CITY COUNCIL MINUTES
PORTERVILLE, CALIFORNIA
SEPTEMBER 21, 2004 6:00 P.M.

Call to Order:  6:00 p.m.
Roll Call:  Council Member West, Mayor Pro Tem Irish, Council Member Hamilton, Council Member Stadtherr, Mayor Martinez

CLOSED SESSION:
A.  CLOSED SESSION PURSUANT TO:
   1 - GOVERNMENT CODE SECTION 54957.6 - CONFERENCE WITH LABOR NEGOTIATOR. AGENCY NEGOTIATOR: DARREL PYLE. EMPLOYEE ORGANIZATIONS: PORTERVILLE CITY EMPLOYEES ASSOCIATION, PORTERVILLE FIREFIGHTERS ASSOCIATION, PORTERVILLE POLICE OFFICERS ASSOCIATION, AND POLICE SUPERVISOR SERIES.

7:00 P.M. RECONVENE OPEN SESSION
REPORT ON ANY ACTION TAKEN IN CLOSED SESSION
No action to report.

Pledge of Allegiance Led by Council Member Richard Stadtherr
Invocation by Associate Pastor Jonathan Colburn, Porterville Church of the Nazarene

PROCLAMATIONS
• “Domestic Violence Awareness Month” - October, 2004

   Heather Beatty, Director of Community Services for Central California Family Crisis Center, came forward to accept the Proclamation and invited Council, staff, and audience members to attend the candlelight vigil on October 5, 2004 at 6:00 p.m.

• “Porterville Area Coordinating Council Appreciation Day” - September 21, 2004

   Elva Beltran, Porterville Area Coordinating Council, came forward to accept the Proclamation and invited the Council, staff, and audience members to attend a dinner/dance party on Saturday, September 25, 2004 at 5:30 p.m.

PRESENTATIONS
Employee Service Awards
• Donnie Moore, Parks & Leisure Services/Leisure, 5 years of service;
• Carl Jordan, Police Department, 5 years of service;
• Mike Hildreth, Fire Department, 5 years of service;
• David Smith, Fire Department, 10 years of service;
• Laura Burkhart, Police Department, 10 years of service;
• Ricardo Leal, Public Works/Field Services, 15 years of service;
• Loran Blasdell, Fire Department, 15 years of service.
City Manager’s Featured Projects
• Nelson Building Demolition Project
  Public Works Director Baldo Rodriguez presented photographs reflecting the progress of the demolition.

**ORAL COMMUNICATIONS**
• Sandy Joy Tellez, Porterville Rescue Mission, A Street & Olive Ave., spoke regarding an increase in the number of meals provided to under-privileged individuals by the Mission, and requested that the City assist the Mission by paying for its utilities.
• Joyce Jared, 2300 West Morton, Colonial Mobilehome Park resident, thanked the Council and staff for their assistance in resolving the landscaping issue.
• Dick Eckhoff, Downtown Porterville Association, 180 N. Main, stated he had comments on Items 12 and 17 and requested that he be allowed to speak when those items were before the Council.
• Fellipe Martinez, 195 Putnam Ave., voiced concern over loss of revenues for several businesses due to the Orange Avenue Project, and requested that the City assist business owners with informing the public of alternate routes to such businesses.
• Rick Garcia, 287 So. Plano, voiced concern regarding the location of the proposed abandonment detailed in Item 13.

**CONSENT CALENDAR**
   Item No. 2 was removed.

  1. CITY COUNCIL MINUTES OF SEPTEMBER 7, 2004

  Recommendation: That the Council approve the City Council Minutes of September 7, 2004.
  Documentation: Minute Order 01-092104
  Disposition: Approved.

  3. ACCEPTANCE OF APPRAISED VALUE OF RIGHT OF WAY FOR PROPERTY LOCATED AT APN 245-060-023 - BILL A. WIGGINS AND EVELYN M. WIGGINS - HENDERSON AVENUE RECONSTRUCTION PROJECT

  Recommendation: That the Council:
  1. Authorize staff to begin escrow, with the City paying escrow fees;
  2. Authorize staff to make payment to Bill A. Wiggins and Evelyn M. Wiggins, in the amount of $5,792.00, after completion of escrow;
  3. Authorize the Mayor to sign all necessary documents; and
  4. Authorize staff to record all documents with the County Recorder.

  Documentation: Resolution 123-2004
  Disposition: Approved.

  4. ACCEPTANCE OF APPRAISED VALUE FOR PURCHASE OF PROPERTY LOCATED AT APN 302-130-019 AND 302-130-021 - ALLEN HUNSAKER AND
LOUIS NIVEN - CONSTRUCTION OF PERCOLATION POND AND IRRIGATED FARM LAND

Recommendation: That the Council:
   1. Authorize staff to begin escrow, with the City paying escrow fees;
   2. Authorize staff to make payment to Allen Hunsaker and Louis Niven, in the amount of $735,300, after completion of escrow;
   3. Authorize the Mayor to sign all necessary documents; and
   4. Authorize staff to record all documents with the County Recorder.

Documentation: Resolution 124-2004
Disposition: Approved.

5. APPROVAL FOR COMMUNITY CIVIC EVENT - DOWNTOWN PORTERVILLE ASSOCIATION - FIRE WEEK STORY TIME

Recommendation: That the Council approve the Community Civic Event Application and Agreement from the Downtown Porterville Association, subject to the Restrictions and Requirements contained in the Application, Agreement and Exhibit “A” of the Community Civic Event forms.

Documentation: Minute Order 02-092104
Disposition: Approved.

6. SET STUDY SESSION ON LAKE SUCCESS DAM REMEDIATION EFFORT

Recommendation: That the Council:
   1. Set the date of October 26, 2004 at 6:00 p.m. at the City Library for the Lake Success Dam Remediation Project;
   2. Advertise said study session through the local media inviting the public; and
   3. Notify and invite the Corps of Engineers and the Tule Lake Basin Committee to participate in said study session.

