement for the property owner, I disagree. Our property was not improved at all by the installation of the sidewalk and curb. We don’t need it, we never needed it, we didn’t want it, and we were not informed that it was going to be installed. At least, we should have been involved, I would think, being notified that this would happen. Now, as a matter of improvement for our situation, the street was widened and this created, I guess you’d call it a truck route channel through there. It’s a nice, wide street, it’s real convenient, and I have counted as many as 30 cars per minute during the rush hour. Since Foster Farms moved there, we get the change of shift traffic. We have two schools, one of each side of us. During school years, we get an awful lot of traffic from these people taking their kids to school, and you have just approved a project across the street which will add another 300 people to the neighborhood. All right. Is it improvement when my swamp cooler sucks in diesel smoke, exhaust fumes? Is that an improvement for me?”

Doug Webb, 608 North Plano: “You talk about an improvement, that sidewalk was not an improvement for me. Ever since it’s been in, I’ve been fighting nothing but graffiti. I finally had to fence my entire property to keep from losing...I’ve lost two bikes and I don’t know how many tools out of my truck. And if I’d had a choice, I could have done it myself for a lot less. We went back and looked at our records for that time period. We were pouring concrete for $2.50 to $3.25 a foot, reinforced. That’s not reinforced. Your engineer tells me it’s going to cost me almost $5.00 per square foot. I don’t think so. I think you better take a look at your priorities again.”
Mary Aurellano Powah: “Please allow me to speak in behalf of my sister, Junesea Ajuan, who also owns property on 157 North Westwood Avenue. By the time the installation was in progress, she was really in great surprise on what’s really happening, because she wasn’t informed about what improvement there is. And she was really frustrated because she was expecting that she should still see her two driveways open and now she only has one. That’s all.”

Daryl Nicholson, 1949 West Olive: “I also have property in escrow that is affected by your ordinance if you take the proposed action. As you know, curbs, gutters and sidewalks are not on private property. They are all public property and public improvements. They do not belong to the private citizens that this ordinance intends to charge for. Developers, at the time of development, do donate land, and usually donate that land to the City as a requirement to develop. And as a further requirement at that time, they do have to pay for or put in the curbs and gutters. That’s been standard for years in the City. This proposal that you have is not standard. If the City put in the curbs and gutter before the developer, it’s only because (as your staff report shows) that the City has the need for it. And, as you had public testimony tonight from your staff, it was because you/we/the city as a whole had the need for the curbs and gutters to protect the street. To protect the street that’s owned by the City, not to protect a street that’s owned by adjacent property owners. Sidewalks do not necessarily increase the value of the land. I’m in a unique situation that I don’t ever have a customer walk to my business on a sidewalk, so the blanket statement made in your proposed resolution tonight is not true for all properties affected. Some properties, if I had a neighborhood commercial business—a minute-mart if you will—it would affect that and it would increase the value. But my customers must, by the nature of my business, drive to my property and they, therefore, do not increase the value. Sidewalks, in my situation at my business allow other citizens to walk around my property on City property. That’s an advantage to the City as a whole, not an advantage to the adjacent property owners as you see. Your proposed resolution states that the only equitable solution is to charge an adjacent property owner, and I would submit to you in public testimony, that an equitable solution to allowing the public as a whole to walk around my property would be for the public as a whole, or the City budget, to put in those improvements or pay for them if they choose to. If the City waited for me to develop, I would have put those in, and that’s a true statement. But they didn’t, and I waited, and it’s not an appropriate statement, and, therefore, this is an appropriate resolution maybe, but it can’t be blanketed to everyone. To me, this is either $600 a minute or $6,000 a minute, depending on if you put the two properties together. Some of the properties that I’m involved with are farm properties, and those owners absolutely did not want, would not choose to have that sidewalk put in, never would. They now have one entrance where, prior to the curb, gutter and sidewalk, they could drive their tractor, their swather, or whatever it is, in and out of their property very easily. It’s not a benefit as you’re asked to make a determination. And I think that’s important. All City streets are re-asphalted at times throughout the year, or on a rotation. Do we ask the adjacent property when they get a new street to be lined? I think the answer to that: we never have in the past, and maybe this is a forefront to what we might see. No qualified appraiser, I believe, would add value or deduct value for a curb, gutter and sidewalk. I’ve never seen it on an appraisal of property, because it does not belong to that property. It belongs to the City, or in some cases the County, as a whole. If a developer puts in something like you’ve done, puts in a structure, for the benefit of other property owners—say a storm drain down the middle of the street and there’s other people that may tie into it later. The City has a proposal or a structure of a payback agreement, and that payback agreement, according to your City’s standard form that you require us to sign, allows that if it’s not done in ten years, it expires worthless. And, yet, in some of these proposals, you’re going back further than that. As you remember, several months ago, I came to you with a problem at the curb and gutter and City street, and the problem affects county streets on both sides of me, and your staff, and I think it was your determination, that you helped me, and I appreciate that, but you also stated, and staff stated, that you couldn’t do anything about the street out in front of the county property; you had no jurisdiction, was the word you used, to help there and therefore our problem is still exacerbated. We moved it in front of my place down to the neighbor’s and they line those. How do you have jurisdiction to charge an adjacent property owner who does not own it, if you didn’t even have jurisdiction to keep somebody from parking on it, and indeed you told us you couldn’t even paint the curb and gutter red.
But this proposal, and those lines, are asking for you to have jurisdiction to charge back for those. In my particular case, and on Olive, the city, when they came in, did not discuss it with the property owner. Never came and said what they were doing. You, the City staff and the contractor, only put in half the requirement. The requirement is ten feet—nine-and-a-half feet—and the City had 4-1/2 feet put in. Now you talk about cost and economy of scale, it is not an economy of scale when you put a board at 4-1/2 feet or you take the same board and put it at nine, and you squeegee it with just a ten-foot board. You understand that. It’s not an economy of scale. It will cost me almost as much to pour the other five feet that wasn’t done, and why it wasn’t, I don’t know. You require us, but when you do it, it’s only 4-1/2 feet. Didn’t quite make sense, but at this time, talking about the cost of it, it’s not a fair trade, as Mr. Webb said, for you to charge twice as much as I could have done it for then and only to do half as much, and then I’ll go back in and put five more feet. Doesn’t make sense for all property owners. And that may not be the case for others. You’re, in essence, this ordinance is singling out a certain segment of tax payers. It’s not consistent with what’s ever been done. It’s not consistent with what you do at other places. The City has a program to install handicapped curbs and gutters in almost all the corners in the City at some time or another. Systematically going in, sometimes buying property, cutting out the curb and gutter and reinstalling it. Are you now going to take the same approach to those corner property owners and notify them? That’s the same program. They must put it in, if they were to develop that property, but yet there’s only a certain segment that you picked out. If you put those dots on that map, if the staff would do that, of all the ones that the City paid for in this city, it would almost be solid. So, to pick out a certain segment of the property owners is not correct.”

Mayor Stadtherr reminded Mr. Nicholson of the time limitation and asked if anyone present would yield their time. There was a positive response.

Mr Nicholson continued: “This is an important issue. If it were a minor thing, I would step down for sure. A full, fair resolution or solution, as presented in your staff report, is not to charge the property owners. It’s for the citizens of Porterville who benefitted from the improvements to pay for the improvements. I believe that I was sitting where you’re sitting when some of these projects were done, and I, for one, do not remember—honestly do not remember—it doesn’t affect my property, mine’s after. But the other ones, I don’t remember that this was our intent. I don’t know what the record shows, but from my personal belief, I will stand here under oath and tell you that that was not the intent of that Council at that time, or at least my understanding of it. Private owners could have negotiated had they realized they were going to be charged for the service, and put it in where they wanted, when they wanted it, as long as they were given a deadline: You must do it within three weeks or within three months or within three years. We could have done it more efficiently without a lien on our property. What do you do with property that I have in escrow right now, negotiated, determined that this is the price, and you put a lien on 60 days from now. That property owner is absolved of it. And you can’t send me back in to negotiate a lien that’s not there. It’s a difficult situation because of the timing. Had it been placed on before, then it would be a public record, it would have shown up in a preliminary title report and it would have been either a ‘yes’ or ‘no’ we could have negotiated from that standpoint. [Q: How many of those properties do you have in escrow right now?] One very large one. And it represents about $18,000 of your fee right now, of the list that I just saw. You know, this is not your fault.[Q: How many pieces of property do people buy by just going to a preliminary title search?] Absolutely every one. Every property that I know of that any respectable real estate developer looks at, it’s subject to the approval of the preliminary title report. There’s no need to go further. Not that you’ve placed an ordinance that might cost an additional fee. If that curb, gutter and sidewalk isn’t there, then it’s a whole different story, we know what the rules are. But in essence, the proposal is to change the rules right in mid-stream and to affect people for past acts, and that’s the difficulty here as far as I see it. This is not your fault. None of you were here when these problems were caused as far as I know. [Councilman Hamilton stated he was.] I don’t know if you understood it better than I, but as a Council, it’s not the fault of this Council. And it’s not the responsibility of this Council to clean up problems that happened in the past. This proposal that you have is not pro business. The majority of you who ran for Council talked about being pro business. There are properties that have the
potential to be nice shopping centers and yet we’ve taken an out-of-town owner and slapped him with another $20,000 that they didn’t want or didn’t do. Those five-foot sidewalks are not going to do that property owner one bit of good when he has to come in and put entrances, exits the full at least ten feet, because this is zoned commercial. The real question is if you take this approach with a few tax payers and a few property owners, will you be consistent and go back and begin to make other amendments? Is it not better in my personal situation that you finally landscaped the center island in Olive and have done all the way down the street? That’s a public improvement that helped my property value, I think. But the sidewalk did not. Are you going to take the approach that you go back to all the islands? Are you going to take the approach that any repairs that you’re doing get attached to the specific property? It’s the City’s property that these improvements are on and not the private person. I ask you just to consider that, to look to other avenues to either recoup this or move forward, or begin it with your projects in the future, and tell your citizens, us that elect you, that you’re going to do it ahead of time, and let us respond to the market, and not three, five or ten years after the fact.” [Q: When you were sitting up here, do you remember any situations where you did curbs and gutters and didn’t charge for them?] Yes, yes! Hundreds of individual properties. We did a lot in Redevelopment. We spend City money, that’s taxpayer, we spent that to actually improve buildings, and we didn’t charge those people back for it. We fixed their whole sidewalk. I’m talking about bond money, money that I personally signed my name on the bonds. We fixed property many, many times. Not just once, not ten, but hundreds of individual properties. Constantly. Because it was for the betterment of the entire citizenry. It was for the betterment of the entire citizenry that we put in handicapped ramps. You can’t go back and charge the guy that owns the vacant lot on the corner. There’s not a handicapped ramp at my property. If I were to develop, I have to break that out and put it in. Now, you’re wanting to charge me for the one you put in, meaning the City. This proposal says I paid for the old one. Then if I do build on that property—which I have vacant—I have to pay for my new one, break it out, which is a cost, tear it up and put in the new one, according to the new City standards. It doesn’t make sense for me to pay for the old one and pay for the new one and pay to haul away yours. So, the answer is, there’s a lot of properties. It would be easy if you needed substantiation that other properties have benefitted with the same exact situation. [Council comment that Mr. Nicholson wouldn’t be required to do that] When you go to project review, they said this is a requirement that you take out that radius curb and you put in—I have that in writing on a project that I just proposed—and the requirement is that I take out that if I build on that property. So I’m getting charged here, and it may not come to fruition until I get a building permit, but at that time, I’m going to pay two or maybe three times as much. [Q: Were there any times the City paid for curb, gutter and sidewalk when you were on the Council?] I honestly do not remember of one. We did just the opposite. When we want to put in a handicapped ramp, sometimes we paid up to $800 to a property owner for five or six feet of his corner, then we put in the whole thing for free. We didn’t say ‘now that we’ve bought your property, you have to put it in’. It’s a public improvement, and these public improvements are for the general public. The staff made the greatest statement that curbs and gutters are put in to protect the streets, and that is the truth. And it’s not my street, it’s our street—the citizens, therefore the citizens should bear the cost, if it’s prior to development. Thank you. Good luck with your decision.”