Documentation: Minute Order 03-092104
Disposition: Approved.

7. SET STUDY SESSION ON CONSIDERATION OF ESTABLISHING “FISCAL POLICY”

Recommendation: That the Council set the date of November 9, 2004 at 6:00 p.m. as the date and time for the study session.

Documentation: Minute Order 04-092104
Disposition: Approved.

8. EMPLOYEE FUNDED SUPPLEMENTAL INSURANCE PROGRAM
Recommendation: That the Council approve the establishment of an employee funded account with AFLAC, and allow for its implementation as soon as the account is established.

Documentation: Minute Order 05-092104
Disposition: Approved.

9. TRUST SERVICE UPDATE

Recommendation: That the Council authorize staff to remain with US Bank as the Trust Agent for all outstanding Certificates of Participation issuances.

Documentation: Minute Order 06-092104
Disposition: Approved.

10. DESIGNATION OF CITY HALL MEETING ROOMS TO SUPPORT SISTER CITY PROGRAM

Recommendation: That the City Council designate the north Conference Room as “The Mikkabi Room,” and the City Manager’s Conference Room as “The La Barca Room.”

Documentation: Resolution 125-2004
Disposition: Approved.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Stadtherr that Council approve Item 1, and Items 3 through 10. The motion carried unanimously.

2. AWARD OF CONTRACT - AUDITING SERVICES

Recommendation: That the Council:
1. Authorize staff to begin negotiating a three-year contract with J. Steven Pressley for financial auditing services for the fiscal years 2004/05, 2005/06 and 2006/07; and
2. Authorize staff to exercise the optional contract renewals.

Mayor Pro Tem Irish voiced concern over the minimal response to the City’s request for bids, specifically, receiving only 4 responses to 51 requests. He requested that staff follow-up with some of the contractors to determine why they did not submit bids.

At Mayor Pro Tem Irish’s request, staff then clarified the optional renewal procedure, indicating that additional language could be added to the contract calling for two optional one-year extensions with mutually agreeable terms.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Stadtherr that Council approve staff’s recommendation. The motion carried unanimously.

Documentation: Minute Order 07-092104
Disposition: Approved.
PUBLIC HEARINGS

11. MODIFICATION OR REVOCATION OF CONDITIONAL USE PERMIT 6-82 (COLONIAL MOBILEHOME PARK)

Recommendation: That the Council take public comment regarding the frontage landscaping for the Colonial Mobilehome Park, and direct staff to take additional action if necessary.

The City Manager presented the item, and Community Development Director Brad Dunlap presented the staff report. Mr. Dunlap informed Council that as of September 20, 2004, the property owner had essentially conformed to the C.U.P. He then stated that due to interference by a large tree located on the opposite side of the park wall, one new tree would need to be relocated. Mr. Dunlap stated that the owner had indicated that the tree’s relocation would be completed prior to the September 21, 2004 meeting. He then noted that several patches of turf had been removed from the site, and that the owner’s representatives had committed to replacing that missing turf.

Council Member Hamilton clarified that the removed patches of turf were actually stolen from the site.

Mayor Pro Tem Irish clarified with Public Works Director Baldo Rodriguez that the integrity of the park wall had been maintained. Mayor Pro Tem Irish then thanked all the parties involved for their hard work.

Council Member Hamilton voiced concern over a certain mobilehome inside Colonial Mobilehome Park that lacks skirting and pointed out it might pose a potential safety issue. He then requested that Chief Guyton follow-up with the mobilehome owner.

The Public Hearing was opened at 7:38 p.m. and closed at 7:39 p.m., when no one came forward.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council West that Council determine that the landscaped areas along Morton Avenue and M.O. 08-092104 Westwood Street have been brought back into conformance with the conditions of Conditional Use Permit 6-82, Modification No. 1, and that Council take no further action. The motion carried unanimously.

Disposition: Approved.

12. ZONING ORDINANCE AMENDMENT 3-2004: AN ORDINANCE AMENDING VARIOUS SIGNAGE REGULATIONS

Recommendation: That the Council:
1. Approve the proposed Zoning Ordinance and Municipal Code Amendments, and give first reading to the Draft Ordinance approving amendments to Article 20 of the Zoning Ordinance and Chapter 3, Article 4 of the City of Porterville Municipal Code pertaining to Sign Regulations;
2. Waive further reading of the Draft Ordinance pertaining to Sign Regulations and order to print; and
3. Approve the Draft Resolution Setting a Fee for Temporary Sign Permit Applications.

The City Manager presented the item, and Community Development Director Brad Dunlap presented the staff report.

Mr. Dunlap stated that staff had prepared a supplemental set of proposed “clean-up” amendments which were detailed in a supplemental memorandum provided to Council prior to the meeting. Mr. Dunlap explained that the memorandum specifically addressed two changes: 1) changing “Uniform Building Code” to “latest adopted Building Code,” and 2) eliminating references to Fire Zones, which were no longer in use. He then indicated that staff had also revised Attachment A and the draft Ordinance which were attached to staff’s initial recommendation, and that such revisions were attached to the supplemental memorandum. Mr. Dunlap then indicated that staff had received a letter from Renee Sprague of Sprague’s Outdoor Power Center in which she voiced concern over the proposed restrictions on temporary signage. Mr. Dunlap indicated that copies of Ms. Sprague’s letter had been provided to Council.

The Public Hearing opened at 7:47 p.m.

Dick Eckhoff, Downtown Porterville Association, 180 N. Main Street, indicated that the DPA supported the proposed Ordinance as written, with a condition that temporary A-frame signs and/or free standing signs for specialty advertising be allowed. Mr. Eckhoff then questioned the proposed limit on going-out-of-business sales to one per year, and pointed to the existing Ordinance regulating such sales. He stated that it was his understanding that interested business owners were required to exchange their business license for a going-out-of-business license, which would effectively close down the subject business. Mr. Eckhoff then requested clarification of the proposed “grandfathering” of existing non-conforming signs, specifically questioning the trigger mechanism for removal of the sign and the procedure that the City would use in reimbursing an owner for an abated sign. Mr. Eckhoff then requested that information packages be sent out to businesses advising them of the proposed changes.

Renee Sprague, Sprague’s Outdoor Power Center, 75 North D Street, voiced concern over the proposed limitations on temporary signage, and requested that Council reconsider the proposed changes to the Ordinance.

Marty McCormick, Yellow Rose, 222 West Henderson Avenue, came forward and spoke against the proposed changes regarding temporary signage. Ms. McCormick requested that the Council consider their vote from a merchant’s perspective.

Russell “Buck” Fletcher, 862 N. Williford Drive, spoke against the proposed changes regarding temporary signage. He indicated that he believed signage regulations were needed, but not at the expense of merchants. He stated that the City should be focused on bringing businesses into Porterville, as opposed to driving them out.

The Public Hearing closed at 7:59 p.m.

Mayor Pro Tem Irish voiced concern over the proposed restrictions on the number of flags a business could display, and requested clarification of the standards for A-frame signs. Mayor Pro Tem Irish pointed out that the proposed changes had been drafted strictly from a governmental perspective, as that was staff’s duty, but because of the feedback received this evening, he would like the draft Ordinance
circulated throughout the business community to obtain additional commentary on the proposed changes. He then questioned how the proposed changes would be enforced without a code enforcement officer, and stated that the Council, perhaps through the Chamber of Commerce, should obtain further input from the business community before a decision is made.

Council Member Stadtherr suggested that a flyer be placed in the next Chamber of Commerce Newsletter.

Council Member Hamilton pointed out that the initial motivation for changing the Ordinance relating to signs was certainly not to hinder businesses, but instead to set a standard of aesthetics in Porterville of which the citizens could be proud. He then stated that Ms. McCormick did in fact present her business in an above-standard fashion, but there were other business owners who did not. He then agreed with Mayor Pro Tem Irish’s suggestion that an opportunity should be given to Porterville merchants to provide further commentary on signage regulation.

Council Member Stadtherr again suggested that an effective approach to inviting commentary from the merchants would be to place a flyer in the next Chamber of Commerce Newsletter.

Mayor Pro Tem Irish agreed that the Chamber’s Newsletter was one avenue that could be utilized.

Council Member Hamilton apologized to staff and indicated that perhaps Council had jumped into this matter too hastily.

The City Manager asked if Council recommended a widely-advertised workshop scheduled so as to provide a round-table-type environment to discuss various options.

Council Member Hamilton responded that he would rather see Porterville merchants establish their own committee and seek commentary from other businesses, then return to Council with their recommendations.

Mayor Martinez suggested that the Council could assist the Chamber of Commerce, the Hispanic Chamber of Commerce, and the Downtown Porterville Association in establishing a committee.

Mayor Pro Tem Irish suggested that Ms. Sprague, Ms. McCormick and Mr. Fletcher also be included in the committee. He then requested that the item be brought back after January 1, 2005 to allow enough time for merchant input.

**COUNCIL ACTION:** MOVED by Mayor Pro Tem Irish, SECONDED by Council Member West that Council direct staff to assist in the formation of a local merchant committee to seek commentary on the proposed changes regarding signage, then return to Council after January 1, 2005 with the committee’s recommendations. The motion carried unanimously.

Disposition: Continued.

The City Manager, for clarification, confirmed that Council had directed staff to contact the two Chambers, the Downtown Porterville Association, Mr. Fletcher, Ms. Sprague, and Ms. McCormick to assist them in the formation of a merchant committee, and once that committee had reached its conclusions, the matter was to be brought back before Council after January 1, 2005.
Mayor Pro Tem Irish then requested that the Porterville Recorder assist with informing the public of the City’s request for commentary on signage regulations.

13. ABANDONMENT OF AN ALLEY BOUNDED BY LOCUST AVENUE, PLANO STREET, DATE AVENUE AND HOWARD STREET (FELIX & COMISION HONORIFICA MEXICANA AMERICANA, INC.)

Recommendation:
That the Council:
1. Adopt the Resolution of Abandonment, including reservations, for an unimproved alley bounded by Locust Avenue, Plano Street, Date Avenue and Howard Street; and
2. Authorize the City Clerk to record the Resolution of Abandonment with the County Recorder.

Mayor Martinez indicated that he would abstain from this vote due to a conflict of interest. The Mayor then excused himself from the Council Chambers.

The City Manager presented the item and Public Works Director Baldo Rodriguez presented the staff report.

The Public Hearing opened at 8:11 p.m. and closed at 8:12 p.m. when no one came forward to speak.

Council Member Hamilton questioned if Mr. Garcia still had questions pertaining to this proposed abandonment.

Rick Garcia, 287 So. Plano, came forward and stated that he believed he had been provided incorrect information by staff regarding the affected properties, and that he had attempted to meet with Mr. Rodriguez, however he had been unavailable.

Public Works Director Baldo Rodriguez apologized to Mr. Garcia, and then clarified that Mr. Garcia’s property would not be affected by the proposed abandonment. Mr. Garcia and Mr. Rodriguez then agreed to meet on Wednesday, September 22, 2004 at 8:00 a.m.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Stadtherr that Council approve staff's recommendation.

Resolution 126-2004 AYES: West, Irish, Hamilton, Stadtherr
NOES: None
ABSTAIN: Martinez
ABSENT: None

Disposition: Approved.