Terry Schuler, 11015 Road 256, Terra Bella: “I’m here regarding a property I bought several years ago on North Plano, and what kind of concerns me about this issue is I’ve developed most of the property, I have one lot still available for multiple-family residential units. The property in question was purchased by me in November, 1991. When I bought the property at that time, it was escrowed through one of the local title companies. There was no notice of any liens at that time, and the curb, gutter and sidewalk on that property that fronts on Plano, was already in. Now, I keep hearing about improvements put in in 1996. Keep in mind this property of mine was purchased in November of ‘91. Approximately a year and a half went by, I subdivided the property into six individual lots. In doing so, I built half of the Kanai extension from Murray to Plano. I put in the curb, gutter and the road on that side. So, to me, I wonder about the accuracy of the letter I received from you guys just about a week ago. I think I’m already; and I think I may have been possibly charged for some of these fees. When I did the subdivision, I wrote a check to the City to have the right to put that road in for $36,000. Also built the road on top of that, so now I get a letter that I owe you guys an
additional three grand of improvements that were already there before this ‘96 project came in. It says on here, ‘driveway approach: zero’. The APN number that’s reflected on this letter has a drive approach. So there’s several inaccuracies on this particular piece of property. The property directly north of this that I own that was involved in the subdivision is 515 North Plano. It had an existing home on it. I don’t know when this curb and gutter was put in, but it was before I showed up in 1991. I noticed that the home at 515 Plano, I sold in approximately ‘93 or ‘94. That property is not listed on the staff report for reimbursement. It’s very plain to me that some errors have been made on this situation, and I hope you take that into careful consideration in any decision that you do make. [Q: Is the APN 253 230 052?] That’s correct. There’s no address because it’s a bare lot. Directly north of that, the address is 515 North Plano. That home belongs to Johnny Ordundo. Then at the intersection of Plano and Kanai, I’ve built 12 residential rental units in there. They’re all addressed on the Kanai Street. When I put the improvements in and finished off the half street of Kanai, I tied in the street that I built and the handicapped ramp to the existing curb, gutter and sidewalk that was already on Plano Street. I put the improvements in, probably by the time I did the subdivision map, went through all the planning process, it was probably done in about ‘92 or ‘93. I built the first units there around ‘94 or ‘95. I sold the 515 North Plano house at about ‘93 or ‘94.

Public Works Director Rodriguez told Mr. Schuler that several messages had been left at his telephone number advising him that his properties had been removed from the subject list of properties.

Jim Winton, 150 West Morton: “Mr. Wayne Carter, who received the letters in relation to improvement costs, I guess assessments for lack of a better term, for property their family owns between Crestview and Hillcrest on both sides of Morton Avenue. He asked me to express to you his opposition to the charges. He asked me to express his disappointment that through the lengthy negotiations for the right-of-way (this section is in the new alignment portion of Morton Avenue) that the fact that the City planned to charge him for the improvements that were made along this new road frontage was not disclosed to him during that period, and the fact that when he first learned of it was when he received his certified letters. He also is concerned because his property is presently vacant, and while he understands that ultimately he would have to improve the frontage for the improvements not there, that in effect there will be probably a 30 or 40% increase in his improvement costs along that frontage because there was no opportunity to have driveways and/or road approaches installed at the time, so he will be paying for the curb and gutter that is presently in place. He will then have to pay to remove the curb and gutter where the driveways and/or road approaches will be installed, and he will have to pay to reinstall those facilities in the present alignment. The last item that he asked me to convey to you is the fact that he has some concern over the actual recording of assessments against specific properties and specific amounts and that if there is an error on the owner or on the amount, that once those become recorded, it seems to him that it’s going to be very difficult in order to rectify the error. When I checked the amounts that were on his property, I did go over those with the staff, and it will be five properties that he received the letters on, at least three of them were probably cut in half, as far as the amount that was computed to be owed. Mr. Rodriguez took care of that. He faxed me a copy of his corrected sheet, which I believe in your packet tonight, Exhibit “B”, but on the one sheet that he did fax me, I also noted another error. There’s an APN 254 010 043, which is listed as the owner as Arthur Buckley. That property is actually owned by Greg Childress, previously owned by Gene Letsinger, has never been owned by Art Buckley. The only Buckley ownership in that area was a small well site that the City took as a total take when they bought the right-of-way, so I’m not too sure that Mr. Childress, or Gene Letsinger, the previous owner, was properly notified of the hearing or received letters or received any notification that they owe any money in relation to that particular APN. Thank you.”

Robert Vanderhorst, 1482 Highland Drive: “Good evening Mayor and City Council. I have a few comments to address to you concerning this issue. I did a little legal research and found the Mitigation Fee Act requires, in Section 66016, that prior to levying a new fee or service charge, or prior to approving an increase
in an existing fee or service charge, a local agency shall hold at least one public meeting at which oral or written presentations can be made as part of the regularly scheduled meeting. Additionally, ten days prior to such meeting, the local agency shall make available to the public data indicating the amount of costs or estimated costs required to provide the service for which the fee or service charge is levied, and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge, or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for the fee or service charge levied. This meeting tonight and the proposed change in ordinance, is an attempt, I think, to correct a problem made in the past. It’s an ex post facto levy made on property owners to make up for a mistake made some time ago. The public record from the June 16th Council meeting and the comments made by City Council then, and leading up to tonight’s meeting, indicate that the Resolution 8-89 was adopted without any public hearing or notice. That resolution is defective and void. Section 66017 of the Government Code requires that any action adopting a fee or charge or increasing a fee or charge requires a notice to the public and that even if enacted, that there is a 60-day period before the action can take place and take effect for the public to protest the action. Section 66018 requires that prior to adopting an ordinance, resolution or other legislative enactment adopting a new fee or approving a fee increase in an existing fee to which this section applies, a local agency shall hold a public hearing at which oral or written presentations can be made as part of a regularly scheduled meeting. That wasn’t done before Resolution 8-89 was adopted by this Council, and what I would propose to the City is this: That all of the persons who have been affected by curb, gutter and sidewalk improvements, who are private property owners, who got this improvement with request, without notice, without knowledge, without any levy or assessment made onto their property with their knowledge, that they be forgiven these charges, and that the City consider these improvements to have been made for the benefit for the entire community. As Mr. Rodriguez indicated earlier, the primary purpose, or one of the main purposes of curb, gutter and sidewalks is to protect the city streets, which, of course, benefits all of us in this community. As Mr. Nicholson pointed out, these improvements do not belong to the property owner. The curb, gutter and sidewalks belong to the City, they belong to the community, and each individual property owner who has not received proper notice should not be kicked in the rear now by an ex post facto attempt to assess them for something they had no notice of, no knowledge of, and would be violative of their due process rights to be imposed upon them at this time.”

Council corrected Mr. Vanderhorst’s reference of record from Resolution 8-89 to Resolution 8-99.

Connie Salazar, 264 South Plano: “I have not been feeling so good, they opened my heart and I feel kind of weak. My husband told me if you want us to pay on payments, it would be okay. I have to pay my medicine and insurance for the hospital and everything.” Mrs. Salazar was informed by the Council that nothing was owed on her property at this time. She was assisted to her seat by a member of the audience.

Emilio Campos, 2288 East Roby: “We own property on East Morton, it’s in the county, it’s agriculture. The City took the property there by eminent domain. When the City took the property, they never notified us that we have to pay for any improvements. They never told us that we have to pay for any improvements at all. I don’t believe myself that we have any improvements on the property. To the contrary, what we have is more damage to our property than improvements. Number one, the water system. We have irrigation system on the end of the property. When they was grading the road in there, they destroyed the weir box and the cover there, the meter and gates and everything else, and nobody help us. And I can verify with Mr. Land, he was the inspector. He tried to get somebody to come in there and do something about it, and nobody do anything about it. When the City—when the judge in Visalia ruled in favor of the City, they give them 24 hours to relocate the water system and the fence. And they supposed to notify us in advance when they was going to do. They never did. And she say was more the amount of time, 24 hours. When they relocate the fence, they never notify us, either. And the fence was not put right. At the end of the property where they cut
the barbed wire, we have a field fence all around the property except on the east side of the property, is wire fence, six wires. When they cut the wire in there, they never tied the corner, so one of my animals got out in the road and collide with an automobile. Then I have to pay the damage of the automobile because the driver went to the City, the City refused to accept his claim. They send to the contractor. The contractor sent him to the company who replaced the fence, so they sue me for $3050. I explained the charge. My insurance took pictures and everything else of the whole situation because I notify my insurance the next day. [Q: How long ago was this?] This was probably just a little after the City took over the property, I don’t know exactly the day, so I notify Mr. Fred Beltran, which he was the inspector, about the fence situation. He asked me if I had a police report, I tell him ‘no’. He said ‘well, I can get one’, but I never hear. The driver going to the City with the claim, the City refused, reject the claim, so they sent him to the contractor, the contractor sent him to the company whoever replaced the fence and they refused to take the responsibility. So he’s suing me. I have to pay. I lost my cow, I have to pay them. And right now, when I have in front of the house: 36" retained dirt, five feet from the foundation of the house. My people, they haven’t been able to use the front door, because can you climb 36" with mud in there? During the rainy season, it washed the mud, the water went under the house. I had to go in there and dig a ditch about a foot deep, about that wide, to get the mud out and everything else, and you, you call that improvements? I called Mr. Rodriguez many times because I need to do something so my people able to use the front door. I left my message in there. I went to the City. Nobody ever called me back, because I asked him what can I do, and they said Mr. Longley wasn’t there. So they went in there and they tamped the dirt because it was straight down. They tamped the dirt, which is about 45-degrees now. Okay? And I asked him what can I do, and Mr. Rodriguez tell me ‘from the property line, you can do anything you want to, but not this way’. I wish one of you people could go and see what a mess I got in there, and you want me to pay for all this?”