Mayor Martinez then returned to the Council Chambers.

14. ADOPTION OF THE REVISED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)
Recommendation: That the Council:
1. Open the public hearing;
2. Take testimony and written comments; and
3. Direct staff to consider the comments, finalize the revised DBE Program, and submit the program to Caltrans for approval.

The City Manager presented the item and Public Works Director Baldo Rodriguez presented the staff report.

The Public Hearing opened at 8:16 p.m. and closed at 8:17 p.m. when no one came forward.

Council Member Hamilton stated that the accuracy of the Revised DBE Program document before the Council was crucial, as Caltrans had become extremely strict in their analyses due to State budget constraints.

Mayor Pro Tem Irish questioned, and staff confirmed, that monies to be paid to prime contractors could be held up to thirty-five days, and to the subcontractors, thirty days, and that the responsibility of meeting those deadlines was the City’s.

In response to Council Member West’s question of how a delay in a subcontractor receiving a labor and/or materials release would affect the timing of that subcontractor’s receipt of payment, staff explained that if the prime contractor had determined a subcontractor’s completed work to be acceptable and confirmed that all required payments had been made by the subcontractor, then the prime contractor could release the money. However, staff explained, if an issue arised, the prime contractor could make the determination to retain the subcontractor’s money for additional thirty days.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council Member West that Council approve staff’s recommendation. The motion carried unanimously.

COUNCIL ACTION: MOVED by Council Member Stadtherr, SECONDED by Council Member West that Council approve staff’s recommendation. The motion carried unanimously.

M.O. 10-092104

Disposition: Approved.

Council took a 10 minute recess.

SCHEDULED MATTERS

15. AWARD OF CONTRACT - MUNICIPAL WATER WELL NO. 28 PROJECT

Recommendation: That the Council:
1. Award the Municipal Water Well No. 28 Project to Zim Industries, Inc. in the amount of $291,990.00;
2. Authorize progress payments up to 90% of the contract amount; and
3. Authorize a 10% contingency to cover unforeseen construction costs.

The City Manager presented the item, and Public Works Director Baldo Rodriguez presented the staff report.

Mayor Pro Tem Irish inquired as to the total cost of the project at completion, and questioned how the selection of the location had been determined.
Mr. Rodriguez responded that staff estimated that the total cost would be approximately $400,000, assuming a 700 gallon per minute well use, and pointed to several reasons why that particular site had been chosen. He stated that in addition to the City already owning the property, test results had indicated that water was present, and that the environmental impact report, plans, and specifications for that site had already been completed.

Mayor Pro Tem Irish then questioned the cost of the environmental impact, which staff indicated was approximately $10,000.

The City Manager pointed out that another reason for selecting that particular site for the project was the fact that the site had already been tied into the City’s water system.

Council Member West questioned whether water pipes were already at that location. Staff responded that pipes were not yet in place, but once the pump sizing was determined, piping the location would be a part of the proposed project. Mr. Rodriguez then explained that in the past, requests for bids on water well projects were sent out based on well production estimates obtained by drilling tests. Contractors would then bid on the highest of three production estimates. He explained that once work began and the location actually offered less water than was estimated, such change would cause delay as it required a recalculation based on the new amount of water. Mr. Rodriguez then stated that the proposed contract would eliminate that problem, as a determination of water production would be made first, allowing the bid process to begin with actual amounts.

Council Member West suggested that the proposed area was a poor choice for water production, citing the last well, the production from which was estimated to be approximately 500 gallons per minute, yet ultimately produced only about 275 gallons per minute. Council Member West then requested that staff provide an estimate of water production from that same well assuming its relocation to a west-side location.

Mr. Rodriguez informed Council that staff had generated electronic logs (“e-logs”) at various locations throughout the City. He explained that e-logs were generated by dropping a probe into the ground, and that those obtained from the City’s largest producing wells on the west side had been almost identical to the E-log generated for the proposed site. He then re-iterated that the City already owned the proposed site, all environmental work had already been completed, and the plans and specifications were already in place thereby allowing work to immediately commence.

Council Member West then asked staff how long the project would be delayed if another site was chosen, to which Mr. Rodriguez estimated at approximately six months, two months of which would be spent advertising for bids.

Council Member Stadtherr pointed out that it appeared that the capacity of the City’s wells was decreasing while the cost was increasing. He then questioned how much farther the trends could continue on their respective paths, and questioned if staff was aware of any evidence indicating a reversal in these trends. Mr. Rodriguez responded that he did not see a reduction of costs in the future, nor did he see a large 1500 gallon per minute well in the future. He stated that this was precisely the reason why staff was returning to a site previously determined to be inadequate with estimated production between 500 to 800 gallons per minute. Mr. Rodriguez indicated that six potential sites were currently in line for acquisition negotiations, with only one of those properties located on the west side.
Council Member Irish suggested that well construction on the six sites outlined in the schedule attached to the staff report would be more cost efficient if handled together, as opposed to one at a time.

Mr. Rodriguez stated that once the environmental clearance had been obtained on each of the sites, the City’s consultant would begin to prepare packages. He indicated that because the City did not own the sites, the timing of each project would depend upon the negotiation process with each property owner, which would affect whether or not the City could combine the projects for bidding purposes. Mr. Rodriguez then agreed that combining several wells projects could save the City money, and suggested it might also attract larger construction firms.

Mayor Pro Tem Irish confirmed that an itemization of the 10% contingency would be brought back to Council for its review.

Council Member West questioned why the City would not simply abandon a site that turned out to only produce approximately 200 to 300 gallons per minute, and why efforts were not redirected to the west side where the chances were better for larger producing wells.