Councilman Irish directed this matter to the City Manager as it appeared unrelated to the matter at hand. Councilmen Hamilton and Irish assured Mr. Campos that they would personally visit his property the following day.

“I’m losing $250 rent on the house, because the only way I can keep the people in there, they were paying $750, now I’ve reduced to $500. My address is 2288 East Roby. My telephone number is 784-4655. The address is 612 East Morton. It’s right at the corner of Park and Morton. I will be available before noon.”

Mayor Stadtherr recessed the Council meeting at 8:32 p.m. and reconvened the meeting at 8:45 p.m. and continued the public input portion of the public hearing.

Alfredo Rivas, 1130-B Westfield: “I strongly disapprove of the way this was handled through the City. I don’t know whether—to my understanding, my knowledge is that we were going to have these city improvements done on our roadway, but was never told that I was going to have to pay for the curb and gutter. Two or three years later, I received a bill which I don’t think that’s right, the way it was handled. First of all, if we were told that this was going to happen and we were told that we were going to have to pay for it, then it’s a different story, but we were never notified of that, so I disapprove of it.”

Mike Garcia, 1140 West Westfield: “I also object to this. I was never told about it, and everybody has voiced their feelings about this, but I’d also like to let you know, do I need to pay for this? It’s Michael Garza, so should I just forget it? And Michael was spelled wrong.”

Garland Gifford, 505 North Murray: “I purchased a piece of property that we’re developing upon the corner of Morton and Conner. I purchased this property less than a year ago, and wasn’t informed at that time that there would be any assessments or anything to it, so I’m just going to wait. I am in disagreement with this. Thank you very much.”
Marilyn Stafford, 356 North Conner Street: “One comment I want to say is that I had a lot of inquiries about this, and I asked private individuals and some legal counsel, and also asked the City, and I must say that I was very impressed with the fact that I got a lot of information and a lot of thoroughness from the City when I asked the questions. And even though I am in disagreement with this, I wish to thank the City employees for being so thorough and for being so timely in answering the questions that I had. I just do not see how the City Council can do something after the fact. It just totally goes against legal—it’s just not legal the way I see it. It’s an unlawful action. I just don’t understand why the City Council in 1999 adopted the Resolution 8-99 without a public hearing as required by law. It seems to me the City Council members were familiar, I would assume they were, with various notification requirements, especially the Mitigation Fee Act, and I assume the weekly agenda is reviewed, I mean the monthly agenda, is reviewed by the City Attorney, so why wasn’t the public notified prior to the adoption of the fees? I see the problems and expenses that have occurred concerning these past sale transactions that were effected by this resolution could have been avoided if all disclosures were known, both to the buyer and seller at the time of the initial sale. Fair market value in light of the cost of improvements is impossible to go back and reenact after the sale. I, myself, know that I can be quoted law and told what the City can do, but this after-the-fact, I don’t see how this they can do without a public hearing. And, of course, I do question the fact that I have a sidewalk in front of my house and it enhances my property value when I was able to commute wherever I wanted, and my property drained fine, and I had no kind of—I haven’t experienced an enhancement that I’m being charged for, but I think it gets down to a legal issue, is the fact that we’re charged afterward, and I just don’t see how that’s a lawful action. Thank you.”

Mayor Stadtherr asked City Manager Longley to introduce correspondence received on this matter. Mayor Stadtherr said the City was in receipt of only one document. He addressed the benefit of submitting concerns, objections, disagreements, etc. in writing in advance which in itself enabled staff to prepare and better respond with consistent reason and to provide complete information at the time of hearing.

City Manager Longley introduced the letter received via certified mail on July 14, 2003, as follows:

D. Moe, P.O. Box 5233, Sherman Oaks, California: Text from letter dated July 10, 2003, addressed to the Public Works Department, Attn: Baldomero S. Rodriguez, regarding property listed as APN 259-050-025: “We are in receipt of your letter dated June 27, 2003 (see attached copy) which we received on or about July 3, 2003. Due to the short notice, we will not be able to attend the hearing set for July 15, 2003. We request an extension of time to obtain additional information.> On Monday, July 7, 2003, our representative contacted your office (Bobbie at your City Clerk’s office at 559-782-7442) requesting an extension of time and additional information which your letter states would be available. However, as of this date, we have not received any information from your office.> For the record, please let this letter notify you that we cannot agree to the imposition of charges on the property without additional itemized information on how those listed charges (i.e. curb and gutter, sidewalk) were calculated.> As per your letter, we respectfully request that you send or fax us copies of (1) the proposed resolution; (2) itemized back up information on how you determined the costs of the concrete improvements; (3) the ordinance authorizing the imposition of said charges; and (4) any other additional information concerning these charges.> Thank you for your attention and cooperation.> Sincerely yours, [Signed] D. Moe.”

Mayor Stadtherr closed the public hearing to public comment at 8:54 p.m. and called for Council comments.

Councilman Irish: “I think the system is working, the public is being heard, and this Council is wanting to make the right decision. It’s not us against them, and I appreciate Mr. Webb for addressing an injustice that he’s perceived, and I appreciate his time to go literally door-to-door to let people know. It takes a lot of time and energy, and that’s how the system works. Thank you for doing that. You might not get the results you
want, but thank you anyway. At least we’re looking into it. We have addressed a couple of times tonight Resolution 8-99, and I have that resolution here in front of me. I am one of the ones that voted ‘yes’ on it, and I’ll give you my reasoning for voting ‘yes’ at the time. And, again, whenever we make votes up here, we can only do it with the information we have available to us at that time. Since ‘99, there have been a few things change, and we have gotten a little bit more information. But the feeling at that particular time—and I remember this issue—was the fact that we were doing a lot of street improvements in this town. One of the major concerns of most of the citizens of Porterville was that you could get to about any place you wanted to in Porterville, but you had a lot of potholes to go over. And one of the reasons we went out with the COPs is to improve the streets. But when we started improving the streets, we had to start to improve the sidewalks, curbs and gutters, and at that particular time, with the information that we had, it didn’t seem right to the Council at the time, at least to me at the time, because I voted for that resolution, I can’t speak for the past Councilpeople, but it seemed to me that it was only fair that when we came across a piece of undeveloped property that we were putting a new street next to, and we knew that we had to put a curb and gutter on it, at that particular time, we thought, well, it’s not fair to charge the person there the fees for that curbs, gutters and sidewalks when they’re not probably going to develop on it for another ten or fifteen years, but we still need to have that improvement. So, at that particular time, we waived the charges at that time to go with any permit that might be pulled later. As I look back on it now, it’s the typical ‘no good deed goes unpunished’, and that’s just about what’s happened. I think that we tried to make provisions for people not to have to do the improvement at the time we put the street in. If we had done it the other way and imposed those fees, we would have just about as many people sitting here fighting against us for doing that, too. There’s been a lot of questions raised. I’m real uncomfortable with making any decision right now on this particular item myself because I think so that I don’t get into a situation with Resolution 8-99, I want more information before I make a decision. And the information that I would like to have put forth would come from our legal, from our staff and from input like this again. I would like to have another meeting, but I would like to have some meetings on a one-to-one, also. There’s questions that have arisen that I feel like if I made a decision right now, I’d literally be cutting the baby in half, and I’m not ready to do it that way, yet.”

Councilman Hamilton: “First of all, I want to address the issue that everyone thinks that they must come forward and pay these fees right now. The fact is that until you improve your property at this point of over $9,600 something, there is no fee that you have to pay, so I want to set that part to rest. I would like to address a couple of questions to legal counsel about the Mitigation Act, and Mr. Vanderhorst brought up a couple of situations that he’s pointed out that we may be in possible violation of, and if you could give us some clarification of how I understand the Mitigation Act is we can bring up these fees at any time with public hearing at any time. It doesn’t matter if it was ten years ago, fifteen years ago. Can you give us a statement for public record?

City Attorney Lew: “That’s right. There is no time period in the Mitigation Fee Act, and often development related fees are applied to development as conditions for development, and they concern improvements that are already in existence. That’s actually quite typical. This situation, frankly, when this was considered in 1999, the improvements were done in 1996. This is done for a good reason, because they don’t want to do an estimate of the costs, they actually want to proportion the actual costs, and in order to do that, you have to finish the project to know what those total costs are. So, there is no actual time period for when something is built and then when you’re going to charge a fee for that. But once, Mr. Vanderhorst did point out the notice requirement, that is what we’re doing now. We’re having the public hearing to hear the property owner’s concerns. We sent out the letters notifying them of the various charges that would be applied upon development of the property. We made the resolutions available ten days beforehand in the Clerk’s office and upon request and to my knowledge they were provided. So those provisions of the Mitigation Fee Act were followed. The resolutions we provide for 60 days pursuant to the Mitigation Fee Act. It appears, in 1999, that there were no notices sent out, and I don’t believe there were notices sent out for any of the other projects. I

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myself wasn’t here at the time; however, I did speak to staff about this. Part of the problem is the Mitigation Fee Act. It’s not necessarily clear what it applies to. I went back and looked at the various options that could be done upon direct questions from the Council and from the public on this, and this, due to the way they did it in 1999, to be consistent with policies set up. I’m essentially providing for the same mechanism but via the procedures of the Mitigation Fee Act, because the way that the Council had decided to do this was as a condition of development. When I look at the definition for Mitigation Fee Act and development projects, it includes building permits, includes tentative parcel, includes the things that Council included in 1999. However, back then, it may not have been as clear for the Act to apply, so I can’t speak to that. Plus, there’s additional complications because Prop 218 didn’t apply until about 1997, I want to say—became effective, it was through statutes of 1996, 1995, so that was the second procedure. It’s not applicable here, because this is done as a condition of development, but it clouded the issue back then when Council was considering it. The 1911 Act was an alternative measure for assessing the fees. It is an actual assessment. It becomes—those are charges that once adopted by Council through the mechanism provided in the Act, become an assessment. In other words, it’s due immediately, payable immediately, and if you don’t pay it, it becomes a lien on your property. Since we’re talking about liens, I want to reference the fact that, as you’ve noted, there’s this perception that there are currently liens on the property. We couldn’t legally put a lien on the property if we wanted to, because it’s not assessed until you go to develop your property: You don’t owe anything until you go to develop, whether it’s a building permit, a parcel map or a subdivision application. And the recording that we’re providing for in the resolution is not a legal requirement (the Mitigation Act does not provide for any legal requirement for recordation), and we wouldn’t be recording specific amounts. We would just simply be recording an abstract that would notify property owners that there may be City fees that applied to their property under certain conditions so they would know they need to go check that out with the City. So, we’re trying to provide it so it’s general enough that it sends notice that you do need to check. [Q: Is that passed on to the next owner?] Because it’s an abstract that’s now recordable, you would at least have an indication that there’s something you need to check out with the City. That was added to the resolution actually on Council’s direction and the concerns the public had about wanting to have more notice. [Q: Can you tell me what Prop. 218 is?] Prop. 218 covers special taxes, general taxes and assessments. They specifically exempt development fees, fees put on as a condition for development. Those are handled by the Mitigation Fee Act. An assessment would be something similar to what’s done in street—landscaping is a perfect example. Also Benefit Assessment Districts, same thing. It’s directly related to your owners of the property, often is done proportionately to the amount of property you own. There is a protest procedure set up for that. They’re generally done before you do the work because you set up the mechanism for it before you do the work because the majority of property owners could protest and turn down the assessment, then the City wouldn’t want to do the work if it couldn’t get the assessment theoretically. It’s an alternative procedure.”

Councilman Hamilton: “I only mention that because I would venture to say that there’s not a person in the crowd, or on the Council, that knows what Prop. 218 is. And at that point, we’re depending on local government to protect us as a citizen, and without proper notification, which I think is the issue here tonight, we come under the guise of ‘well, our elected officials or our city staff is watching over our best interests,’ and I’m not going to go out and look up every prop because I depend on you for that, but I think the citizens of Porterville feel like they’ve been a little bit short-changed here with the way the City has represented what these costs to them would be. So, I’ve heard you, Porterville. I don’t know how I’ll vote yet, but I’ve definitely heard you.”

Councilman Irish: “The Mitigation Fee Act. That requires a public hearing prior to the fees being charged, not prior to the work being done?”

City Attorney Lew: “That’s correct. Thanks for pointing that out because I believe I’ve heard that from the public as well. It is prior to the fee being charged. The fee itself would not go into effect until 60 days after
adoption by the Council of those resolutions, in the event that you choose to adopt those resolutions; however, once it’s in effect, the property owner still doesn’t owe it. The property owner doesn’t owe it until they go to fill out and submit an application for development with the City. At that point, the City will assess the charge.”

Councilman Hamilton: “Before I give up my time, I want to go over some of the concepts. Some options that have been put before us on this is adjust the concrete improvement threshold on building permits from its current $9,638. Mr. Longley, can you expand on that, or Mr. Rodriguez, so it can be understood?”

City Manager Longley: “These are a series of options. The first one there is basically how this has been applied since September, 1996. There are now some other options that may make it more appropriate. The one that you refer to is, at this point in time, the way this fee would normally be assessed, or the reimbursement would normally be assessed, is at the time that a development approval is requested, it would be a condition of that approval. So, if you had an approved tentative map or you had an approved parcel map, it would be a condition of that approval to reimburse the cost for the installation of curb, gutter and sidewalk. It would also apply in cases of building permits, but it only applies when the work of that building permit is more than $9,638. And potentially, to make it more appropriate, options are suggested to potentially raise that amount to maybe $15,000 or $20,000, some threshold that is reasonable, in which case the fee would not be assessed until that threshold was exceeded. It’s not cumulative, it’s per project. Let me make sure of that. Is it cumulative, Baldo, or per project.”

Public Works Director Rodriguez: “It would be over a two-year period per project. A home comes in over a two-year period, if he exceeds the $9,638, then we would require the concrete improvements. So it is cumulative for two years.”

City Manager Longley: “Also, an option may be to exclude it for health & safety improvements, if it’s necessary to put a foundation in or do other work just to preserve the health and safety of the dwelling, it would be possible not to require the concrete improvements in that case. Or for energy conservation improvements. These are just potential areas, so what this proposal is is to broaden the area of exemption. The third proposal here, as an option, would be to adjust the concrete improvement unit cost across the board. We’ve heard some concern that individuals can do it for less; generally, when we buy concrete improvements, we buy them, we think, at a fairly economical price because we do it on large-bid items and for large quantities, and it’s low bid. This is just to assure that if there are improvements in technology or materials of the future, and generally concrete improvements are reduced, then we could potentially apply to all outstanding reimbursement amounts, that lower unit price.”

Councilman Hamilton: “You said ‘low bid’. Is that based on prevailing wage?”

City Manager Longley: “Not necessarily. For much of this, the COP work was not prevailing wage. I’d have to ask Mr. Rodriguez that.”

Public Works Director Rodriguez: “For COP work, it was; for LTF, it was.”

Mayor Pro Tem Martinez: “I find myself really concerned with the improvements, ‘so-called improvements’ by many. Others say they weren’t improvements. But I find myself concerned with damage being done to the property, and what we, as a City, are supposed to do. Have there been damages that were done that we needed to look at? It concerns me that was there, or was there not, adequate notice given. We’ve heard from a lot of the citizens that were here. I heard one comment from an individual a few days ago that said, ‘Well, this affects a lot of the Big Cats,’ and the truth is, though, I look out and there’s a lot of little cats in there, too. It’s definitely an issue. And regardless of who it affects, income level or not, there is some things
that the City has to do. It’s just proper procedure. At that time, I’d say, do we charge them or do we not? Do we give it away, and is that a gift of public funds? Are the citizens willing to pay for it? Are they willing to compromise and say ‘hey, you know what, let’s work out something, we don’t want it free, maybe it’s a sidewalk, does it improve my property, yes, no?’ There are definitely some issues that need to be addressed and some things that need to be compromised here that we need to talk about and come to the table and really address these issues. And from many of you, this is the first time that I’ve actually gotten to hear you. So, as Mr. Irish says, I want to hear more from you, want to be able to listen to your concerns so that I’ll be able to bring these up to staff myself and say ‘why wasn’t this done?’ and ‘what can we do?’, and bring some of our concerns for our legal counsel and for our engineers and bring it up to our City Manager and find out why certain things weren’t done. That being said, I did not question this, too: Are there property owners that were alive at the time when these properties were improved that are no longer here with us, that are deceased?”

City Manager Longley: “I don’t know the answer to that. I think people have maintained that that’s the case. People have certainly maintained the property has changed hands since the improvements were done.”

Mayor Pro Tem Martinez: “That worries me, because then somebody else could have paid for it. It concerns me as a property owner. I said, ‘Well, you know what, when I bought my house, maybe somebody else would have paid for it, then I got my house, and if my house passed escrow and my house cleared and I see no problem.’ Then five years down the line or so or something, all of a sudden there’s a problem. That concerns me. What happened? Where was the breakdown in the system and how was it that—I’d be upset if someone came to me. And I tend to think in some simple terms sometimes with these very difficult problems, and I just want to give you an example of something simple that I refer this to. I had a friend who had a car. One morning, when he woke up, another friend was putting a stereo inside his car—he didn’t ask for it—put this loud stereo system, put it in his car for him. A few days later, the car got stolen because the guy was driving around with his brand-new, loud stereo that was in his car, and some thief must have heard it, said ‘Hey, I want that stereo system.’ Well, the guy who installed the stereo system came back a few days later and said, “Hey, you owe me so much for that stereo system.” He said, ‘Well, wait a minute now. I just woke up one morning and you put it in there. I didn’t ask you for it.’ And he said, ‘Well, that’s not my fault. You still owe me.’ I want to make sure that we treat the citizens of Porterville fair. We really need to look at this as a Council and make sure that we’re not saying to the citizens of Porterville, ‘You owe me’, when they didn’t ask for it. So, let’s look at this. Now, I’m not saying that we’re not going to charge. I’m saying that we need to be fair about it, and we need to come to an amount, a number that’s going to work. And a process that’s going to work. We cannot go in and say as I heard one individual say, ‘We could have done it for such a percentage less.’ I believe that’s true. I believe that’s true. So, once again, I’m not comfortable making a decision tonight, but it’s definitely something that we need some more information on. And, once again, I want to invite you to make sure you give me a call. Call the City, send me a letter, I want to be able to hear from you myself.”

Councilman West: “I think that everything’s been covered except for one thing. I’d like to talk to our City Attorney: What is the City Council’s liability here if we vote for it, or against it. I’d like to know what our obligation is here. We are the final authority, but we’re not the legal authority.”

City Attorney Lew: “I can never speak to what a court will ultimately do with any lawsuit filed against the City; however, that being said, I do believe the system proposed to you tonight per staff recommendation is legally defensible, that it is consistent with the Mitigation Fee Act.”

Councilman West: “I agree with Mayor Pro Tem Martinez that we need more input on this before I could vote this evening. I think we need to really listen to the people and then get with the staff and with our City Attorney before I could make that decision.”
Mayor Stadtherr: “I’ve heard some people—up here we’ve made the claim that the amounts are not owed until development is done, and I’ve looked out there and see people shaking their head ‘no’, and I’ve heard other clarifications here from City Attorney and I see heads out there shaking ‘no’, and it’s obvious there’s still a lot of confusion out there. One thing we didn’t touch on, Mr. Longley, is the topic of people who live in the county. It’s my understanding, correct me if I’m wrong, that there is no liability for a county dweller until they come into the city. Is that correct?”

City Manager Longley referred the question to the City Attorney.

City Attorney Lew: “Actually, I do believe the county has imposed charges on behalf of the City, charges for City services and City facilities that are put in by the City in the past. I don’t know if have any specific concrete curb and gutter improvements where fees have already been paid on this. It would be with just analogous-type services, I think water or sewer connections probably would be the most likely type of services we provide to county residents.”

City Manager Longley: “My impression on this, and this is sort of an area that’s never been tested even though we have collected these fees in a limited sense since September of ‘96—limited because there haven’t been many paid because there hasn’t been much development in the area where the work has been done; however, it’s my impression that the way we work largely in county areas, is that if property came within the City for purpose of development, at the time it came within the City, then the fees would be assessed. The entire thing is development driven.”

Mayor Stadtherr: “Another comment I heard was that developers typically put in improvements at the time of development and the argument was made that these people shouldn’t have to pay for it because this land is developed, the City should pay for it, and actually the City has paid for it because these are already done and paid for, and that these assessments wouldn’t come due until it was developed. I, too, am not quite comfortable in making a decision this evening. I think we have failed a little bid here in the communication process and the education process. I’m especially concerned that a person could come in this evening and actually feel like this bill was a bill that’s immediately due and payable, and my suggestion is that we reconsider this at a later date.”

Councilman Hamilton: “The first question I’ve got is if we forgave these, is it a gift of public funds, yes or no.”