The City Manager clarified that staff would have a good indication of the well’s yield prior to bringing specifications back for the completion of the project, thereby allowing Council’s consideration of whether staff should proceed. Mr. Rodriguez then informed Council that the environmental process was already underway for the west side locations.

Community Development Director Brad Dunlap added that the City had now streamlined the way in which it handled the well development process by, for example, processing one environmental document for multiple sites which enables the Public Works Department to commence negotiations. He pointed out that this change was more time and cost efficient and allowed the flexibility to efficiently move on those sites that tested as being productive.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member Stadtherr that Council award the Municipal Water Well No. 28 Project to Zim Industries, Inc. in the amount of $291,990.00, authorize progress payments up to 90% of the contract amount, and authorize a 10% contingency to cover unforeseen construction costs. The motion carried unanimously.

Disposition: Approved.

16. CONSULTANT INTERVIEWS - CURBSIDE RECYCLE PROJECT

Recommendation: That the Council:
1. Direct staff to set October 14, 2004 as the date to conduct interviews for the purpose of evaluating and rating the firms of Huls Environmental and Skumatz Economic Research relative to the “Curbside Recycle Program”;
2. Appoint two members of the City Council to sit on the interview panel and authorize the Public Works Director to appoint three staff members to the interview panel; and
3. Direct staff to prepare a report summarizing the interview panel’s evaluation
of the two consulting firms and that said staff report be presented to City Council at the November 2, 2004 Council Meeting.

The City Manager presented the item and Public Works Director Baldo Rodriguez presented the staff report.

Council Member Stadtherr volunteered to serve as one of the representatives.

Council Member Hamilton suggested that Council Member West serve as Council’s other representative on the interview panel.

**COUNCIL ACTION:** MOVED by Council Member Hamilton, SECONDED by Mayor Pro Tem Irish that Council appoint Council Member Stadtherr and Council Member West to sit on the interview panel and authorize the Public Works Director to appoint three staff members to the interview panel. The motion carried unanimously.

**COUNCIL ACTION:** MOVED by Council Member Hamilton, SECONDED by Council Member Stadtherr that Council approve staff’s recommendation Nos. 1 and 3. The motion carried unanimously.

Disposition: Approved.

17. CONSIDERATION OF CROSS-STREET BANNER

Recommendation: For Council’s consideration and recommendation.

The City Manager presented the item and Community Development Director Brad Dunlap presented the staff report.

Mayor Martinez invited Mr. Eckhoff to come forward and offer his comments.

Dick Eckhoff, Downtown Porterville Association, 180 N. Main Street, came forward in support of the cross-street banner. He stated that such a banner had been in the DPA ‘s plan for quite some time -- the project being spearheaded by Mr. Cone when he served on the DPA’s Board -- but the idea had been placed on hold when Mr. Cone vacated the Board. Mr. Eckhoff indicated that when first considered by the DPA Board, it had been budgeted at approximately $4,000. He then stated that the DPA had not eliminated this project from its long term goals, and the DPA was willing to work with the City once the criteria was determined regarding the free speech issues. He also stated that DPA funding had already been set up, which he would confirm with the Board, and he believed that the DPA would still be interested in funding, or partially funding, the project.

Jim Cone, 118 N. Second Street, spoke in support of the cross-street banner. Mr. Cone offered examples of various messages the sign could hold, and proposed criteria for its use by groups.

Council Member West questioned whether First Amendment rights of free speech may create problems if certain groups desire to place inappropriate or controversial messages on the sign. City Attorney Julia Lew stated that she recommended that all attempts be made to avoid the problem that the “Adopt-A-Highway” clean-up programs had been encountering. She pointed to a case in which the Ku
Klux Klan prevailed when it sued to have its name on a sign for a Missouri Adopt-A-Highway program. Ms. Lew stated that she did not recommend leasing out space on the sign, and that Council should proceed very carefully. She stated that even if the banner’s use was limited to the promotion of civic events, Council should keep in mind that some groups which may be deemed inappropriate or controversial by many could also have “civic” events. Ms. Lew reiterated that the proposed banner raised issues that should be carefully examined.

Council Member West asked if some of the free speech concerns would be eliminated if the City owned the banner, to which Ms. Lew responded that ownership by the City would actually create more concerns as a public forum would be created. Ms. Lew pointed out that private ownership could restrict use based on content, whereas public ownership created a public forum.

Mr. Cone came forward and stated that Main Street had been previously categorized as a highway by the State Legislature, but that categorization was no longer valid. He suggested that because of this change, everybody could utilize the banner.

Council Member West stated that he supported the idea of having a banner sign downtown if the issues raised by Ms. Lew could be worked out.

Mayor Pro Tem Irish suggested that if Council had the authority to approve or disapprove applications for the banner’s use, the free speech issues would be addressed at that point.

Council Member West questioned how a private club could own the cross-street banner if such banner was located on City property.

Ms. Lew suggested that the City could lease the banner to a private entity, thereby giving that private entity the ability to control the content of the banner and avoid the chance of creating a public forum. She indicated that she and staff could look into how other cities with banners handled this issue.

Mayor Pro Tem Irish questioned if the City could lease the banner to the Downtown Porterville Association, to which Ms. Lew stated that it would depend upon how the DPA had been developed and how independent that organization was from the City. She pointed out that the Chamber of Commerce was independent from the City, whereas the DPA was the City’s administering authority with regard to public funds, which might be an issue. She stated these options could be explored.

The City Manager suggested that if Council wished to pursue this item, that it could be re-directed to the Redevelopment Agency for its consideration, then brought back to Council.

Council Member Hamilton voiced concern over Council and staff’s apparent hesitation to offer a venue - in the form of a cross-street banner - for free speech, and voiced support for allowing all speech on the banner.

Council Member Stadtherr agreed with Council Member Hamilton.