City Attorney Lew: “It depends. As noted, there is a City benefit to the sidewalk because it does help keep the street from degrading; however, there is also benefit to the property owners. This has been disagreed with, but it is viewed as a benefit to the property owners as well. So, the benefit portion could be construed, I don’t know that there’s any case directly on point that is the fact, but there is a possible argument there, and we could be facing potential problems with that.”

City Manager Longley: “I’m not so sure. The attorney can advise you on a gift of public funds from a legal sense, and she’s indicated to me that it can be argued, but it’s a tough case to make; however, I think one of the real dangers here is more from a practical sense, a perception of a gift of funds, because in the future, I would assume that the City anticipates that it will continue to require curb, gutter and sidewalk as a condition of development, and if there is $400,000 or so of these types of improvements that are essentially forgiven, we lose sort of our practical effect in requiring others to do it in the future. So, where it may not be a legal issue, I think it will very, very definitely will become a practical issue.”

Councilman Hamilton: “I believe you asked that question of [Past] Mayor Nicholson of did we do this in the past, and the answer was ‘yes’. Can we find out if we had? Using Redevelopment funds, I believe.
City Manager Longley: “There were bonds issued for Redevelopment Agencies, and the public purpose of the Redevelopment Agencies were the redevelopment of a specific area, and there were street improvements done, sidewalk improvements done, in those specific areas for the purpose of redevelopment. This wasn’t the purpose of this work. Also, we used CDBG for our neighborhood improvements areas which were neighborhoods that were felt to be impacted and should have assistance provided. And as you know, there’s a major project now having to do with PM-10 Prevention. So in each of these instances, Redevelopment, CDBG, PM-10 Prevention, there were specific public purposes for the sidewalks other than just to generally improve the area. They were different in terms of purpose.

Councilman Hamilton: “My second question was if these are forgiven, who’s responsible for the maintenance for the sidewalks and curbs?”

City Manager Longley: “There is a state procedure that requires notice, and that does not change.”

City Attorney Lew: “Not only that, by our own City Code, property owners are responsible for maintaining sidewalks. And that is by ordinance by City Code.”

Councilman Hamilton: “So this is City property that the citizens are responsible for?”

City Manager Longley: “Yes. [City Attorney: That’s correct.] And that’s been the case since nearly the turn of the century. It’s a very long-standing law. And that is the general requirement. There are not instances I’m aware of where there are curb, gutter and sidewalk on private property. In each instance where it’s required as a condition of development, it is done then the property is deeded to the City. It is uniform and exactly that way this is.”

Councilman Hamilton: “My last question is if, like Mr. Nicholson was to develop his land out front and he had to tear out the curb and gutter and replace it with driveways, what assessment value goes down, the demolition plus what we had already put in, or is he paying for the demolition on top of his own construction?”

City Manager Longley: “The way I read this, and maybe Baldo can correct it if I’m wrong, but the way that it is presented in this staff report is that there would be the responsibility for reimbursement of the cost of the improvement as defined for reimbursement’s sake; however, the Council may wish to consider, in that case, if there is the necessity to demolish in order to install improvements consistent with development standards on a specific plan, that any of the material that is demolished should be removed from the reimbursement category. The reason I say that is it’s consistent with the three major points of the concept up there. As those improvements are installed, before there is development, they are essentially there to protect the city street. That is the rationale. Once there is development, then the rationale changes, and we have consistently required these improvements where development occurs. So, the three start up there, and the concept that’s contained, there has to be the removal of improvements. Reducing the cost of reimbursement, I believe, would be consistent with that concept.”

Public Works Director Rodriguez agreed with the City Manager’s interpretation of the City Code.

Councilman Hamilton: “I’m not ready to make a decision, but I am ready to direct the legal counsel, with your permission, that we write an ordinance that from this day forth sets abstracts into any type of property development that we have that will be properly noticed through abstracts, and we can go from there.”
Councilman Irish: “Question with the abstracts: Do we do the abstracts or do we charge the fee? I’ve heard pros and cons to charge the fee right then when you do it. Now the reason we didn’t want to do that before was, like I said, we’ll fill this place up again with a counter on it. I don’t have a problem with the abstract, if that is an easier way to do it.”

City Attorney Lew: “Might I suggest that we hold off on how we’re going to do that until the Council decides what it’s going to do, because then it will just be easier to write an ordinance with that information. Until I know the procedure we’re going to use, if any at all, for assessing for curb, gutter—essentially, if we’re going to do abstracts for all development, I think that means we’ll have to somehow manage to tie it to every piece of property in the City. Essentially, all it does is tell them that they need to check with the City, which you really are supposed to be doing anyway when you buy property in the City of Porterville. I’m just trying to figure out exactly how you want that implemented.

Councilman Hamilton: “I’ve heard from the City twice now today, that you should check with the City when you’re buying property, but I’m hearing from folks that I know who buy an awful lot of property and they’re saying ‘no’.”

City Attorney Lew: “If you have something codified in the Municipal Code, I think Mr. Nicholson pointed out that he does know to check for those kinds of things, like for instance, he understands he is responsible for putting curb and gutter and sidewalk in if it’s not already there. That is an ordinance. It’s not recorded anywhere, there’s nothing that tells you that you have to do that, it’s simply by regulation of the City.”

Councilman Hamilton: “This meeting will change a few things, and I bet one of the things it changes is when certain people buy property in this town, they’ll come down to the City and check.”

Mr. Vanderhorst: “No, what you’re thinking of doing is clouding the title, a terrible thought. You’re not putting the amount of the lien on there, you’re clouding the title.

Mr. Nicholson: “What has been suggested to you is that somebody that buys property, goes to a licensed realtor, is represented, goes to a bonded title company. That’s the method in California that we use to find out about liens and titles. It’s not to go to the jurisdiction. As a matter of fact, if I’m going to buy property, the last thing I want to do is spread it around town that a certain corner is available. That is...you know, you’re...and the worst thing to do is go to City staff who have expertise in a certain area but you’re not going to get an answer when you come to your counter out there. Don’t cloud the title with an abstract that’s just wild so that nobody can find out. Because the negotiation takes place long before they come to the City and say ‘will you accept this property’. We put it—the way it’s done—and I’m not the biggest developer in this town, they ought to be here! The way it’s done is you put the property in escrow, you check the title, you pay for a title search, and this won’t do it. And you don’t want—I don’t know how many properties you have, 400 potential new buyers coming and checking the title—and you don’t want the 20-30,000 people racing here because all of a sudden they heard that you might be clouding title every time they buy a house.”

Councilman Hamilton: “That’s not the way I understand ‘abstract’. It was explained to me that an abstract will show up on a title report.”

City Manager Longley: “There is no lien here. Everybody’s said time and again that there’s a lien. There is no lien. We couldn’t say there’s a lien. There’s no ability to collect this fund unless development occurs. There is no lien. The purpose of the abstract is essentially to advise potential property owners, and it goes out, the plant picks it up—the ones who do the title report—and then it is essentially represented that there may be City fees due. It’ll be recorded with APNs. And that there may be City fees due upon development of
the property to reimburse the cost of previous improvements. And that’s what it would say. It would provide a point of contact, to contact the City’s Public Works Department.”

Councilman Hamilton: “Does it absolutely show up on a title report?”

City Manager Longley: “My experience in the past is it’s the plants that pick it up, the plants that put the title reports together. I’ve dealt with them on very similar matters in different places, and they have always recommended to me, the people that run the plant, that if the City wants things picked up and put in title reports, you do it in the form of an abstract, not submitting a resolution. That’s always been the problem in the past. You do it in the form of an abstract, short, easily decipherable, and when they review it, they can pick it up quickly.”

Mr. Nicholson: “You see more City liens on property for past water bills, and in all honesty, they’re usually paid, but the City doesn’t follow through and remove those. You go to the title company, they have to check and see if it’s paid and they finally get relieved that way. An abstract is a cloud of title. If you own it, you no longer can transfer what we call ‘fee title’ free and clear. You can call it what you want. Some of us will go down and charge a new suit on our credit card and never pay it. We just pay the minimum, ten dollars a day, but none of us think that we don’t owe that bill, even if we go 20 years and not pay it off. And that’s what you’re saying, that it’s going to be triggered sometime. I can probably assure you that the, the, if one of the questions you brought, the developers are going to complain that they buy a piece of vacant property without a curb and gutter and they’re going to come in here and scream. And as a developer in the City, I would tell you that that’s not a concept that I’ve heard or would even discuss. We know that we buy property, and we figure out what it’s going to cost to put in all those services that we give to the City, and then we see if we can sell that property, developed, for enough to make a profit, and we’re not trying to beat you out of curbs and gutters within our subdivisions. The developers will not approach you, because we know it up front. But if there’s a curb and gutter in front of the subdivision, that’s a whole different story. And that’s what you’re talking about now, something in the past, three, five, ten years ago that happened that nobody knows anything about. The last thing is if you put an abstract without a number, when do we have the chance to see what your billing is? Because I don’t have it now, and you could have voted on it tonight. And then we can challenge it. You’ve had people come to the podium and they’re wiped clean tonight, and leave, and we don’t know why, they’re just like us. If you’re going to do it, send every property owner, just like you probably did with the Moe’s property, a detailed listing of what you’re proposing to charge, and then we can look at those fees. I have no idea whether yours was efficient or not efficient, but maybe you should do that before you have another public hearing. We should be able to tell you that ‘I don’t have a problem with it, you did it cheaper than I did’ or something like that. I really doubt it, but that’s what you do. Thank you very much.”

City Manager Longley: “What the former mayor was indicating, I think, was maybe a misunderstanding. When I say ‘abstract’, the key is it’s an abstract of what. And in this case, if the Council approves these, it would be an abstract of the resolution. That’s how title plants readily transfer. I believe what he was talking about was abstracts of debts or abstracts of judgments or things like that, and that does cloud property. But this, the general term ‘abstract’ the key is what it’s of, and in this case, it would be an abstract of the Council’s resolution.”

City Attorney Lew: “I can verify that whatever it is we’re going to do would not cloud title. However, I still think that it would be good to get the mechanism in place before determining the particulars.”

Councilman Hamilton: “How do Tulare, Visalia, and Hanford handle this?”
Public Works Director Rodriguez: “I was unable to get a response from any of the cities. They seemed to be passing me off from one person to another.”

Councilman Hamilton: “I hope that we can meet again looking for solutions. We know what the problems are, we don’t have to beat ourselves up with the problems, but if everybody approaches this like we’re going to look for the solutions, I think that as a community, we’ll find it.”

Mayor Stadtherr: “I would like to thank all of you for showing up. If this job of City Councilman were easy, we’d be out of here every meeting by 7:30, but it is a complicated process, there is a lot of history behind this problem, there are a lot of different points of view, and it helps us be better Councilors when you participate. I would be against scheduling this matter for a specific meeting until such time as we’ve had a chance to go over all of the questions that have been asked and make sure we have enough time to get them answered adequately. I’d be more comfortable saying ‘at a future Council meeting’ than at the next Council meeting.”

City Manager Longley: “If we can get the questions answered, do I have the discretion to place the further consideration of it on the next meeting?” [Council responded affirmatively.]

Mayor Stadtherr closed the public hearing at 9:48 p.m. and called for a motion.

COUNCIL ACTION

MOVED by Council Member Irish, SECONDED by Council Member Hamilton that Council table this matter and bring the item back at a later date at the City Manager’s discretion; and instructed the Public Works Director to, prior to the next consideration of this item, send a notice to each affected property owner indicating that amounts and the method of arriving at improvement values would be available upon request. The motion carried unanimously.

Disposition: Item tabled.

Mayor Stadtherr recessed the Council meeting at 9:48 p.m. and reconvened the meeting at 9:55 p.m.

16. LABORATORY SERVICE FEES; PUBLIC HEARING.

Recommendation: That Council authorize the Mayor to sign the resolution adopting the new laboratory service fee schedule.

City Manager Longley stated Mr. Rodriguez had been designated to present the staff report. Mr. Rodriguez said the Porterville Laboratory provided analytical services to internal (water and wastewater) and external customers (community water systems and the general public) and that a complete review of the fee structure had been completed indicating a fee increase necessary to recover said laboratory costs. An itemized list of tests, current fees and proposed fees was presented to the Council with an effective date of August 1, 2003. Mr. Rodriguez said fees and charges for specialized and undefined services would be established by the City Manager.

Mayor Stadtherr opened the public hearing at 9:58 p.m. but as there was no response to his call for proponents or opponents, closed the public’s portion of the hearing at 9:59. He invited Council comments.

Councilman Hamilton asked if the City was subsidizing costs for in-house lab services for the water and wastewater analysis; Mr. Rodriguez said, “No.” Councilman Irish asked what outside agencies other than
Camp Nelson Water District used City services for chemical analysis. Mr. Rodriguez said there were a few regular participants and others who had asked to review fees prior to requesting services. Responding to a question from Council, City Manager Longley said the proposed fee increase was based on allocation costs of salary and materials and charges were to only recover costs of the service provided. Mr. Styles said the last fee increase was in February, 2000. Councilman Hamilton asked why this was not based on a CPI somewhere; City Manager Longley said fee recovery in the City was based on actual cost.

Mayor Stadtherr closed the public hearing at 10:02 p.m.

COUNCIL ACTION

MOVED by Council Member West, SECONDED by Mayor Stadtherr that Council authorize the Mayor to sign the resolution adopting the new laboratory service fee schedule. The motion carried unanimously.

Disposition: Approved.

17. ENVIRONMENTAL REVIEW OF THE CITY OF PORTERVILLE MUNICIPAL WATER WELL NO. 28 PROJECT LOCATED ON THE WEST SIDE OF SOUTH ‘E’ STREET, 350+/- FEET NORTH OF GIBBONS AVENUE; PUBLIC HEARING.

Recommendation That the Council adopt the attached resolution approving a Negative Declaration for the City of Porterville Municipal Water Well No. 28 project.

City Manager Longley said Comm. Dev. Director Brad Dunlap was designated to give the staff report. Mr. Dunlap said the initial preliminary environmental study prepared by Quad Knopf, Inc. had been completed for construction and development of a municipal water well pumping plant and appurtenances and that the Environmental Review Committee determined that a Mitigated Negative Declaration would be appropriate for the proposed project. He said copies of the study and mitigation measures had been transmitted to all interested parties for a 20-day review and that no agencies had responded during the review period.

Mayor Stadtherr opened the public hearing at 10:05 p.m. but as neither proponents nor opponents chose to address the Council, closed the public input portion of the hearing and entertained comments from the City Council members. Council thanked Mr. Dunlap for such a comprehensive environmental review that no comments were elicited from the water board or other agencies. Mayor Stadtherr closed the public hearing at 10:07 p.m. and called for Council action.

COUNCIL ACTION

MOVED by Council Member Hamilton, SECONDED by Council Member Irish that Council adopt the resolution approving a Negative Declaration for the City of Porterville Municipal Water Well No. 28 project. The motion carried unanimously.

Disposition: Approved.

18. ENVIRONMENTAL REVIEW OF THE CITY OF PORTERVILLE’S HENDERSON AVENUE AND WESTWOOD STREET RECONSTRUCTION PROJECT.

Recommendation: That the Council adopt the resolution approving a Negative Declaration for the City of Porterville Henderson Avenue and Westwood Street reconstruction project.
City Manager Longley said Comm. Dev. Director Brad Dunlap had been designated to present the staff report on this item. Mr. Dunlap reviewed the proposed project and said the environmental review of the preliminary environmental initial study was complete for the Henderson Avenue & Westwood Street reconstruction project which would widen a portion along Henderson Avenue from two lanes in the current 60-foot right-of-way to four lanes in an 84-foot right-of-way for 5,276 feet from Newcomb Street to Westwood Street and north along Westwood Street approximately 2,642 feet to the south side of the intersection with Westwood Street and Westfield Avenue. He said the project included right-of-way acquisitions along Henderson Avenue and the east side of Westwood Street and would add curbs, gutters, sidewalks and street lighting on portions of Henderson and Westwood, with installation of a 12" water main as called for in the City’s Master Plan. He said box culverts would be installed and/or encased at Porter Slough and Porter Ditch crossings as part of the projects. Mr. Dunlap said the Environmental Review Committee’s preliminary determination of a Mitigated Negative Declaration would be appropriate for the project and the Initial Study and proposed Mitigation Measures had been transmitted to all agencies, groups, individuals and the State Clearinghouse for review and comment. He stated comments had been received from the Department of Conservation regarding notification procedures for William Act Agricultural Preserve property at Henderson & Matthew) and the Regional Water Quality Control Board regarding permitting requirements for work within the slough. He said the City had responded affirmatively to those agencies to concur with all requirements as noted.

Mayor Stadtherr opened the public hearing at 10:09 p.m. but as there was no response to his call for proponents or opponents, closed the hearing to public input at 10:10 p.m. and invited Council comments.

Councilman Hamilton: “I see that we have Elderberry bushes on this project, and is the mitigation that we have out on the east side going—will we be able to go forward with this using that mitigation property that we have set aside?”

Mr. Dunlap: “Actually, on this particular project, we were able to negotiate a letter of not likely to adversely affect the Elderberry bushes, and US Fish and Wildlife Services allowing us to retain them in place, avoid them through mitigation measures and not be required to relocate to our mitigation site.”

Mayor Stadtherr closed the public hearing at 10:11 p.m. and called for Council action.

COUNCIL ACTION

MOVED by Council Member Hamilton, SECONDED by Council Member Irish that Council adopt the resolution approving a Negative Declaration for the City of Porterville Henderson Avenue and Westwood Street reconstruction project. The motion carried unanimously.

Disposition: Approved.

SECOND READINGS

19. AMENDMENT TO THE CITY CODE - CHANGES TO THE SPECIAL SPEED ZONES ON PORTER ROAD.

Recommendation: That the Council declare the second reading and approve the proposed amendment to the City Code as contained in Ordinance No. 1637.

The City Manager read the Ordinance by title only.
COUNCIL ACTION

MOVED by Mayor Pro Tem Pete Martinez, SECONDED by Council Member West that Council waive further reading of the ordinance. The motion carried unanimously.

Ordinance No. 1637

MOVED by Council Member West, SECONDED by Council Member Irish that Council adopt Ordinance 1637, being AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 17 OF THE CODE OF THE CITY OF PORTERVILLE, SPECIFICALLY ARTICLE XV, SECTION 17-15, PRIMA FACIE SPEED LIMITS DETERMINED ON CERTAIN STREETS. The motion carried unanimously.

Disposition: Approved.

20. ORDINANCE PROVIDING FOR THE REMOVAL OF GRAFFITI, THE RECOVERY OF COSTS INCURRED IN REMOVAL, AND ESTABLISHING LIABILITY AND PENALTIES IN CONNECTION THEREWITH.

Recommendation: That Council give Second Reading to Ordinance No. 1638, waive further reading and adopt said ordinance.

Mayor Stadtherr asked if an ordinance was prepared with an affirmative response from staff and directed City Clerk Longley to read the ordinance by title only.

Councilman Hamilton stated his understanding of a motion to remove this item from the agenda. Councilman Irish said he had some questions on the item and that the ordinance and staff report had not been included with his Council packet and moved the measure be brought back at the next Council meeting.

Mayor Stadtherr requested the public in attendance come forward and present comments on the proposal.

Dick Eckoff 30 East Oak, “I have a couple of notes here and have copies of the notes for Council, the Attorney and the City Manager. As I stated at the prior reading, I personally, and as Chairman of Downtown Porterville Association, am fully in favor of immediate abatement of all graffiti and back the City staff and Council in its attempt to do so. However, graffiti is a crime that not only impacts the direct victim, the owner of the defaced property, but is also a crime against and lowers the value of the neighboring business and property owners, the neighborhood and the entire community. As such, I am completely in favor of the following portions on page 4, Section 1833, sub D1. Line 1 and following: Property owners are required to remove graffiti within 24 hours. And lines 2 and 5: City may remove the graffiti. However, some problems quickly show up on the same page, Section 1833, D2C. Line 1 and following: City may abate graffiti where written consent of the owner is obtained, except pursuant to subsection D3. Subsection D2E, Line 3 and following: Any case where the responsible party, understood as the property owner, fails to give consent, they may be held responsible, pursuant to D3, which, Line 1 and following: If a responsible party, that is the property owner, fails to remove within 24 hours, City may immediately commence and cost recovery pursuant to the Nuisance Abatement Authority, which is on page 10, Section 1839. Subsection A, Line 5 and following: The City shall be entitled to recover such costs from the property owner upon which the nuisance exists. I do have one question: If the nuisance exists upon the property owner, couldn’t we just chase them out of town? Subsection B, Lines 1, 6 and 7: Notice may be served upon the owner of the affected property, and if the address is unknown, will be sent to the property address. Now this would go to the business owner at that address, who may or may not forward it in a timely manner. If the property is vacant, the mail may never be
collected or forwarded. And Subsection C, Line 1 and following: If the owner fails to abate the nuisance, City may direct the removal, the cost billed to the property owner. Now, the property or business owner is not the criminal and should not be punished for a crime against them. With attorney fees, city court costs, this could easily total a thousand dollars or more. If a property or business owner is involved in posting the graffiti or after being notified absolutely refuses to abate the nuisance, or allow the city to abate it, then I have no problem with that owner being billed. However, the wording in this ordinance assumes that failure to reply means failure to give consent, and failure to give consent is assumed to be refusal to give consent, reading on page 5, Section 1833, D2E. Now there’s also another side to the coin, as an example: a wall on a non-arterial is tagged. The next day, the City discovers it and posts it. 48 hours later, the owner has neither abated nor given permission to abate, and “the City may immediately commence abatement and cost recovery pursuant to the Nuisance Abatement Authority. Said Authority, however, allows the property owner 15 days from service to abate prior the City taking action. Now, I would assume that if the City abated the problem before the 15 days were up, it would lose the right to collect from the responsible party, i.e., property owner. Thus, if we assume three days to serve notice, we have one plus two plus three plus 15, equals 21 days before the City can move to abate. This garbage will remain in sight for a minimum of three weeks. Now, that flies totally against the spirit of this ordinance, and it totally unacceptable. It appears that the City either has to abate immediately and lose the right to bill the property owner—which is fine with me—or at the City’s option, allow the graffiti to remain in place for three weeks so that it can attempt to collect. That delay is not acceptable and this option is not acceptable. In summation, the problem here is that this ordinance, as written, does allow for sanctions against the property owner. Now, I have full faith that no one on this staff, or Council, would ever abuse the authority; however, it should not be assumed that no staff or Council would ever attempt to abuse its authority. And this potential for abuse must not be enshrined for the future. Thank you."