COUNCIL ACTION: MOVED by Mayor Martinez, SECONDED by Council Member Stadtherr that Council refer the matter to the Redevelopment Agency for its consideration, then have the item returned to Council. The motion carried unanimously.
18. CONSIDERATION OF PROPOSITION 68 ON THE NOVEMBER BALLOT

Recommendation: That the Council review the materials provided and determine whether to support, oppose, or remain neutral on Proposition 68.

The City Manager presented the item and the staff report.

Sam Cohen, Tule River Tribal Council, P.O. Box 589, came forward and voiced the Tule River Tribe’s opposition to Proposition 68. He stated that if Proposition 68 passed, all tribes in California would be required to pay 25% of every dollar earned from a gaming devise, after paying winnings but before paying operating expenses, and suggested that such a rate would effectively mean a 50% tax rate. Mr. Cohen stated that the Tule River Tribe respectfully requested that the Council pass a resolution opposing Proposition 68, and pointed out that, to date, the Tribe had received similar resolutions of opposition from the Porterville Chamber of Commerce, Springville Chamber of Commerce, Tulare-Kings Hispanic Chamber of Commerce, and the Tulare County Association of Governments. Mr. Cohen then provided Council with written materials opposing Proposition 68.

In response to Council Member Hamilton question, Mr. Cohen stated that Proposition 65 was being primarily funded by 15 different card rooms, including Larry Flynt’s Hustler Club. He stated that the card rooms were located throughout California, primarily in San Francisco, Sacramento and San Diego. He also indicated that race track interests also supported the measure.

Council Member Stadtherr questioned why the Sacramento County Sheriff supported this measure, to which Mr. Cohen responded that it would receive $20,000 per month if the measure passed.

COUNCIL ACTION: MOVED by Council Member Hamilton, SECONDED by Council Member West that Council direct staff to prepare a resolution in opposition to Proposition 68. The motion carried unanimously.

M.O. 15-092104

Disposition: Approved.

19. UPDATE ON REMOTE CONTROL CAR FACILITY

Recommendation: That the Council direct staff accordingly.

The City Manager presented the item and Director of Community Development Brad Dunlap presented the item.

Greg Shelton, 888 N. Williford Drive, came forward in opposition to staff’s recommendation. Mr. Shelton asserted that the genesis of the issue before the Council had been an $11.00 electrical permit, which he accused staff of turning into a $250,000 project. He stated that he understood staff was only doing their job, but that staff’s recommendation was unfeasible. Mr. Shelton then stated that during a recent meeting, staff categorized the remote control car facility as “commercial recreational,” and asserted that he did not agree with this categorization during the meeting. He stated that he could not locate a definition for “commercial recreational” within the City’s Code, but did find one in Tulare County’s Code, which pertained to arcades and like operations. He asserted that he believed “club” best defined their use.
and stated that the Code defined “club” as: “An association of persons for some common non-profit purpose, but not including groups organized primarily to render a service which is customarily carried on as a business.” Mr. Shelton stated that pursuant to City Code, clubs were allowed to operate on his property. He requested that Council direct staff to issue the $11.00 electrical permit.

Council Member West asked Mr. Shelton if he was requesting the City to install a power pole, to which Mr. Shelton clarified that he was only seeking the electrical service, and that it was his own responsibility to install the pole with Southern California Edison.

Mr. Shelton pointed out that the remote control car use was not a permanent use for the property. He stated that he had no problem with commencing improvements that he would use in the future after the remote control car facility was gone; however, he did not want to perform improvements that he would then need to tear out for some other future use. He stated that he installed the fence and was willing to install an electrical pole because he would need both in the future. He indicated that he also recognized that he would likely need to install a sidewalk, yet he debated the issue that staff brought up pertaining to the water pipe. Mr. Shelton then asserted that staff’s requirements were over-cumbersome and precisely why small businesses avoided developing in Porterville.

Council Member West asked staff if there was a Code that pertained to the installation of a temporary electrical pole. Public Works Director Baldo Rodriguez stated that Edison generally supervised such installation and set forth the requirements. He advised that Edison’s procedure required the property owner to acquire a tag from the City that indicated that the property owner had obtained the necessary approval to receive electrical power.

Council Member Hamilton stated that he had worked with the applicants and staff to reach a solution to this issue, and questioned staff how the Conditional Use Permit was triggered.

Community Services Director Brad Dunlap explained that in this case, the C.U.P was a mechanism to allow graduated improvements on the site. Otherwise, Mr. Dunlap explained, the Code required initiation of all improvements from day one. Mr. Dunlap then stated that although Mr. Shelton had compared the applicants to Zumba and Rotary -- clubs that meet in enclosed buildings -- staff believed that the applicants’ use most closely resembled a commercial recreational facility which required a C.U.P., even though the applicants were not charging for admission.

Council Member Hamilton stated that he could argue that the group was a club, even though they operated outside. He then asked for clarification of the definition of a club.

Ms. Lew responded that the definition of club was ambiguous, and asked staff if the Code defined “commercial recreation.” Mr. Dunlap responded that it did not, but it did define “club.” Mr. Dunlap then pointed out that it was Council’s responsibility to clarify ambiguities.

Council Member Hamilton confirmed that pursuant to Section 26 of the Code, it was Council’s responsibility to clarify ambiguities. He then suggested that the remote control car use be allowed, with certain restrictions, for an approximate two-year period, at the end of which the applicants could be required to return to Council. Council Member Hamilton suggested that one restriction could be that the applicants could not charge.

The City Manager pointed out that if the applicants were granted approval under a temporary use permit, then the extension of the electrical current should also be temporary. In response to Council
Member Hamilton’s question, Mr. Longley further explained that the City regulated access to electricity in order to control land use. He indicated that the City had uniformly regulated use in this fashion, and that if Council directed staff to proceed otherwise, it would be a departure from policy.