City Manager Longley requested permission, with assistance from the City Attorney, to address Mr. Eckoff’s comments. Mayor Stadtherr requested he do so.

City Manager Longley: He is exactly correct. If we use the summary process where we do it in 24 hours or 48 hours, there is no recovery. I talked to Mr. Tree today. He’s not aware that there has ever a recovery. The reason for the 15 day process is if you get an extraordinary situation where there is a building that is an overall nuisance situation, we have some remedy. It’s my understanding it is only placed in the ordinance to basically advise the public and make the public aware that it’s a process that can be used. It in fact is taken out of State law, it’s my understanding.”

City Attorney Lew: “This 18-39 section involving graffiti as a nuisance is currently in the City Code. And I left it in when I amended as an option for the City. This just underscores that graffiti, like any other form of vandalism, including arson, including physical damage to the property, it can become a nuisance. It can be declared a nuisance and property owners are responsible for public and private nuisances pursuant to state law. It’s simply an option, and I can’t speak to the history, but it is currently in existence in the City Code right now.”

Daryl Nicholson, 1949 West Olive: “I would like to see you someway address the owner-tenant relationship. You have a situation where a property is leased, long-term, yet you’re dealing with the owner when the tenant is the responsible person under a lease. And the notice goes someplace and we end up in this quagmire of not knowing who’s responsible. I had a building tagged last night. And I had the company call me today, and say, ‘It’s your responsibility.’ So it’s my responsibility now to paint that out. And so, if you’ll give notice to the tenant, and make the tenant responsible, then you solve the problem. You have many, many buildings that are owned—I’m local, and it would be easy for somebody to call me, but you have many buildings that are outside the area and you end up placing liens and forcing liens. The other thing is, in a practical matter, if you call the city, they won’t come out and do it. They won’t make any effort to go on
anybody else’s property to abate the graffiti, so you have another issue there. But on this one, try to address the tenant relationship, because the owner is an absentee. And you have a problem in another ordinance just like it, which is the weed abatement, in which it reads this way: the City will immediately abate. In other municipalities in our valley, do the courtesy to notify the owner. Ten days, you don’t clean it up, we’ll take care of it. And we have a very user-unfriendly there and this sounds just like it. So, if you can solve those problems, this will be a very wonderful ordinance. We’re all against graffiti, and we know how much the City spends to eliminate it, so I commend you.”

Pete McCracken, 341 East Olive in Eastridge Plaza: “Again, it’s on the tenant-landlord relationship. Most of the tenants in Eastridge Plaza are responsible for the graffiti. I happen to be a tenant in that shopping center, and I am not responsible under my arrangement with my landlord because I’m on a completely separate agreement. I’m not on the same type of lease. So, as Mr. Nicholson brought up, now you’re going to have to determine, on each lessee, what is their relationship to the property. So you have to take a look at that. My landlord is in Sacramento. Let me give you an example, it’s not graffiti, but I lost my mailbox key. I couldn’t get my mail. I went to the post office and said I lost my key and needed a new one. They said ‘No problem’ and then came back and said, ‘Oh, those mailboxes are owned by your landlord!’ So I called the landlord and the landlord said, ‘Absolutely not. We’ve never seen those mailboxes.’ Well, the property had changed hands and fortunately the post office finally gave us a new key but said if the mailboxes ever got knocked down we’d have to go to the landlord. There’s a situation right there. Very simple. The landlord said it wasn’t his responsibility. So, you have to be careful when you write an ordinance that says landlord, tenant, and like I said, in Eastridge, there are many tenants, and we may all have different relationships with the landlord.”

Councilman Hamilton: “Can this be addressed by just striking it out of the ordinance?”

City Attorney Lew: “What I would recommend with regard to the landlord-tenant, we don’t have the ability to enforce on a tenant simply because the lease provides that the tenant is responsible for something, that becomes a contractual issue between the tenant and landlord. That being said, we could notice both the owner and occupant of the property so that both have the ability to work it out among themselves. We ultimately look to the property owner.

Mayor Stadtherr: “I’m getting nods from the gallery. My concern would have been, if you have a building with multiple tenants, the tenants.....

City Attorney Lew: “Right, and we don’t really have the authority to do that. We have the ability to enforce on property owners, unless we have tenants that are signed up for services specifically, and then we can enforce on those specific services, and that does happen. But generally with these kinds of issues, it’s the property owner that we look to. But we can notice both.

Sue Janoko, 619 North Third Street: “I would like to speak in favor of a modified version of this ordinance. I would also like to tell you why this ordinance should be one of your top three priorities, both in your time and to schedule money for it. Even in times of budgetary limitations, I want to speak as to why we should fund this project, and it is because graffiti steals the value of my home. I think we’re aware, at least it’s been my experience, that graffiti marking is one of the ways that a gang tests your neighborhood, to see if you’re weak enough to be infiltrated. They first start with the loud music, and if you don’t complain, they graduate to graffiti. And then, if you don’t repaint, you’re marked as lambs for the slaughter. Next, drug dealers move in, and that follows crime and violence. I speak from my own neighborhood where I have lived for 18 years, and it was a very nice neighborhood when I moved in. And we saw this pattern, and even had a murder across the street. And only until us neighbors, we united, and we are on our own painting over the graffiti...immediately. We are on our own meeting our neighbors and getting the neighborhood back. If this can
happen in my neighborhood, this can happen to your neighborhood, even if you live on Snob Hill, even if you live in a new Westwood development. You cannot buy your way out of graffiti. You cannot move your way out of harm’s way into safety. The whole town must unite to remove and prevent graffiti. And I’m going to base this on some scientific fact. Researchers have asked why a neighborhood declines from a nice place to one that’s riddled with drugs and crime. And they’ve analyzed all the variables, including things like personal income, race, age of the home, none of these mattered. The one statistic that could predict decline of a neighborhood was the number of broken windows in a neighborhood. It is called the Broken Window Theory. The point of this is: we must show the gangs that we care enough about our homes and neighborhoods that we will maintain our homes and will monitor the safety of our community, so removing graffiti has a direct cause and effect relationship on keeping gangs out of our community, keeping our homes safe, and keeping our kids from joining gangs. Graffiti must be removed. Graffiti must be removed immediately. This is because the immature people who paint graffiti want to bring their friends to the site and admire it and gain status in their gang. So I’m saying we must remove the personal reward of graffiti to prevent graffiti, so we must remove it immediately, no ten-day, two-week waiting period may-I-have-your-permission. We must remove it immediately. This was borne in the fact when we had our own store on Main Street. We removed the graffiti every morning. We were hit four times, then after that, we weren’t hit for two years because the vandals got tired. We must remove graffiti immediately to take away the reward of view the graffiti. Okay, how do these facts apply to the proposed graffiti ordinance? These are interesting facts, but how do they apply to this ordinance? Graffiti abatement is a safety issue as important as the Fire Department. We have to fund the Fire Department, we need to fund graffiti abatement. It’s a crime prevention issue as key as any Police Department issue. I believe graffiti abatement should be our third-highest priority in our budget. Now clearly it’s not going to cost as much as the Police Department, but we need to make this a priority even in tight fiscal times. Please do not let gangs steal the safety of our neighborhood and steal the value of our homes. Our City budget reflects the values of our city. Let us put the value of safety first. Let us spend money on safe neighborhoods, even before we build bridges or fill in pot holes. Let us make it a priority and let’s pay for it. Let us then—graffiti must be removed immediately wherever it is on the City, so let us not limit this ordinance to main arterial things. Graffiti crosses all neighborhoods. It crosses all racial lines. It crosses all economic lines. Remove it wherever it is in the city. Do not limit this ordinance to major arterial connections. And let us remove it within 24 to 48 hours. That way, we eliminate the reward to the graffiti vandal to show off their “artistic” work and to encourage more work. Now, there is the objection ‘Well, we have to ask the property owner.’ I think we have a sufficient clear and present danger from this attractive nuisance that we must remove it within 24 to 48 hours, even though we’re not able to necessarily contact the property owner. Now, the Porterville Recorder wrote an editorial objecting to this ordinance, and one of the main objections was the billing of the property owners for reimbursement of this graffiti removal. Does the Police Department send you a bill when they recover your stolen car? No, that’s their job. Does the Fire Department send you a bill when they put out your fire? No, that’s their job. Please let us allow the City to pay for graffiti removal in a quick manner, without charging the victim, and let us pay for this as a community. As long as graffiti is immediately covered, the property owner can then repaint it with a matching color. Then it is not like advertising: this is a site for graffiti, come here next. We need to paint it over in a matching color to obliterate the evidence of graffiti and this is the property owner’s job, but at least until then, let the abatement people cover it. And the Porterville Recorder seemed to object to this ordinance because it violated private property rights. This is why I politely disagree with the Recorder on this issue of private property rights: Freedom in America is a two-edged sword. One edge is personal freedom; the other edge is personal responsibility. We have to have both to be truly free. We’re free to rent a business, own a home, but we have a responsibility to our community to maintain that home. To fix the broken windows, to cover the graffiti, in order to protect the safety of all our neighbors. Neighbors who ignore a graffiti mess are stealing the value of the property from their neighbors and their stealing their safety. So, respectfully, the Porterville Recorder may place a higher value on property rights, but I place a higher value on real people and real safety issues and my home. I will conclude that I would like to ask the Council to please
protect our neighbors; please protect the value of our homes; please protect our youth from joining gangs; please approve a graffiti abatement ordinance with the above suggestions. Thank you.”