The City Manager pointed out that if Council determined the remote car facility to be a club use, then a number of things would automatically be imposed. He explained that issuance of a use permit simply meant that a particular use was permitted on the site, but that the permit did not waive the requirement for improvements. He stated that it appeared that Council was considering a temporary use, and if that were the case, then it would be assumed that any privilege granted would also be temporary.

Per Council Member Hamilton’s request, Mr. Rodriguez explained the process for removing an electrical pole. Mr. Rodriguez pointed out that since the pole in this particular case would be privately owned by Mr. Shelton, it would be his responsibility to remove the pole, either privately or through Edison.

Council Member Hamilton then clarified that the City would only pull the source of electricity, and not the pole itself. He then asked Mr. Shelton, in the event Council approved his request, whether he still intended on installing road base as a means for dust control.

Mr. Shelton responded that he would rather use water, and then suggested that he would comply with the Code when the City complied with the Code on all of its projects. He then cited the parking lots at the fairgrounds and the sports park as examples. Mr. Shelton stated he felt the City’s requirements were hypocritical. He then commented that the suggested road base was not a quality product, and that he would then have to remove the road base after the track was no longer operating. Mr. Shelton then argued that Mr. Longley’s statement regarding the trigger for improvements was incorrect, and suggested that per the Code, he would only be required to make such improvements if his intended work was valued to be greater than $15,000.

Staff then clarified that the $15,000 trigger to which Mr. Shelton referred related to building permits, not Conditional Use Permits. Staff then pointed out that Chapter 20 of the Zoning Ordinance required individuals to make improvements that meet City standards prior to establishing parking on a property, and that while occupants of dwellings and their guests were excepted from this requirement, that exception might not be applicable as no dwelling existed on Mr. Shelton’s property.

Council Member Hamilton then clarified that the question before Council was whether or not the remote control car facility could proceed with a temporary use permit.

City Attorney Julia Lew pointed out that when the term “club” had been initially defined, remote control car use had not necessarily been considered. She then cautioned Council about setting a precedent if approval was to be granted to the applicants as a club with a temporary use permit.

In response to Council Member Hamilton, Ms. Lew then clarified that the facility’s use could also be categorized under commercial recreational, and again advised Council that if they decided to move forward with allowing the applicants to operate with a temporary use permit, Council would set precedent. She cautioned that Council’s findings and the specific conditions for this particular club should be well thought out and well documented for the future.
Tim Beebe, 677 N. Plano, came forward and identified himself as one of the applicants. He stated that he had initially told staff that he and his friends were a “club,” and that their activity was a “hobby.” He stated that if the City did not want the matter to go forward, to just tell them.

Mayor Martinez then stated that Council had been very receptive to receiving commentary from the audience, but indicated that no further comments would be allowed so as to provide Council with an opportunity to discuss and resolve the matter.

Council Member Stadtherr stated that the parties appeared to him to be in agreement in wanting the project to move forward, and that the only hesitation was concern with setting precedent which the City might ultimately regret. He then complimented the applicants on their work on the property to date.

Council Member Hamilton questioned how the Council would be setting precedent if the decision to allow the facility to temporarily operate was a discretionary decision by the Council.

Council Member West stated that an enormous amount of time had already been spent on this request, and that its approval might inspire further requests in the future. He stated that Council should take the time to get it right the first time. He then commented that he believed staff’s recommendation was good, if Mr. Shelton developed the property.

In response to Mayor Pro Tem Irish’s question, Council Member Hamilton stated that the property owner could not simply continue to operate with the use of a generator. He stated that the property owner was not presently in compliance, but suggested that the City had merely been lenient.

The City Manager clarified that no complaints had been received to date, so the applicants had been allowed to continue operations.

Mayor Pro Tem Irish then requested that prior to any approval, certain items should be addressed such as the maximum number of people allowed to participate at one time, and restroom facilities. He then thanked staff for their efforts and pointed out that staff could not be discretionary, as that was Council’s job. He commented that Council had the authority to set up a temporary use permit that would expire in one year, with the electrical service expiring along with it. He stated that Council could then consider continuing the temporary use permit on an annual basis. Mayor Pro Tem Irish pointed out that the applicants had already installed a fence and had satisfied a need, and since the City had received no complaints, he believed that Council should work with the applicants.

In response to the City Manager’s request, Mayor Pro Tem Irish clarified that he supported approving a temporary use permit with restrictions, and suggested that some restrictions should be a requirement for restroom facilities, required use of water for dust control, no charging by applicants, and no alcohol.

Council Member Hamilton agreed with Mayor Pro Tem Irish and pointed out that Council had used its discretionary authority before, as when it allowed motorcycles in Murry Park, and that as long as certain conditions were required, he supported moving forward with granting a temporary use permit. He then recommended that the matter be brought back to Council at the next meeting.
City Attorney Julia Lew confirmed that the matter would have to be brought back as no draft resolution was before Council for their consideration. Ms. Lew then clarified that no public hearing would be required for a temporary use permit.

Council Member West asked if the facility would be allowed to continue to operate until such time as the matter was brought back to Council, to which Ms. Lew pointed out that no one had stopped them yet.

Council Member West then commented that he had witnessed individuals operating remote control cars in front of the drive-in and questioned why they were allowed to operate. Ms. Lew clarified that when that particular property was annexed by the City, the use was grandfathered in as “legal non-conforming.”

The City Manager confirmed that staff would prepare a draft resolution with staff’s recommendations for Council’s review and modification at the next Council meeting.

Council Member Hamilton then informed Mr. Shelton and Mr. Beebe that in the past Council had made decisions based on what it thought would be good, and warned that Council was counting on them to make sure there were no problems.

Mayor Martinez voiced support for people having fun and enjoying themselves in Porterville, as long as safety was considered.

Disposition: Continued.

20. CIEDB LOAN UPDATE

Recommendation: That the Council authorize staff to complete and submit the loan application to secure the CIEDB funding to complete the Water System Improvement Project.

The City Manager presented the item and Deputy City Manager Darrel Pyle presented the staff report.

Council Member Hamilton questioned why the design and construction for Rocky Hill I was scheduled to occur before that of Martin Hill, which had a larger capacity.

Public Works Director Baldo Rodriguez stated that current development would benefit more from the Rocky Hill I tank than from the 3 million gallon tank of Martin Hill, which was further south.

Council Member Stadtherr then requested clarification of the Surface Water Treatment Facility and the PCE Well Head Facility.

Mr. Rodriguez explained that the proposed treatment facility would be located in the downtown area and would include everything necessary to bring the surface water into the municipal water grid, including appropriate piping and the blending of two wells. He then elaborated on the PCE Well Head Facility and confirmed that no new wells were a part of the proposed projects outlined on the schedule provided to Council, and that any new wells would be in addition to the $8.4 million.
Council Member Stadtherr then requested clarification of the cost for the sewer expansion project that was recently endeavored, to which staff responded approximately $5.3 million. Council Member Stadtherr summarized that the City was spending a great deal of money on water.

COUNCIL ACTION: MOVED by Council Member West, SECONDED by Council Member Stadtherr that Council approve staff’s recommendation. The motion carried unanimously.

M.O. 16-092107

Disposition: Approved.

21. REVIEW OF PROPOSED LAFCO POLICIES

Recommendation: That the Council review and consider policies and proposed comments, and direct staff to send correspondence to the Local Agency Formation Commission recommending approval of the proposed policies subject to amendments as described.

The City Manager presented the item and Director of Community Development Brad Dunlap presented the staff report.

Mr. Dunlap informed Council that staff regularly received policies from LAFCO for review and comments, and that in the past staff had routinely handled them. Mr. Dunlap requested Council’s clarification on whether it would like to have such policies brought before Council, or whether Council would prefer that staff continue to handle the routine items without Council’s involvement.

Council Member Hamilton stated that he believed that staff should handle those items routine in nature, and only bring items to the Council that are out of the ordinary.

Mayor Pro Tem Irish agreed with Council Member Hamilton.

Mr. Dunlap informed Council that staff generally took exception to most proposed policies it received from LAFCO, but pointed out that LAFCO was usually very receptive to suggestions and comments from local cities. He stated that staff worked in coordination with both Tulare and Visalia on various LAFCO issues.

Mayor Martinez suggested that Council could receive a copy of each LAFCO proposal.

Mayor Pro Tem Irish stated that he would prefer that staff had the discretion of whether or not to involve Council in a particular proposed policy.

COUNCIL ACTION: MOVED by Mayor Pro Tem Irish, SECONDED by Council Member Hamilton that Council direct staff to send correspondence to the Local Agency Formation Commission recommending approval of the proposed policies subject to the amendments described in the staff report. The motion carried unanimously.

M.O. 17-092104

Disposition: Approved.
The Council adjourned at 10:09 p.m. to a Meeting of the Porterville Public Improvement Corporation

PORTERVILLE PUBLIC IMPROVEMENT CORPORATION

Roll Call: Director West, Director Irish, Director Hamilton, Director Stadtherr, President Martinez

WRITTEN COMMUNICATIONS
None.

ORAL COMMUNICATIONS
None.

SCHEDULED MATTER

PIC-1. ANNUAL MEETING OF THE PORTERVILLE PUBLIC IMPROVEMENT CORPORATION

Recommendation: That the Council, sitting as the Porterville Public Improvement Corporation:
1. Approve the election of officers as indicated in the attached draft resolution;
2. Accept public comment; and
3. Approve the 2004 Status Report for Certificates of Participation Projects.

The Secretary presented the item, and Community Development Director Brad Dunlap presented the staff report.

CORPORATE ACTION: MOVED by Director Stadtherr, SECONDED by Director West that the City Council, sitting as the Porterville Public Improvement Corporation, approve Resolution PIC 2004-1 staff’s recommendation. The motion carried unanimously.

Disposition: Approved.

ORAL COMMUNICATIONS
None.

The Porterville Public Improvement Corporation adjourned at 10:11 p.m. to a Meeting of the Porterville City Council.

ORAL COMMUNICATIONS
• Russell “Buck” Fletcher, 862 N. Williford Drive, came forward and asked about the activities of the Porterville Public Improvement Corporation.

OTHER MATTERS/COUNCIL COMMENTS
• Council Member Hamilton spoke regarding a recent TCAG meeting and voiced opposition to a certain issue concerning a proposed staffing change for TCAG.
• Council Member Stadtherr spoke regarding “The California Water Awareness Campaign” (www.wateraware.org) and requested feedback from Council on the possible use of the
Campaign’s free educational literature. He then suggested the creation of a staff position solely dedicated to water issues.

- Council Member Irish requested that Council receive Agendas on the Wednesday before Council Meetings, as opposed to Thursday, and voiced concern with receiving too many supplemental materials immediately prior to Council Meetings. Staff pointed out that the quality of the staff reports might suffer. After some discussion between staff and Council, it was agreed that Council would receive a copy of the draft Agenda without attachments on Tuesdays preceding Council Meetings. It was further agreed that Council would no longer receive supplemental Agenda materials after the Agenda packages had been delivered.

- Council Member Hamilton thanked Mr. Rouda for his efforts on the remote control car facility.

**ADJOURNMENT**

The Council adjourned at 10:26 p.m. to the meeting of October 5, 2004

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Patrice Hildreth, Deputy City Clerk

SEAL

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Pedro R. Martinez, Mayor