Mayor Stadtherr: “Mr. Irish, I know you were going to make a motion that we move this to a different date, but out of respect for those people who did hear this was going to be announced today, and made the trip down here to City Hall, I want to at least put them in even though we don’t act tonight.”

Councilman Irish: “Just for the record, I do have a motion on the floor, but it’s not because I have anything against this ordinance. I think this is proactive. I think we need to do something. I think this is in the right direction. There are a few questions I need to have cleared up. Mainly, this is kind of a housekeeping problem that I’m having, because I don’t know if you guys got the attachments or not, it’s listed as No. 1638 and also the staff report, I got neither, and it looks like we’re going to change something else on it, and I’d feel a lot more comfortable if we bring it back and do it right.”

Mayor Stadtherr: “We’re going to bring this back again in the future, at the next meeting. Is there any additional thing we wish to add or subtract from the ordinance?”

The following elements were listed by Council as concerns to be addressed at the next consideration of the ordinance:

• Owner-Tenant Clarification
• Public Nuisance Designation

City Attorney Lew: “The ordinance will probably have to go back to first reading because these won’t be just typographical changes, but it needs to be clarified. If you want to continue to have it as a public nuisance, I would recommend that you at least include a statement that you do deem the maintenance of the graffitied property to be a public nuisance, then you would follow your general public nuisance abatement procedures. It’s actually much more specific, but we could if Council wants to consider this. Deem it a public nuisance in our provisions and say that we will abate pursuant to our Nuisance Abatement Procedures and refer to our Weed Abatement Procedure and use a parallel procedure for that. That does involve giving notice, giving the owner a chance to clean it up themselves before we do something, and then at that point if we have to go in and do it, then we would assess the cost. The revised ordinance could be ready for the next Council meeting. We have held the public hearing here as a benefit to the public and the changes that we’re suggesting are not substantial to what’s already been provided.”

Councilman Hamilton: “I would like to expedite it.”

Mayor Stadtherr: “Yes. I want to do it right, but I don’t want to take forever. There is a public pressure to get this done, and I want it done, but I don’t want to be coming back four, six months from now saying, ‘Oops, we goofed, we’ve got to do it again.’ My only comment on the issue of this potentially charging people, to me that is the last resort, and only for problem property owners who are clearly clouding this procedure. Given the fact that we have never charged anyone for graffiti abatement in the past, I think it’s important to keep that in there just in the eventual case that we ever get a property owner that just absolutely refuses.”

City Attorney Lew: “We can add a longer period of time, but I need Council direction on how long they want that to be before we deem it a public nuisance, or if we just want to follow our nuisance abatement procedures. Keep in mind that the responsibility for cleaning up graffiti, according to this ordinance, is still the property owner’s. The City has chosen to implement an expedited basis for cleaning graffiti to the extent that it has the resources to do so, and if it does it on an expedited basis, it won’t charge the property owners, that’s
how the ordinance is defined; but it doesn’t alleviate the responsibility, and that’s why we’ve kept in some kind of nuisance abatement procedure.”

City Manager Longley: “Would it be appropriate to state in the ordinance that if it is on the accelerated procedure that there will be no charge?”

City Attorney Lew: “That’s how it reads, but we can make it more clear so there’s no question in anybody’s mind that that’s how it works.”

Councilman Irish: “When we come back on this, I have a question for the Chief of Police. He doesn’t have to answer this tonight, but I came across a situation where a building was graffitied and the Police Department told them not to clean it up because they needed pictures so they could see who had been doing what on the wall, for their records. Well, I don’t know if there was a misunderstanding or a lack of followup, but four days later the Police Department hadn’t gotten back to the building owner, so they were in a dilemma whether to clean it up or not. So, I would like to address that issue when we come back, how we’re going to handle that, if we can send somebody out there just to take a couple of pictures, then clean it up, whatever. But that needs to be addressed.”

City Attorney Lew: “Sometimes there needs to be a portion maintained for evidentiary purposes, and I think—actually I’ll have to double check—but I believe we have that in here, but I’ll double check, then we’ll have to, of course, make sure it’s implemented properly and that the owner clearly understands that if he has to keep it there why and try to minimize that time obviously.”

COUNCIL ACTION

MOVED by Council Member Irish, SECONDED by Mayor Pro Tem Pete Martinez that Council instruct staff to revise the ordinance according to their MO. 15-071503 direction and bring the matter back for consideration at the regular meeting on August 5, 2003. The motion carried unanimously.

Disposition: Approved.

SCHEDULED MATTERS

21. STREET CLOSURE FOR BLOCK PARTIES.

Recommendation: That the Council designate the Chief of Police as the public officer authorized to approve street closures for block parties on cul-de-sac streets and do so through a resolution.

City Manager Longley said Chief Silver Rodriguez would present the staff report. Chief Rodriguez said the reason for the request was to simplify and expedite requests submitted by residents and that such procedure was provided for in the California Vehicle Code, Section 21101(e). He addressed Council concerns regarding permitted times for amplified music, alcohol on public streets, unruly behavior, neighborhood cooperation and an 18-month moratorium on such activity as a penalty for violations. He said this would pertain only to cul-de-sacs only and that closing of through streets would still require Council approval.

Councilman Irish stated he recommended an 80% approval of residences with ballots to be submitted by one adult resident from each household indicating “Yes, No, Don’t Care, or Refuse”.}

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Councilman West stated he envisioned problems if there was even one person in opposition and said he was not in favor of closing residential cul-de-sacs for parties.

In response to a question from Council, Admin. Services Manager Darrel Pyle stated: “We did contact our litigation manager through our Risk Management JPA and posed the question. Liability always exists, even to the extent that when people walk across the street and get hit by a car, they’re going to sue everybody, including the City. We share with the Risk Management JPA information contained in this particular arrangement, identifying the fact that it would be a cul-de-sac street only, that there would be type two barricades for traffic separation, that it would require notification of all the parties involved, and identified the fact that homeowners insurance would be another entity in that list of lawsuits. They did indicate that there is a possibility of having the homeowners obtain additional insurance. The cost of that coverage runs somewhere in the neighborhood of $135-$185 per night, depending on the number of participants anticipated. They did indicate that our pooled insurance coverage would protect us because we’ve at least gone through the process of evaluating where, when and how these block parties would be allowed but that there really is no way to guarantee that we wouldn’t get sued. But we do have adequate coverage and we could request additional coverage be placed in front of the City if that was the desire of the Council.”

Council touched on items such as police protection, drinking in public, altercations. The general consensus of the Council was to allow the activity, monitor it, and have the matter reviewed by Council at least on an annual basis. The proposed resolution was revised for noise (loud music), the hours the activity is permitted, violations, and how the neighborhood approval is conducted.

Pete McCracken recommended purchasing a decible meter to measure sound volume.

COUNCIL ACTION

MOVED by Council Member Irish, SECONDED by Council Member Hamilton that Council approve the resolution with amendments to the conditions as follows: 80% of residences must approve and the petition must contain indications for “yes” “no” “don’t care” and “refuse”; duration shall be limited to 9:00 p.m. Monday-Thursday and 10:00 p.m. Friday-Sunday; delete “high” regarding volume; and delete “complaints” regarding disruptive behavior.

AYES: Martinez, Hamilton, Irish, Hamilton
NOES: West
ABSENT: None
ABSTAIN: None

Disposition: Approved.

22. STATUS OF THE WATER SYSTEM.


City Manager Longley stated Mr. Styles would present the water system report. Mr. Styles reviewed an in-depth report on the status of the City’s water system.

COUNCIL ACTION

MOVED by Council Member Irish, SECONDED by Council Member Hamilton that Council accept the Status Report on the City’s Water System. The motion carried unanimously.
23. QUARTERLY PORTFOLIO SUMMARY

Recommendation: That Council accept the Quarterly Portfolio Summary in accordance with SB 564 and SB 866.

City Manager Longley designated Admin. Services Manager Darrel Pyle to present this report. Mr. Pyle reviewed the financial report in detail.

COUNCIL ACTION MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Pete Martinez that Council accept the Quarterly Portfolio Summary in accordance with SB 564 and SB 866. The motion carried unanimously.

Disposition Approved.

24. INTERIM FINANCIAL STATUS REPORT

Recommendation: That the Council accept the Interim Financial Status Report.

City Manager Longley designated Admin. Services Manager Darrel Pyle to present this report. Mr. Pyle reviewed the Interim Financial Status Report in detail.

COUNCIL ACTION MOVED by Council Member Irish, SECONDED by Council Member West that Council accept the Interim Financial Status Report. The motion carried unanimously.

Disposition Approved.

ORAL COMMUNICATIONS

Dick Eckoff, 30 East Oak: “Once again, I just want to mention, on the graffiti ordinance, I realize that this is a re-write or replacement of the original and probably a lot of the stuff was carried over. I still have—well, I have no problem with the nuisance ordinance portion of it. As I said, I agree that anybody who constantly refuses to do anything about their property should be billed for the cleanup on it. I’d just like to see something stated in there or clarified in there that this is not the normal...perhaps instead of ‘failing to give consent,’ ‘refusing to give consent,’ or something just to tighten it up. Like I say, down the line in the future, we don’t get some hard nose comes along and decides to dump on us.”

OTHER MATTERS

• Councilman West asked that it be entered into record that he was ill last Saturday and was unable to attend the meeting at the library, but failed to notify City Manager Longley.

• Councilman Hamilton requested a study session be scheduled to discuss gang activity. Councilman West supported the request. Councilman Irish recommended meeting with the Police Chief on a one-on-one basis to glean useful information on the subject. Mayor Pro Tem Martinez recognized the merit of the suggestions and was in favor. Mayor Stadtherr concurred. The Council directed staff to place this on an agenda for August 23, 2003.
Mayor Pro Tem Martinez requested clarification on Conflict of Interest vs. Rule of Necessity and asked the Attorney to comment on his vote under those elements of law.

COUNCIL COMMENTS None.

ADJOURN TO CLOSED SESSION

Mayor Stadtherr adjourned the meeting to a closed session at 11:30 p.m. regarding the following:
1) Conference with Legal Counsel re Anticipated Litigation, Government Code Section 54956.9, (one case);
2) Conference with Legal Counsel re Existing Litigation, Government Code Section 54956.9: Valley Advocates et.al. Vs. City of Porterville et.al.

Mayor Stadtherr reconvened the meeting to regular session at 11:40 p.m. No action was taken in closed session.

ADJOURNMENT

Mayor Stadtherr adjourned the meeting at 11:45 p.m. to a Study Session July 23, 2003 at 5:30 p.m.

Richard M. Stadtherr, Mayor

ATTEST:

Georgia Hawley, Deputy City Clerk